

Title Ankit Mishra vs . Beeru on 18 August, 2023

IN THE COURT OF MS. EBBANI AGGARWAL
LD. MM (NI ACT), DIGITAL COURT-09, SOUTH-WEST,
DWARKA COURT, NEW DELHI

DLSW020155012021

ANKIT MISHRA
S/o Sh. Balram Mishra
R/o B-418, Gali No.11, Vikas Vihar
Vikas Nagar
New Delhi - 110059
..... Complainant

VERSUS

BEERU
S/o Radheyshyam
R/o B-58, Gali No.09, Vikas Vihar
Vikas Nagar
New Delhi - 110059
..... Accused

Complainant Case no.	6695/2021
CNR No.	DLSW020155012021
Title	Ankit Mishra Vs. Beeru
Name of Complainant	Ankita Mishra
Name of Accused	Beeru
Date of Institution of Complaint	10.03.2021
Date of Final Arguments	08.08.2023
Date of Pronouncement of Judgment	18.08.2023
Offence Involved	Section 138 NI Act
Plea of the Accused	Pleaded not guilty
Final order	Acquittal

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by EBBAN

AGGAR AGGARWAL
Date:
2023.08.

JUDGMENT

1. Present complaint has been filed by complainant alleging an offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the "NI Act").

2. Facts, in brief, as alleged in the complaint are that accused along with his father had, on several occasions, taken financial help/ friendly loan from complainant. On 09.04.2018, when accused along with his father again approached complainant for further financial help, an agreement/undertaking [Ex. CW-1/1 (OSR)] was executed by father of accused, in presence of accused, whereby he promised to return a sum of Rs. 3,50,000/- along with an interest @ 2% per month. Accused made payment of interest amount till July, 2019. Thereafter, in discharge of his legally enforceable debt and as full and final settlement of various loans disbursed by complainant, accused issued cheque bearing no. 176452 dated 14.12.2020 for a sum of Rs. 4,44,000/- (Ex. CW-1/2) (hereinafter referred to as the "cheque-in-question") in favour of complainant. On presentation, the said cheque was returned as unpaid with remarks "Account Blocked" vide Return Memo dated 31.12.2020 (Ex. CW-1/3). Thereafter, a legal demand notice dated 28.01.2021 (Ex. CW-1/4) was served upon the accused and the accused did not make the payment of cheque amount within the statutory period and hence, complainant has filed complaint under Section 138 of the NI Act.

APPEARANCE OF ACCUSED AND FRAMING OF NOTICE EBBANI Digitally by EBBANI signed AGGAR AGGARWAL Date:

2023.08.18 CC NI ACT No. 6695/2021 Ankit Mishra vs. Beeru Page No. 2 of 19 WAL 14:05:39 +05'30'

3. This court took cognizance of offence under Section 138 of the NI Act and accused was summoned vide order dated 05.04.2021. Accused entered appearance before this Court on 18.01.2022 and thereafter, Notice as per mandate of Section 251 of Code of Criminal Procedure, 1973 (hereinafter referred to as the "Cr.P.C.") was framed against the accused wherein accused pleaded not guilty and claimed trial. In his plea of defence, accused has stated that complainant had got a bank account opened in his name and that complainant had fraudulently taken the cheque-in-

question from him. Accused further stated that he has no legal liability towards complainant, that he does not know the complainant and that he had received the legal demand notice. Further, accused denied his signatures on the cheque-in-question.

COMPLAINANT'S EVIDENCE

4. Complainant examined himself as CW-1 who tendered his affidavit of evidence. Admission-Denial of documents in terms of Section 294 of Cr.P.C. was also conducted wherein the accused has not admitted genuineness of any of the documents relied upon by the complainant. Thereafter, Accused orally moved an application seeking permission to cross examine the complainant, which was

allowed and the trial of the present complaint was converted to a summons triable case.

5. Complainant, CW-1, was then cross-examined wherein he deposed that loan agreement [Ex. CW-1/1 (OSR)] was executed at his house and that the loan agreement was signed by father of accused and himself. Complainant EBBANI by EBBANI AGGARWAL CC NI ACT No. 6695/2021 Ankit Mishra vs. Beeru Page No. 3 of 19 AGGARWAL Date: 2023.08.18 14:05:54 +05'30' further deposed that the loan agreement was not signed by any witness and that at time of execution of loan agreement, accused, his father and one other person who he does not know were present at his house. Complainant further deposed that he knows accused Beeru from before and that accused is his neighbor. Complainant further deposed that in 2017, he used to work as Branch Relationship Manager at SBI as well as in some B2B business. Complainant further deposed that he had disbursed the loan to accused in cash and that in April 2018, he had given Rs. 1,50,000/- to accused in cash after he took 3-4 days to arrange the said amount. Complainant further deposed that he does not maintain any official record in form of any ledger or account with respect to the loan which he had disbursed. Complainant further deposed that father of accused had suggested to enter into loan agreement [Ex. CW-1/1 (OSR)]. Complainant further deposed that he had accompanied accused to PNB, Vikas Vihar Branch to help him in fulfilling formalities for opening of a bank account as accused had told him that he was about to receive some payment and for that purpose he needs a bank account and that it was through that money accused had promised to repay the loan amount and that it was for this reason he had helped accused. Complainant further deposed that accused had paid Rs. 7,000/- per month as interest for a period starting from April, 2018 till July, 2019 by way of cash and that he had not given any receipt regarding payment of interest by way of cash. Complainant further deposed that he had received a notice from accused Beeru alleging that he has in his possession eight cheques pertaining to bank EBBANI by AGGARWAL CC NI ACT No. 6695/2021 Ankit Mishra vs. Beeru Page No. 4 of 19 AGGAR 2023.08.18 Date:

WAL 14:06:06 +05'30' account of accused Beeru. Complainant further deposed that the cheque-in-question was filled by accused Beeru himself and same was handed over to him. Complainant further deposed that he does not know what occupation accused Beeru is engaged in, however, earlier he was employed in some job and that he does not know the exact nature of that job. Complainant further deposed that earlier also accused Beeru had taken some loan from him which he had duly repaid and that it was on that basis he had disbursed present loan to accused Beeru. Complainant further deposed that name of father of accused is Radhey Shyam and that he has four sons. Thereafter, complainant was shown loan agreement [Ex. CW-1/1 (OSR)] wherein he deposed that name of accused Beeru is mentioned on the loan agreement and then admitted that loan agreement neither bears the name of accused Beeru nor the same has been signed by accused Beeru. Complainant further deposed that he had disbursed the loan amount of Rs. 3,50,000/- to accused Beeru, however, he again said that accused Beeru along with his father had visited his house and that he had given the said loan to them.

6. Thereafter, concerned official of Punjab National Bank, F- Block Vikaspuri Branch was summoned and Sh. Anil Kumar Sharma, Manager at Punjab National Bank, F-Block Vikaspuri

Branch was examined as CW-2 who placed on record bank account statement of accused (Ex. CW-2/1) and cheque book maintenance-cheque leaf status inquiry (Ex. CW-2/2). CW-2 deposed that accused had opened his bank account in 2018 with mandatory charges of Rs. 1,000/- and thereafter, accused did not do any transaction and his EBBANI Digitally signed by EBBANI AGGAR Date:

AGGARWAL CC NI ACT No. 6695/2021 Ankit Mishra vs. Beeru Page No. 5 of 19
2023.08.18 WAL 14:06:18 +05'30' bank balance was zero in year 2019. CW-2 further deposed that cheque book which was issued to accused had twenty cheques in it. CW-2 further deposed that account of accused is currently dormant as he did not do any transaction whatsoever in the bank account and therefore, no other details can be furnished by the bank.

7. CW-2 was thereafter cross-examined where he deposed that no other cheque other than the cheque in question was presented for encashment in bank account of accused. CW- 2 further deposed that he cannot tell if the cheque-in- question bears the signature of accused or not as the record is not available with the bank. CW-2 further deposed that record of account opening of accused is not available with bank as the account of accused is currently dormant and that he cannot tell who filled the necessary paperwork for opening the bank account of accused. CW-2 further deposed that he cannot furnish the bank account opening form of accused as same has not been found at capital record centre where all records are maintained. CW-2 further deposed that he has personally not seen accused signing the bank account opening form and that he has no personal knowledge regarding signatures of accused. CW-2 further deposed that he is not aware if the complainant was in possession of the cheque book of which present cheque in question forms part of.

Complainant, then dropped witness mentioned at serial number two in his list of witness and CE was closed.

STATEMENT OF ACCUSED UNDER SECTION 313 R/W 281 Cr.P.C.

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8. Thereafter, all incriminating piece of evidence were put to accused and his statement in terms of Section 313 r/w Section 281 of Cr.P.C. was recorded wherein accused stated that loan agreement [Ex. CW-1/1 (OSR)] has not been signed by his father. Accused has further stated that complainant had got a bank account opened in his name and that charges of Rs. 1,000/- for purpose of opening of bank account were also paid by complainant himself. Accused has further stated that complainant had fraudulently taken his cheque book and pass book and that cheque-in-question is one of the cheques of the said cheque book which was fraudulently taken by

complainant. Accused has further stated that cheque-in-question does not bear his signature and that he has no legal liability towards complainant.

In the said statement itself, accused opted to lead evidence in his defence and the matter was listed for DE.

DEFENCE EVIDENCE

9. In support of his defence, accused has examined himself as a witness and he entered the witness box himself after his application under Section 315 Cr.P.C. was allowed. Accused was examined as DW-1 wherein he has placed on record following documents:

(i) Ex. DW-1/1: Legal notice dated 22.02.2022 sent to complainant calling upon him to return his cheques.

(ii) Mark DW-1/A: Corrigendum dated 05.03.2022 sent to complainant in furtherance of notice dated 20.22.2022.

(iii) Ex. DW-1/2: Postal Receipts.

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(iv) Ex. DW-1/3: Copy of complaint filed before DCP.

10. In his examination-in-chief accused has deposed on similar lines as his statement under Section 313 r/w Section 281 of Cr.P.C. and has reiterated that he has never taken any loan from complainant and that cheque-in-question does not bear his signature. Accused further deposed that in March 2018, complainant took him to a bank to get his bank account opened and that account opening form and initial deposit of Rs. 1,000/- in the bank account was done by complainant. Accused further deposed that complainant took his passbook and cheque book on premise that he will get his loan approved. Accused further deposed that when he got to know that complainant has taken his cheque book he sent a legal notice (Ex. DW-1/1) and corrigendum (Mark DW- 1/A). Accused further deposed that he had also filed a complaint to the DCP which is Ex. DW-1/3 and that his cheque is being misused by complainant.

11. Thereafter, Accused (DW-1) was cross examined wherein he deposed that complainant lives after a gap of four to five houses from his house and that complainant and he had visited the bank from his house as complainant had visited his house. Accused further deposed that complainant had taken his passbook and cheque book from him in the bank itself and that he did not inform anyone in the bank regarding this fact. Thereafter, accused was shown Ex. DW- 1/1 and Mark DW-1/A wherein he deposed that the notice and corrigendum were sent by him after filing of the present

complaint. Accused was then shown Ex. DW-1/3 wherein he deposed that the complaint was made to DCP after filing EBBANI by AGGARWAL AGGAR Date:

2023.08.18 CC NI ACT No. 6695/2021 Ankit Mishra vs. Beeru Page No. 8 of 19 WAL 14:06:58 +05'30' of the present complaint. Accused further deposed that he did not reply to legal demand notice sent by complainant to him.

Thereafter, DE was closed, and matter was listed for final arguments.

FINAL ARGUMENTS

12. Ld. Counsel for complainant has reiterated the averments made in the complaint in his arguments and has further argued that complainant had advanced a friendly loan of Rs. 3,5,000/- to accused and his father and that father of accused had also executed an agreement in writing [Ex. CW-1/1 (OSR)] wherein it has been promised that accused shall return the loan amount to complainant along with interest. Ld. Counsel for complainant has further argued that accused has issued the present cheque in question in discharge of his legally enforceable debt and that benefit of presumption under Section 139 of the NI Act exists in favour of complainant. Ld. Counsel for complainant has further argued that accused has been inconsistent in his defence and has made material improvements in his defence at every stage of trial. Ld. Counsel for complainant has further argued that accused never replied to the legal demand notice issued by complainant which has been admitted by the accused and this fact strengthens the case of complainant. Ld. Counsel for complainant has further argued that accused has merely denied his signatures on the cheque-in-question and has not examined any other witness in support of either his defence or to prove that the cheque-in-question does not bear his signatures. Ld. Counsel for complainant has further EBBANI Digitally by EBBANI signed AGGARWAL AGGAR Date:

2023.08.18 CC NI ACT No. 6695/2021 Ankit Mishra vs. Beeru Page No. 9 of 19 WAL 14:07:35 +05'30' argued that all the statutory requirements for an offence under Section 138 of the NI Act are met with in the present complaint and that complainant has been able to prove his case beyond reasonable doubt and that in view of the facts and circumstances of the present complaint, accused be convicted of offence under Section 138 of the NI Act.

13. Per Contra, Ld. Counsel for accused has argued that accused has been falsely implicated in the present complaint and that no friendly relation exists between complainant and accused. Ld. Counsel for accused has further argued that accused has not taken any friendly loan from complainant and that neither accused nor father of accused has executed the alleged loan agreement [Ex. CW-1/1 (OSR)]. Ld. Counsel for accused has further argued that there are major contradictions in the cross examination of complainant and the averments made in the complaint. Ld. Counsel for accused has further argued that complainant has admitted in the cross-examination that he had accompanied accused to PNB, Vikaspuri branch for purpose of opening his bank account and that this fact further strengthens the defence of accused. Ld. Counsel for accused has further argued that loan agreement [Ex. CW- 1/1 (OSR)] is a false and fabricated document as same has

neither been executed on a stamp paper nor has been executed in presence of an independent witness. Ld. Counsel for accused has further argued that loan agreement [Ex. CW-1/1 (OSR)] neither bears signature of accused nor name of accused. Ld. Counsel for accused has further argued that accused has been able to establish his defence EBBANI Digitally by EBBANI signed AGGAR Date:

AGGARWAL 2023.08.18 CC NI ACT No. 6695/2021 Ankit Mishra vs. Beeru Page No. 10 of 19 WAL 14:07:50 +05'30' and therefore, accused be acquitted for offence under Section 138 of the NI Act.

LEGAL POSITION

14. Before proceeding to decide the case on merits, it is imperative that position of law with respect to an offence under Section 138 of the NI Act is discussed. Section 138 of the NI Act reads as under:

"138. Dishonour of cheque for insufficiency, etc., of funds in the account. -- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless--

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and;

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

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AGGARWAL CC NI ACT No. 6695/2021 Ankit Mishra vs. Beeru Page No. 11 of 19 2023.08.18 WAL 14:08:02 +05'30' Explanation. -- For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

15. The essential ingredients for commission for an offence under Section 138 of the NI Act has been laid down by Hon'ble Supreme Court of India in case of Kusum Ingots & Alloys Ltd and Ors. v. K Pennar Peterson Securities Ltd and Ors., [2000] 1 S.C.R. 2000 (hereinafter referred to as Kusum Ingots Case) wherein it has been held as under:

"10. On a reading of the provisions of Section 138 of the NI Act it is clear that the ingredients which are to be satisfied for making out a case under the provision are:

(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;

(ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(iii) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

11. If the aforementioned ingredients are satisfied then the person who has drawn the cheque shall be deemed to have committed an offence. In the explanation to the section clarification is made that the phrase "debt or EBBANI Digitally by EBBANI signed CC NI ACT No. 6695/2021 Ankit Mishra vs. Beeru Page No. 12 of 19 AGGAR AGGARWAL Date:

2023.08.18 WAL 14:08:13 +05'30' other liability" means a legally enforceable debt or other liability."

Therefore, in order to establish commission of an offence under Section 138 of the NI Act, complainant has to satisfy those above-mentioned ingredients.

16. Section 139 of the NI Act is a reverse onus clause which was added to the statute book in order to increase the credibility of cheque/negotiable instruments as a mode of payment. Section 139 reads as under:

"139. Presumption in favour of holder. -- It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

17. Nature and scope of presumption under Section 139 of the NI Act has been dealt in a catena of judgments. In case Rangappa v. Sri Mohan, [2010] 6 S.C.R. 507, Hon'ble Supreme Court has further held as under:

"28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."

18. In Basalingappa vs Mudibasappa, [2019] 6 S.C.R. 555 (hereinafter referred to as Basalingappa Case), certain EBBANI Digitally by EBBANI signed AGGARWAL AGGAR Date:

2023.08.18 CC NI ACT No. 6695/2021 Ankit Mishra vs. Beeru Page No. 13 of 19 WAL 14:08:25 +05'30' principles regarding rebuttal of presumption under Section 139 of the NI Act has been laid down which are as under:

25. We having noticed the ratio laid down by this Court in the above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner: 25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities. 25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely. 25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden. 25.5. It is not necessary for the accused to come in the witness box to support his defence."

(Empahsis supplied)

19. From above-mentioned discussion, it becomes clear that once the execution of cheque-in-question is admitted then it is mandatory to raise a presumption under Section 139 of the NI Act in favour of complainant and the presumption includes the presumption that the cheque-in-question was issued in discharge of a legally enforceable debt within its ambit. However, presumption under Section 139 of the NI Act is a rebuttable presumption which casts an onus on accused to rebut the same on basis of preponderance of probabilities. It is not necessary that accused enters the witness box himself for this purpose, however, making of EBBANI Digitally signed by EBBANI CC NI ACT No. 6695/2021 Ankit Mishra vs. Beeru Page No. 14 of 19 AGGAR AGGARWAL Date: 2023.08.18 WAL 14:08:37 +05'30' bare averments is not enough and some proof has to be adduced by accused either from the material which is already available on record or by leading cogent evidence in support of his defence.

ANALYSIS ON MERITS

20. Position of law being as above, it becomes imperative to examine as to whether complainant has been able to establish the basic ingredients for commission of offence under Section 138 of the NI Act and if the complainant succeeds in same, whether accused has been able to rebut the presumption drawn under Section 139 of the NI Act or not.

21. With respect to essential ingredients for commission of offence under Section 138 of the NI Act, it can be seen from record that the cheque in question Ex. CW-1/2 was presented within three months from the date of issuance viz 04.12.2020 and the same was dishonoured with remarks "Account Dormant" vide return memo dated 31.12.2020 Ex. CW-1/3. Legal Demand Notice dated 28.01.2021 Ex. CW-1/4 was sent to the accused within the prescribed period. Speed post receipt, courier receipt and tracking reports have also been placed on record which are Ex. CW- 1/5, Ex. CW-1/6 and Ex. CW-1/7 respectively. Thereafter, the present complaint was filed within the prescribed period of limitation, i.e., on 15.03.2021. In notice framed against the accused under Section 251 of Cr.P.C. accused has admitted that he had received the legal demand notice from complainant. Further, CW-2 (Manager at Punjab National Bank, F-Block Vikaspuri Branch) who has placed on record by EBBANI EBBANI Date:

AGGARWAL 2023.08.18 CC NI ACT No. 6695/2021 Ankit Mishra vs. Beeru Page No. 15 of 19 14:08:49 +05'30' the statement of account (Ex. CW-2/1) from which it can be inferred that the cheque-in-question was issued from an account which was maintained in the name of accused.

22. However, it is pertinent to mention here that accused has denied his signatures on the cheque-in-question and has further taken a defence that he has never taken any friendly loan from complainant as has been alleged in the complaint.

Therefore, the benefit of presumption under Section 139 of the NI Act cannot be extended to the complainant and in order to succeed in its claim, complainant would have to prove existence of a legally enforceable debt independently on its own leg.

WHETHER A LEGALLY ENFORCEABLE DEBT EXISTS IN FAVOUR OF COMPLAINANT

23.It has been alleged by complainant that accused and his father had taken a loan from him on two occasions, once for a sum of Rs. 2,00,000/- on 10.01.2018 and for the second time for a sum of Rs. 1,50,000/- on 09.04.2018. It has further been alleged in the complaint that when accused and his father approached complainant for loan on 09.04.2018, a loan agreement [Ex. CW-1/1 (OSR)] was executed and that accused and his father had agreed to return back the entire loan amount of Rs. 3,50,000/- along with an interest @ 2% per month. It has also been alleged that accused had paid interest amount of Rs. 7,000/- per month to complainant in cash till July, 2019. However, complainant has not placed on record any receipt or document to show that accused has made payment of interest amount of Rs. 7,000/- per month till July, 2019.

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24.The complainant has only placed on record the loan agreement [Ex. CW-1/1 (OSR)] to prove existence of a legally enforceable debt. Perusal of the same shows that the loan agreement has been signed by father of accused and the same has neither been signed by accused himself nor does it anywhere mention the name of accused Beeru. Complainant (CW-1) has also admitted the same in his cross- examination. Further, loan agreement [Ex. CW-1/1 (OSR)] is a vague document as it only mentions that Sh. Radhey Shyam (father of accused) and his son had agreed to repay the loan to complainant along with interest at the rate of 2% per month and the same does not mention which son of accused had agreed to repay the alleged loan when it has been deposed by complainant himself (CW-1) in the cross- examination that father of accused has four sons.

25.In view of the same, this Court is of the opinion that the loan agreement cannot be relied upon to establish existence of a legally enforceable debt qua accused Beeru.

DEFENCE OF ACCUSED

26.Accused has taken a defence that complainant had got his bank account opened and had fraudulently taken his cheque book. Accused has not examined any other person other than himself as a witness and has placed on record one notice with he had sent to complainant dated 22.02.2022 (Ex. DW-1/1), corrigendum dated 05.03.2022 (Ex. DW- 1/2) and copy of complaint filed by him before DCP (Ex. DW-1/3). However, the notice, corrigendum and complaint to DCP have been sent by the accused after the filing of EBBANI Digitally signed by EBBANI AGGAR AGGARWAL Date: 2023.08.18 CC NI ACT No. 6695/2021 Ankit Mishra vs. Beeru Page No. 17 of 19 WAL 14:09:14 +05'30' present complainant and therefore, cannot be relied upon to strengthen the defence of accused.

27. Complainant (CW-1) in his cross-examination has admitted that he had accompanied accused to help him in fulfilling formalities for purpose of opening his bank account as accused had told him he

was about to receive some payment for which he needed a bank account and that it was through this payment accused had promised to repay the loan amount to accused. Complainant has also examined the bank manager of Punjab National Bank, Vikaspuri Branch as CW-2 who has placed on record bank account statement of accused (Ex. CW-2/1) and cheque book maintenance-cheque leaf status inquiry (Ex. CW-2/2) which shows that accused has not done any transaction in his bank account other than the transaction of initial deposit of Rs. 1,000/- and no other cheque other than the cheque in question has been present for clearance in the bank account of accused. This fact strengthens the defence of accused as no transaction has ever been done by accused in his bank account.

CONCLUSION

28. In view of the foregoing facts, arguments advanced by the parties, marshalling of evidence as well as established legal position, this court is of opinion that complainant has not been able to establish existence of legally enforceable debt which is one of the statutory requirements for commission of an offence under Section 138 of the NI Act. Therefore, this court is of the considered opinion that the accused Beeru s/o Sh. Radhey Shyam is not guilty of offence EBBANI Digitally signed by AGGAR EBBANI AGGARWAL Date: 2023.08.18 14:09:28 +05'30' CC NI ACT No. 6695/2021 Ankit Mishra vs. Beeru Page No. 18 of 19 WAL under Section 138 of Negotiable Instruments Act, 1881 and accordingly, is hereby acquitted for offence under Section 138 of Negotiable Instruments Act, 1881.

Announced in open court on 18.08.2023. EBBANI Digitally signed by EBBANI AGGAR AGGARWAL Date: 2023.08.18 WAL 14:09:41 +05'30' (EBBANI AGGARWAL) MM (NI ACT), DIGITAL COURT-09 SOUTH-WEST DISTRICT, DWARKA COURT NEW DELHI 18.08.2023 CC NI ACT No. 6695/2021 Ankit Mishra vs. Beeru Page No. 19 of 19