

## In Re: Shriram Transport vs . Sandeep on 18 August, 2023

IN THE COURT OF SH. SHASHANK NANDAN BHATT,  
MM, NI ACT-06, SOUTH WEST, DWARKA, DELHI

IN RE: SHRIRAM TRANSPORT VS. SANDEEP  
CC No. 32159/19  
CNR No. DLSW02-044630-2019

SHRIRAM TRANSPORT FINANCE CO. LTD.  
REGISTERED OFFICE AT  
3rd FLOOR, MOOKAMBIKA COMPLEX NO. 4,  
LADY DESIKA ROAD, MYLAPORE,  
CHENNAI-600004

BRANCH OFFICE AT  
G-2, S-4/60, SECOND FLOOR  
NEW MAHAVIR NAGAR, DELHI-110018

THROUGH ITS AUTHORIZED REPRESENTATIVE

.....Complainant

Versus

SANDEEP  
M/S SANDEEP TRANSPORT COMPANY  
HN-110, EXTENTION 2-D,  
NANGLOI, DELHI-110041

.....Accused

DATE OF INSTITUTION	: 27.08.2019
OFFENCE COMPLAINED OF	: U/s 138 N I Act
DATE OF JUDGMENT	: 18.08.2023
DECISION	: Acquitted

### JUDGMENT

1. The instant matter has originated out of a complaint under section 200 CrPC read with Section 138 Negotiable Instruments Act (hereinafter referred to as the 'N I Act'), filed by the complainant against the accused alleging that cheque bearing no. 066924, dated 19.06.2019, amounting to Rs. 8,00,000/-, drawn on Union Bank of India, Mundka, Delhi, issued by the accused in favour of the CC No. 32159/2019 Judgment complainant, in discharge of a legal debt or other liability, has been dishonoured and the accused has not paid the said amount even after receiving the prescribed legal demand notice. By virtue of this judgment, the present complaint is being disposed of.

Brief Facts of the case

2. The case of the complainant, in brief, is that the accused approached them for the purpose of procuring a loan for financing a commercial vehicle on hire-purchase basis. Acting on the representations of the accused, the complainant advanced a loan to the complainant as per loan agreement bearing no. JANKPO3112 70003. The accused made several defaults in repayment of the loan amount (as per the schedule) and in order to repay his pending liability, issued the cheque in question (details of which are mentioned in paragraph no. 1 of the judgment). Upon presentation, the said cheque got dishonored with the reason 'Funds Insufficient' vide return memorandum dated 24.06.2019. Thereafter, the complainant sent a legal demand notice dated 11.07.2019 to the accused, via speed post, which was delivered to him on 15.07.2019 but the accused failed to make the payment of the cheque amount even after expiry of the prescribed period. Being aggrieved with the above facts and circumstances, the present complaint was instituted by the complainant.

3. Pursuant to the institution of the present complaint, summons were issued qua the accused. Upon the appearance of the accused, notice u/s 251 of Cr.PC was framed vide order dated 29.03.2022, to which the accused pleaded not guilty and claimed trial. In the defence recorded u/s 251 Cr.P.C. on the same date, the accused admitted his signatures over the cheque in question and stated that the other particulars were not filled by him. The accused stated that in the year 2015-16, he had taken a loan of Rs. 3 to 3.5 lakhs for purchasing a second hand truck and had paid 10-15 installments to the complainant for the repayment of his loan. Thereafter, his truck got CC No. 32159/2019 Judgment stolen and he applied for insurance claim to the complainant but he was informed that the insurance amount will be deducted (set off) from his loan account. He further stated that the complainant misused the cheque in question and had filed a false case against him. He added that he had paid Rs. 75,000/- in cash to one Ankush Jain (who had arranged the loan) but the said Ankush Jain never handed over the said amount to the complainant. He also stated that he had filed a case against the complainant in consumer court. The accused also added that he did not receive the legal demand notice, however, he admitted that the address mentioned upon the same is his correct address.

4. In support of his case, the AR for the complainant -Tarun Sharma has examined himself as CW-1 and presented the following documents:

- (i) Certificate of incorporation as Mark A;
- (ii) Copy of power of attorney and authorization letter as Ex.CW-1/2;
- (iii) Copy of Hire - purchase agreement as Ex.CW1/3;
- (iv) Original cheque in question as Ex.CW1/4;
- (v) Original return memorandum as Ex.CW1/5;
- (vi) Copy of legal notice as Ex.CW1/6;
- (vii) Speed post dated as Ex.CW1/7;
- (viii) Tracking Report along as Ex.CW1/8;
- (ix) Copy of statement of account as Ex.CW1/9;
- (x) Certificate u/s 65-B of Indian Evidence Act as Ex.CW1/10
- (xi) Loan account statement as Ex.CW1/11;

5. In his statements recorded u/s 313 Cr.PC, the accused stated that he had taken the loan of Rs. 3.75 lakhs from the complainant to finance a loading vehicle and the cheque in question was handed over

by him to the complainant, in a blank signed condition, as a security. He paid 7-8 EMIs, which were deducted from his bank account or were paid to one Ankush Jain, who was the employee of the complainant. The amount paid by him to Ankush Jain was Rs. 85,000/-. He further stated that after 1 ½ year of taking the loan, the vehicle was stolen and when he applied for insurance to Shriram General Insurance CC No. 32159/2019 Judgment Company, his claim was rejected on frivolous grounds. Thereafter, he paid a sum of Rs. 50,000/- to Ankush Jain to settle his loan and for the approval of his insurance claim, but, the said Ankush Jain defrauded him as well as the complainant. He further denied his liability mentioned on the cheque in question. The accused reiterated that the legal demand notice was not received by him but the same bears his correct address.

6. Thereafter the matter was listed for defence evidence wherein the accused presented himself as a witness. The accused / Sandeep was examined in chief as DW-1 (on 05.07.2023) and the right of the complainant to cross examine the accused was closed vide order dated 25.07.2023.

7. Thereafter, the matter was listed for final arguments. During the course of arguments, it was argued by Ms. Awaljot Kaur, Ld. Counsel for the complainant that in view of the fact that the accused has admitted his signatures on the cheque in question, the presumptions under 118(a)/139 N I Act are attracted and the case is fit for conviction. She further stated that the accused had failed to prove the role of Ankush Jain, who was previously their employee and even otherwise, the complainant cannot be denied the recovery of his legally enforceable debt, merely for the defaults, if any, of the said Ankush Jain. She further argued that the defence of the accused is totally sham and frivolous and prayed that the accused be convicted in the present matter.

8. Per contra, Sh. Vinod Kumar Dubey, Ld. counsel for the accused argued that the power of attorney and the loan agreement are improperly stamped and cannot be admitted in evidence. He further argued that the complainant has failed to explain how they calculated the liability of the accused as Rs. 8 lakhs, when the loan amount was approximately Rs. 4 lakhs. He also emphasized on the role of Ankush Jain, who was admittedly the agent of the complainant and stated that the complainant is bound by the actions of his agent, who CC No. 32159/2019 Judgment took money from the accused and failed to deposit it with the complainant. He thus prayed that the accused be acquitted in the present matter.

#### Findings of the Court-

9. Before delving into the facts of the case, it is apposite to bear in mind the law with respect to section 138, Negotiable Instrument Act. In order to prove his case under section 138 N I Act, the complainant must prove the following facts-

- i) The accused issued a cheque on a bank account maintained by him;
- ii) The said cheque must have been issued, wholly or partly, in discharge of a 'legal debt or other liability' ;

- iii) The said cheque was presented before the bank within 3 months from the date of issuance and was dishonoured;
- iv) The payee issued a legal demand notice, within 30 days of receipt of information of dishonour of the cheque;
- v) The drawer failed to make payment within 15 days of receipt of the said legal demand notice.

10. Further, the NI Act raises two important legal presumptions in favour of the holder of the cheque as soon as the execution of cheque is proved. As per Section 118(a), NI Act, it shall be presumed that every negotiable instrument was 'made, accepted, transferred, negotiated or endorsed for consideration, unless the contrary is proved'. Furthermore, as per section 139, NI Act, it shall be presumed that 'the holder of cheque, received the cheque for the discharge, in whole or in part, of any debt or other liability, unless the contrary is proved.'

11. The principles with respect to above mentioned presumptions, have been succinctly laid down in Para 25 of the judgment by Hon'ble apex court in Basalingappa v. Mudibasappa (2019) 5 SCC 418, which lays down as under-

CC No. 32159/2019 Judgment " 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."

12. At the very outset, it is pertinent to note that in the present matter the cheque in question (Ex.CW1/4) was issued on 19.06.2019. The said cheque was presented before the bank within the prescribed time and was dishonored vide return memorandum dated 24.06.2019 (Ex.CW1/5) with the reason 'Funds Insufficient'. Thereafter, a legal notice (Ex.CW1/7) was sent by the complainant to the accused on 11.07.2019, which was received by the accused on 15.07.2019 (as per tracking report Ex.CW1/8, certificate u/s 65-B of the Indian Evidence Act Ex.CW1/10). Thereafter, the present matter was instituted by the complainant on 26.08.2019.

13. In the present matter, the case of the complainant is that the cheque in question was issued by the accused in favour of the complainant in discharge of his legally recoverable liability. During the course of the present trial, the accused admitted his signatures over the cheque in question and as laid down by the Hon'ble apex court in Basilingappa (supra), once the execution of the cheque is admitted, the presumption that the cheque in question was executed in discharge of a debt or other liability gets attracted by virtue of the mandate of section 139, N I Act and the onus to raise a probable CC No. 32159/2019 Judgment defence shifts upon the accused. The defence taken by the accused in the present matter is mainly two fold: 1) An amount of approximately Rs. 1,35,000/- was paid by him to one Ankush Jain, who was previously the employee of the complainant and the complainant cannot recover the said amount from him (accused) and

2) The cheque in question does not reflect the legally enforceable liability of the accused.

WITH RESPECT TO THE DEFENCE THAT AN AMOUNT OF APPROXIMATELY RS. 1,35,000/- WAS PAID BY THE ACCUSED TO ONE ANKUSH JAIN, WHO WAS PREVIOUSLY THE EMPLOYEE OF THE COMPLAINANT AND THE COMPLAINANT CANNOT RECOVER THE SAID AMOUNT FROM THE ACCUSED.

14. In the present matter, the accused has taken a defence that he had paid a sum of approximately Rs. 1,35,000/- to one Ankush Jain, who was the agent of the complainant and the complainant cannot recover the said amount from him. On the other hand, the case of the complainant is that the said Ankush Jain acted outside the scope of his authority by illegally embezzling the funds of the complainant and therefore, the complainant was not bound by his actions.

15. At the very outset, it is pertinent to note that in the present matter, the accused (Sandeep/DW-1) had categorically stated at the stage of defence evidence that he had paid a total amount of Rs. 1,35,000/- to one Ankush Jain, who was the employee of the complainant. The said version of the accused remained unimpeached and unrebutted, on account of the fact that the complainant's right to cross examine the accused was closed by the court. Admittedly, the said Ankush Jain was an employee of the complainant and the complainant had lodged an FIR against him pertaining to fraud and malpractices carried on by him. In view of the above, the only question that falls for the consideration of this court is whether the complainant can legally claim, the amount that the accused had already paid to the CC No. 32159/2019 Judgment said Ankush Jain (previously the employee of the complainant), on the ground that the said Ankush Jain acted outside the scope of his authority.

16. The legal position with respect to the Principal-Agent relationship, as laid down in The Indian Contract Act, 1872 is that as an ordinary rule, a principal is bound by the actions of his agent, performed by him, within the scope of his authority. Further, in cases where the agent acts beyond the scope of his authority, the principal is bound by such actions if he has, by words or conduct, induced the third person to believe that such actions were within the scope of the agent's authority (section 237 of The Indian Contract Act).

17. In the present matter, it is admittedly the case of the complainant that Ankush Jain was previously their employee and they have even lodged an FIR against him with respect to the frauds and malpractices that were carried on by him. Pertinently, since the complainant himself came to know of the irregularities committed by the said Ankush Jain, after a lapse of substantial time (when an FIR was lodged by the complainant) and there was no occasion for the complainant to have informed the accused about the fact that Ankush Jain was acting beyond the scope of his authority. Consequently, since the said Ankush Jain was previously employed with the complainant, this court is of the view that the complainant made it apparent to the accused that Ankush Jain was acting on their behalf and thus, the complainant is bound by the actions of the said Ankush Jain. Therefore, the accused has successfully proved that he had paid an amount of approximately Rs. 1,35,000/- to Ankush Jain, who was previously the employee of the complainant and the complainant cannot recover the said amount from the accused.

WITH RESPECT TO THE DEFENCE THAT THE CHEQUE IN QUESTION DOES NOT REFLECT THE LEGALLY ENFORCEABLE LIABILITY OF THE ACCUSED CC No. 32159/2019 Judgment

18. During the course of final arguments, the Ld. counsel for the complainant submitted that as per the statement of loan account (Ex.CW1/11), the total amount of loan that was disbursed to the accused was Rs. 4 lakhs and prior to the presentation of the cheque in question, the accused had repaid a sum of Rs. 1,20,516/-. The Ld. counsel for the complainant further explained that the amount of the alleged liability of the accused (of Rs. 8,00,000/-) was calculated by the complainant after including the penalties and the interest amount. On the other hand, the Ld. counsel for the accused argued that the amount of Rs. 8 lakhs as determined by the complainant was totally arbitrary and there is no legal basis for the calculations of the complainant.

19. Upon considering the record in light of the facts and circumstances of the present case, it emerges that as per the loan agreement (Ex.CW1/2) and the loan account statement (Ex.CW1/9), a loan amount of Rs. 4 lakhs, was advanced by the complainant to the accused at an interest of 13.12% per annum. As per the loan agreement, additional interest of 3% per month was leviable on the accused in case of defaults and dishonor charges of Rs. 300/- were also payable by the accused to the complainant. A careful scrutiny of the loan account statement (Ex.CW1/11), reveals that the total interest leviable by the complainant on the accused was Rs. 2,09,997/- and the date of last installment was 05.08.2017.

20. In the present matter, the cheque in question bears the date 19.06.2019 and as per the statement of account (Ex.CW1/11), the outstanding liability of the accused as on 19.06.2019, was Rs. 19,71,251/-. During the cross examination of the AR of the complainant / Sh. Tarun Sharma (CW-1), he was specifically asked about the basis of his calculations to which he replied that the loan amount was Rs. 4,00,000/, the interest amount was Rs. 2,09,997/- and the accused had already repaid a part amount of Rs. 1,25,516/-. The AR of the complainant further stated that other penalties were CC No. 32159/2019 Judgment also imposed upon the accused, however, to the utter surprise of this court, the AR for the complainant was unable to explain what were the exact penalties that were imposed upon the accused.

21. At this juncture, it is pertinent to note that as per the loan agreement (page no. 16, Ex.CW1/2), the complainant was authorized to impose an additional interest of 3% per month upon the accused (as liquidated damages), alongwith cheque dishonor charges of Rs. 300/- per dishonor. In the considered opinion of this court, an additional rate of interest of 3% per month, is essentially a penalty in nature and the same cannot be regarded as a legally enforceable liability by virtue of the provision of section 74 of The Indian Contract Act, as per which, only a reasonable compensation (not exceeding the amount of penalty) can be recovered by the complainant. In the considered opinion of this court, a penalty imposed by way of an additional interest of 3% per month (apart from a pre existing rate of interest of 13.12% per annum), is totally unreasonable and if such absurd rates of interest is permitted to be recovered by the creditors from the borrowers, the same would set a dangerous precedent and would run contrary to public policy. As discussed hereinbefore, the accused has successfully proved that apart from the amount admitted by the AR of the complainant, he had paid a further amount of Rs. 1,35,000/- to Ankush Jain, who was the agent of the complainant. Ergo, in light of the above facts and circumstances, there is absolutely nothing on record that goes on to establish that the liability of the accused on the date of presentation of cheque was Rs. 8,00,000/-. Consequently, the accused has successfully challenged the fact that the cheque in question amounting to Rs. 8,00,000/- does not reflect his legally enforceable liability.

22. Before parting with this judgment, it is pertinent to note that the Ld. counsel for the accused, during the course of final arguments, challenged the validity of the power of attorney of the AR of the complainant (Ex.CW1/3) and the loan agreement (Ex.CW1/2) on the CC No. 32159/2019 Judgment ground that the said documents are insufficiently stamped. Pertinently, the insufficiency of stamp duty, in the documents mentioned hereinabove, was not challenged by the Ld. counsel for the accused at the stage of complainant's evidence and consequently, the said defence is not sustainable in the eye of law by virtue of the provisions laid down by section 36 of The Indian Stamps act, 1899, as per which when an instrument has been admitted in evidence, its validity cannot be questioned at any stage of trial on the ground that the instrument is not duly stamped.

## CONCLUSION

23. Thus, on account of above appreciation of facts, evidences and materials on record, this court is of the considered opinion that the complainant has failed to establish that the cheque amount represents his legally enforceable liability and has therefore failed to prove his case as per the touchstone of 'beyond reasonable doubt'. Consequently, the accused Sandeep is acquitted under the accusation of committing the offence u/s 138 N I Act.

24. This judgment contains 12 pages. This judgment has been pronounced in the open court today and each page bears the signatures of the undersigned.

25. Let a copy of the judgment be uploaded on the official website of District Courts, Dwarka forthwith. Digitally signed SHASHANK by SHASHANK NANDAN NANDAN BHATT PRONOUNCED IN THE OPEN COURT BHATT Date: 2023.08.18 14:10:08 +0530 TODAY I.E. ON 18th August, 2023.

(Shashank Nandan Bhatt)

In Re: Shriram Transport vs . Sandeep on 18 August, 2023

Metropolitan Magistrate (NI Act)-06  
South- West, Dwarka  
18.08.2023

CC No. 32159/2019

Judgment