

## Sh. Baljeet Singh vs . on 9 September, 2021

IN THE COURT OF METROPOLITAN MAGISTRATE (NI-05),  
WEST, TIS HAZARI COURTS, NEW DELHI  
Presided over by- Sh. Devanshu Sajlan, DJS

Case No. - 4062/2016

Unique Case - DLWT020010972013  
ID No.

In the matter of :-

Sh. Baljeet Singh,  
S/o Lt. Sh. Kewal Singh  
R/o H.No.126, VP0: Bakarwala  
New Delhi.

... Complainant

VS.

Sh. Dharamvir,  
s/o Sh. Laxman Narain  
R/o VP0: Bakarwala  
Opp. Shiv Mandir  
New Delhi - 110015

... Accused

- |    |                                 |  |
|----|---------------------------------|--|
| 1. | Name of Complainant             | : Sh. Baljeet Singh                              |
| 2. | Name of Accused                 | : Sh. Dharamvir                                  |
| 3. | Offence complained of or proved | : Section 138, Negotiable Instruments Act, 1881. |
| 4. | Plea of Accused                 | : Not Guilty                                     |
| 5. | Date of Filing                  | : 16.04.2013                                     |
| 6. | Date of Reserving Order         | : 28.08.2021                                     |
| 7. | Date of Pronouncement           | : 09.09.2021                                     |
| 8. | Final Order                     | : Acquitted                                      |

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Argued by: Sh. Pinku Singh, learned counsel for the complainant.  
Sh. Sanjeev Kumar and Sh. Ranvir Vats, learned counsels for the accused.

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BRIEF STATEMENT OF REASONS FOR THE DECISION:-

A. FACTUAL MATRIX

1. The present complaint has been filed by Sh. Baljeet Singh (hereinafter "complainant") against Sh. Dharamvir (hereinafter "accused") under section 138 of the Negotiable Instruments Act, 1881 (hereinafter "NI Act").
2. The substance of allegations, as contained in the complaint, are as follows:

- (a) The complainant claims that the accused approached the complainant to borrow a sum of Rs.10,00,000 on 04.01.2012, which was advanced by the complainant. The loan was apparently advanced on the basis of friendly relations without any interest. The loan was required to be repaid by the second week of February 2013. It is further alleged that in discharge of the loan liability of the same amount, the complainant received a cheque of Rs. 10,00,000 dated 18.02.2013 drawn on The Delhi State Co-Operative Bank Ltd, M.S.B. Mundka, from the accused. When the complainant presented the cheque, the bank returned it unpaid, vide return memo dated 22.02.2013, as no balance was available in the account. Thereafter, the complainant sent a legal demand notice dated 13.03.2013 but the accused allegedly failed to pay the cheque amount and therefore, the complainant filed the present complaint.
- (b) Accused's stance, on the contrary, is that a person named Pramod, who is his acquaintance, had taken a loan in the sum of Rs. 5 lacs from the complainant in 2011 and the accused had given the cheque in question as security for the said loan transaction. The accused has further submitted that Pramod has already repaid Rs. 4 lacs out of the total loan amount of Rs. 5 lacs. It has been further submitted that an agreement was entered between complainant and Pramod pertaining to the

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aforsaid loan transaction in which the accused was a witness. Further, it has been contended the accused has misused the cheque in question and has filed the present false complaint case against the accused.

#### B. PRE-SUMMONING EVIDENCE & NOTICE

3. Pre-summoning evidence was led by the complainant and on finding a prima facie case, the accused was summoned to face trial vide order dated 23.04.2013. On appearance, the accused was served with the notice of accusation under Section 251, Code of Criminal Procedure, 1973 (hereinafter "CrPC") on 16.12.2014, to which the accused pleaded not guilty and claimed trial. While the accused admitted his signature on the cheque in question, he stated that rest of the particulars were not filled by him. Further, the following plea of defence was taken by the accused at this stage:

I do not plead guilty and have defence to make. The present cheque in question bears my signatures but the other particulars have been filled up by the complainant. Pramod, who is my acquaintance, had taken loan in the sum of rupees 5 lacs from the complainant in 2011 and I had given the cheque in question as security. At present Rs. 1 Lac is due from Pramod who is willing to pay the same. An agreement was entered between complainant and Pramod pertaining to the loan transaction in which I am a witness. I have not entered into any loan transaction with the complainant and I do not owe any liability towards him. I have received legal demand

notice from the complainant and replied the same. I want to lead defense evidence.

4. Thereafter, the accused moved an application u/s 145(2) NI Act which was allowed vide order dated 16.02.2015; and the complainant was allowed to be cross-examined by the accused.

C. COMPLAINANT'S EVIDENCE

5. During the trial, the complainant has led the following oral and documentary

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evidence against the accused to prove his case beyond reasonable doubt:

Oral Evidence

CW1

Baljeet Singh (Complainant)

Documentary Evidence

Ex.CW1/1

Cheque in question bearing number 425551 dated 18.02.2013

Ex.CW1/2

Return memo dated 22.02 2013

Ex.CW1/3

Legal notice dated 13.03.2013

Ex.CW1/4

Postal Receipt of Regd AD

Ex. CW1/5

Postal Receipt of Speed Post

Ex. CW1/6

Postal Receipt of Courier

Ex. CW1/7

Proof of service of Regd AD

Ex. CW1/8

Proof of service of Speed Post

Ex. CW1/9

Proof of service of Courier

Ex. CW1/D1

ITR of the complainant pertaining to 2011-12

Ex. CW1/D2

ITR of the complainant pertaining to 2012-13

Ex. CW1/D3

ITR of the complainant pertaining to 2013-14

Ex. CW1/x

Passbook of the savings account of the complainant from the period 01.11.2010 to 02.07.2012

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Payment Order pertaining to land acquisition of the complainant

D. STATEMENT OF ACCUSED

6. Thereafter, before the start of defence evidence, in order to allow the accused to personally explain the circumstances appearing in evidence against him, his statement under Section 313 CrPC was recorded without oath. In reply, the accused denied all the allegations against him and took the same plea which he had taken during the framing of notice under section 251 CrPC.

7. Thereafter, the accused lead the following evidence in his defense:

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|                  | Oral Evidence   |         |
| DW1              | Dharamvir (Accused)   |         |
| DW2              | Pramod Sharma   |         |
| DW3              | Naveen Sharma   |         |
|                  | Documentary Evidence  |         |
| Ex.DW1/A (colly) | Certified copy of the complaint case u/s 138 NI Act, along with documents, filed by the complainant against Pramod Sharma |         |
| Ex.DW1/B (colly) | Certified copy of the complaint case u/s 138 NI Act, along with documents, filed by the complainant against Naveen        |         |
| Ex.DW2/1         | Loan Agreement executed between the complainant and Pramod Sharma for a sum of Rs. 5 lacs                                 |         |

8. Thereafter, the matter was listed for final arguments. Sh. Pinku Singh, learned counsel, argued on behalf of the complainant. Sh. Sanjeev Kumar and Sh. Ranvir Vats, learned counsels, argued on behalf of the accused. I have heard the learned counsels on both the sides and have given my thoughtful consideration to the material appearing on record.

#### E. INGREDIENTS OF OFFENCE AND DISCUSSION

9. Before dwelling into the facts of the present case, it would be apposite to discuss the legal standards required to be met by both sides. In order to establish the offence under Section 138 of NI Act, the prosecution must fulfil all the essential ingredients of the offence, as highlighted below:-

First Ingredient: The cheque was drawn by a person on an account maintained by him/her for payment of money and the same is presented for payment within a period of 3 months from the date on which it is drawn or within the period of its validity;

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Second Ingredient: The cheque was drawn by the drawer for discharge of any legally enforceable debt or other liability;

Third Ingredient: The cheque was returned unpaid by the bank due to either insufficiency of funds in the account to honour the cheque or that it exceeds the amount arranged to be paid from that account on an agreement made with that bank;

Fourth Ingredient: A demand of the said amount has been made by the payee or holder in due course of the cheque by a notice in writing given to the drawer within thirty days of the receipt of information of the dishonour of cheque from the bank;

Fifth Ingredient: The drawer fails to make payment of the said amount of money within fifteen days from the date of receipt of notice.

10. In addition to the above, the conditions stipulated under Section 142 NI Act have to be fulfilled.

11. Notably, the first, third, fourth and fifth ingredient have been duly proved without there being any real controversy regarding the same:

(a) The complainant has proved the original cheque, Ex. CW1/1, which the accused has not disputed as being drawn on the account of the accused. It is not disputed that the cheque in question was presented within its validity period. The accused's only contention is that the cheque in question was given as a blank signed cheque which has been filled at a subsequent date by the complainant and the amount in the cheque has been manipulated. However, giving a blank signed cheque does not

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erase the liability under the NI Act. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may subsequently fill up the amount and other particulars (Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197, ¶ 34). This, in itself, would not invalidate the cheque (Ibid). The onus would still be on the

accused to prove that the cheque was not in discharge of a debt or liability (Ibid).

- (b) The cheque in question was returned unpaid vide return memo Ex. CW1/2 due to the reason, "Funds insufficient".
  - (c) The complainant has proved on record legal notice Ex. CW1/3 and postal receipts, along with tracking reports, Ex. CW1/4, Ex. CW1/5, Ex. CW1/5, Ex. CW1/6, Ex. CW1/7, Ex. CW1/8, and Ex. CW1/9. The accused has also accepted in his statement under section 251 CrPC that he received the legal notice.
  - (d) The fact that the payment was not made within 15 days of the receipt of the legal notice is also not disputed. As such, on the basis of the above, the first, third, fourth and fifth ingredient of the offence under Section 138 NI Act stands proved against the accused.
12. As far as the proof of second ingredient is concerned, the complainant is required to prove that the cheque in question was drawn by the drawer for discharging a legally enforceable debt. In the present case, the issuance of the cheque in question is not denied. As per the scheme of the NI Act, once the accused admits signature on the cheque in question, certain presumptions are drawn, which result in shifting of onus on the accused.
13. The combined effect of section 118(a) NI Act and section 139 of the NI Act is that

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a presumption exists that the cheque was drawn for consideration and given by the accused for the discharge of debt or other liability. Both the sections use the expression "shall", which makes it imperative for the court to raise the aforesaid presumptions once the foundational facts required for the same are proved (Hiten P. Dalal v. Bratindranath Banerjee, (2001) 6 SCC 16). Further, it has been held by the Hon'ble Apex Court in Rangappa v. Sri Mohan, (2010) 11 SCC 441 that the presumption contemplated under Section 139 of NI Act includes the presumption of existence of a legally enforceable debt. In order to rebut the statutory presumption u/s 139 NI Act, the standard of proof is that of preponderance of probabilities, by which the accused is required to raise a probable defence. To rebut the presumption, it is open to the accused to rely on evidence led by him/her or the accused can also rely on the materials submitted by the complainant or the circumstances upon which the parties rely in order to raise a probable defence

(Basalingappa v. Mudibasappa, (2019) 5 SCC 418).

14. In this case, the arguments raised by the learned counsel for the accused to rebut the presumption are discussed below.

I. Contention 1: Complaint is barred since the complainant is in the business of money lending without obtaining valid license for the same.

15. Learned counsel for the accused has submitted that the present complaint is barred in light of section 3 of the Punjab Registration of Money Lenders' Act, 1938 (which applies to Delhi). The said section provides that notwithstanding anything contained in any other enactment for the time being in force, a suit by a money lender for the recovery of a loan shall, after the commencement of the Act, be dismissed unless the money lender at the time of institution of the suit is registered and holds a valid license.

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and holds a valid license.

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16. It has been contended that it has come in evidence that the complainant has advanced loans to other persons (DW2 and DW3) apart from the accused. Accordingly, it has been contended that it is evident that the complainant is in the business of money lending and since the complainant does not hold a valid money-lending license, the present complaint case is barred in light of section 3 of Punjab Registration of Money Lenders' Act, 1938.

17. The aforementioned contention is liable to be dismissed for the following reasons:

18. Firstly, a criminal complaint is not barred by virtue of section 3 of the Punjab Registration of Money Lenders' Act, 1938. The Hon'ble Delhi High Court, in *Kajal v. Marwah*, 2014 SCC OnLine Del 1298, has specifically held that section 3 only bars the institution of a civil suit, and it will not apply in case of institution of criminal complaint:

Section 3 of the Punjab Registration of Money Lenders' Act, 1938, which applies to Delhi, to the extent it is relevant provides that notwithstanding anything contained in any other enactment for the time being in force, a suit by a money lender for the recovery of a loan shall, after the commencement of the Act, be dismissed unless the money lender at the time of institution of the suit is registered and holds a valid license or holds a certificate from



Commissioner granted under Section 11 of the Act, specifying the loan in respect of which the suit is instituted or if he is not already a registered licensed money lender, he satisfies the court that he has applied for such registration or license but the application is pending. The aforesaid provision does not debar a money lender from instituting a complaint under Section 138 of the Negotiable Instruments Act, 1881, which is a remedy enforceable before a criminal court, and totally independent of a civil suit. The criminal liability is incurred only in case a cheque is issued in discharge of a debt or other liability, the said cheque is dishonoured for want of funds and the borrower fails to make payment of the amount of the cheque even after receipt of a notice from the lender. (emphasis added)

19. Secondly, the definition of loan under the aforesaid legislation specifically states

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that in order to qualify as a loan, the money advanced must be on the basis of interest. The definition of "loan" is reproduced hereunder for reference:

"Loan" means an advance whether secured or unsecured of money or in kind at interest and shall include any transaction which the court finds to be in substance a loan.

20. Therefore, in case of a friendly loan, where money is advanced without any interest, provisions of Punjab Registration of Money Lenders' Act, 1938 will not be applicable. The said position of law has been re-iterated by the Hon'ble Delhi High Court in Lakshmi Builders v. Devinder Lakra, 2016 SCC OnLine Del 1453:

17. . . Learned counsel submits that the transaction between the parties was a friendly loan transaction, as no interest was stipulated to be payable by the defendant.

...

23. The submission of the defendant that the suit is barred by Section 3 of the Punjab Registration of Money Lenders Act, 1938 also has no merit. Firstly, the defendant has not claimed that the money was lent by the plaintiff to the defendant on interest. Secondly, the defendant does not even claim that the plaintiff is engaged in the business of money lending on interest. Thus, the said act has no application to the transaction in question between the parties. Section 3 of the said Act provides that a suit by a "money lender" for recovery of a "loan" shall, after the commencement of the said Act, be dismissed unless the "money lender" is registered under the Act. Since the plaintiff is not a "money lender", and the amount advanced does not qualify as a "loan", the said Act has no applicability to the present case. (emphasis added)

21. In the present complaint, the complainant has stated that money was advanced to the accused without any interest on the basis of friendly relations between the parties. The accused has not been able to rebut the aforesaid statement and has failed to bring on record any evidence which establishes that the complainant advances money to people at interest on a commercial basis. Therefore, since the loan advanced by the complainant has not been proved to be advanced with interest, the provisions of the Money Lenders' Act have no application in the present case.

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II. Contention 2: An exorbitant amount of loan in cash is prohibited under

Income Tax law and Service Conduct Rules applicable to a government servant

22. It was argued on behalf of the accused that Section 269 SS of Income Tax Act prohibits a loan of more than INR 20,000 in cash, and accordingly, the existence of the said provision creates a doubt that an amount of INR 10,00,000 would have been given in cash as loan.

23. It was further argued that the complainant, being a government servant, is bound by the Service Conduct Rules applicable to government servants. Accordingly, it has been contended on behalf of the accused that the complainant could not have lent such a huge amount of Rs. 10 lacs without first taking permission of the relevant government authority.

24. Therefore, it has been contended that the recovery of alleged loan through the present complaint, which is in violation of law, cannot be given effect to. However, I do not agree with the aforesaid contention raised on behalf of the accused for the reasons specified hereunder.

25. Firstly, it is a settled position of law that the breach of Section 269 SS of the Income Tax Act does not make such a transaction null & void (Sheela Sharma v. Mahendra Pal, 2016 SCC OnLine Del 4696; Dilip Chawla v. Ravinder Kumar, 2017 SCC OnLine Del 9753). To further substantiate, the penalty for breach of Section 269 SS of the Income Tax Act is provided under Section 271D of the Income Tax Act, which does not provide that such a transaction would be null and void. Accordingly, the present complaint case cannot be dismissed on this account.

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26. Secondly, violation of Service Conduct Rules, by advancing a loan without taking requisite sanction, may expose a person to disciplinary proceedings but it will not make the transaction of loan null and void. Whether permission was required or not is a matter which is to be decided by the relevant disciplinary authority. The Hon'ble Karnataka High Court, in *Sathisha. B. A. v. Sri. R. Prasad*, Criminal Appeal No. 594 of 2018, dated 26.11.2019, has specifically held that violation of service conduct rules by the complainant has no application/ relevance while determining the liability of the accused under section 138 of the NI Act:

In the opinion of this Court, even if it is a case that the Conduct Rules would apply to the parties, the learned Magistrate while dealing with the matter under Section 138 of the Negotiable Instruments Act, was required to find out whether the complainant had proof to show that he had lent money to the accused, whether he had source to lend money. It was not within the domain of the Magistrate to find out as to whether the complainant had sought permission from the higher authorities. Taking permission or not is a matter of disciplinary proceedings which could be initiated only by the disciplinary authority. The learned Magistrate while dealing with a matter under the Negotiable Instruments Act, is in no way concerned with the permission that was required to be taken from the higher authority, if the Conduct Rules would require such permission. Adherence to the disciplinary or Conduct Rules is an issue totally irrelevant for consideration of a criminal proceedings under Section 138 of Negotiable Instruments Act. (emphasis added) III. Contention 3: The factual position of this case leads to an inference that the consideration and debt did not exist, or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist.

#### III.1 Version of the accused to establish that no debt is due to the complainant

27. It is a settled position of law that the accused, to rebut the statutory presumption, DEVANSH Digitally signed by DEVANSHU SAJLAN U SAJLAN Date: 2021.09.09 14:41:41 +05'30' CC No. 4062/16 Baljeet Singh v. Dharamvir 13 of 23 should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist, or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist (*Kumar Exports v. Sharma Carpets*, (2009) 2 SCC 513, ¶ 20).

28. In order to discharge the aforesaid onus, the accused has put forth the following version of events:

(a) Sh. Pramod Kumar Sharma (DW2), who was known to the accused, was in dire need of money.

(b) In order to arrange money for DW2, the accused brought him to the complainant, who resides in the same village as the accused, and used to do the work of money lending.

(c) The complainant gave a loan of Rs.5 lacs to DW2. An agreement (Ex. DW2/1) was executed between DW2 and the complainant which was signed by the accused and Sh. Naveen Sharma (DW3) as witnesses.

(d) In addition to the execution of the said agreement, the complainant also demanded a security cheque from DW3 and the accused. Therefore, the accused handed a blank undated signed cheque to the complainant as security.

(e) The complainant has misused the security cheques given by the accused and DW3 and has filed two separate cheque dishonor complaints against them, apart from filing a complaint case under section 138 NI Act against DW2 (copy of complaint cases exhibited as Ex. DW1/A (colly) and Ex. DW1/B (colly)).

Therefore, the complainant has converted a single loan transaction of Rs. 5 lacs into three separate loan transactions of Rs. 10 lacs (against the accused), Rs 5 lacs (against DW2), and Rs 7 lacs (against DW3) by misusing the security cheques given by the accused, DW2 and DW3.

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(f) Out of the total loan amount of Rs 5 lacs, DW2 has already repaid an amount of Rs. 4 lacs.

29. The complainant has submitted that the transaction with DW2 is a separate transaction. It has been submitted that the complainant gave a separate loan of Rs. 10 lacs to the accused apart from giving a loan of Rs. 5 lacs to DW2. The complainant has also submitted that he gave a loan of Rs. 7 lacs to DW3 as well. Therefore, in total, the complainant has submitted that he advanced a loan of Rs. 22 lacs to the accused, DW2 and DW3.

30. DW2 and DW3 have deposed in favour of the accused and have submitted that the complainant had taken security cheques from the accused, DW2 and DW3 at the time of advancing the loan of Rs. 5 lacs to DW2, and the complainant has misused the same.

31. The relevant part of the deposition of DW2 is reproduced hereunder for reference:

. . . The complainant informed us that he can provide the money on interest, but I need to sign an agreement with him and also give him blank cheques against the amount. The interest was fixed at the rate of Rs.2% per month. As per the instructions of the complainant, we made the agreement at Janakpuri and the deed writer had taken instructions from him on phone. Two cheque numbers were mentioned in the said agreement, as per the instructions of the complainant, which were issued to him one by me and one by Sh. Naveen Sharma, my nephew as a guarantee on 10.06.2011. We went to the house of the complainant along with Sh. Dharamveer Vats, accused in the present case, to collect the money from the complainant. On arriving there, the complainant asked the accused to issue his cheque as a guarantee to the said money but the accused refused. Thereafter, the complainant refused to give me money, therefore, I requested the accused to handover a cheque to the complainant as guarantee. Therefore, on my request, Dharamveer Vats handed over a blank cheque to the complainant by signing. Dharamveer Vats and Naveen Sharma had also signed as a guarantor on the said cheques [agreement]. The said agreement which is on record is exhibited as Ex.DW2/1. After signing of the agreement and handing over of three DEVANSH Digitally signed by DEVANSHU SAJLAN U SAJLAN 14:42:14 +05'30' Date: 2021.09.09 CC No. 4062/16 Baljeet Singh v. Dharamvir 15 of 23 blank cheques to the complainant, the complainant went to his bank and gave me Rs.5 Lakh after withdrawing it from his account. (emphasis added)

32. DW-3 also deposed on similar lines in his examination-in-chief:

The complainant informed that Pramod Sharma needs to execute an agreement with him and he needs to give blank signed cheques of Pramod Sharma and blank signed cheques of the accused and me. He also demanded photo copy of ID proofs of all of us. On 10/6/2011 on the instruction of the complainant an agreement was prepared by Mr Pramod Sharma and along with the said agreement we visited the house of the complainant. On reaching the house of the complainant where in the accused was also present, the complainant instructed Pramod Sharma to sign the agreement after going through it. He also instructed me and accused to sign the agreement as witness. He also made us sign on a register, our ID proofs and some other documents. As per his instruction I and Pramod Sharma handed over blank signed cheques to the complainant. The complainant insisted that the accused must deliver blank science cheque to him as guarantee to his payment. And as per the insistence of the complainant the accused handed over a blank signed cheque to the complainant. The complainant has given Rs. 5 lacs in cash to Pramod Sharma thereafter he deducted 2% of the said amount as interest. (emphasis added)

33. The complainant has raised the following two objections in relation to the testimony of DW-2 and DW-3:

III.2. Objection 1 by the complainant: No mention of the cheque in question in the Ex. DW2/1 - oral evidence barred in terms of section 91 and 92 of Indian Evidence Act.

34. The Complainant has submitted that the Ex. DW2/1, i.e., the agreement executed on 10.06.2021, between DW2 and the complainant, pertains to a separate transaction. It has been further submitted that the said agreement Ex. DW2/1 nowhere states that the accused has given the cheque in question as security in relation to the loan granted to DW2. It has been further submitted that the agreement DEVANSH Digitally signed by DEVANSHU SAJLAN U SAJLAN Date: 2021.09.09 14:42:30 +05'30' CC No. 4062/16 Baljeet Singh v. Dharamvir 16 of 23 Ex. DW2/1, which has been executed in vernacular, specifically states that as security for grant of loan, DW2 has given two blank signed cheques to the complainant. Therefore, it has been submitted that the relevant security cheques have already been mentioned in the agreement itself and the absence of mention of the cheque in question in the agreement clearly establishes that the cheque in question has no connection with the agreement Ex. DW2/1.

35. It has been further submitted that Section 91 of the Indian Evidence Act says that no evidence shall be given in proof of the terms of the contract except the document itself. Further, section 92 of the Indian Evidence Act excludes the evidence of oral agreements, and it applies to cases where the terms of contracts, grants or other dispositions of property have been proved by the production of the relevant documents themselves under Section 91.

III.3. Position of Law: Oral testimony about any matter on which a document is silent and which is not inconsistent with its terms can be given

36. I have considered the submission of the learned counsel for the complainant. However, I respectfully disagree with it. Section 92 of the Indian Evidence Act contains a total of six provisos and proviso 2 is relevant in the present case:

Proviso (2): The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

37. Proviso 2 to Section 92 of the Indian Evidence Act undoubtedly allows proof of separate oral evidence about any matter on which a document is silent, and which is not inconsistent with its terms, and it provides that in admitting the evidence the court must have regard to the degree of formality of the document. Where the DEVANSH Digitally signed by DEVANSHU SAJLAN U SAJLAN Date: 2021.09.09 14:42:48 +05'30' CC No. 4062/16 Baljeet Singh v. Dharamvir 17 of 23 document does not record all the terms of the contract between the parties, oral evidence is admissible to explain the real nature of the transaction.

38. In this regard, reference may be made to JN Sahani v. The State, (1954) MB 343, wherein it was held that:

The question before us is whether evidence is admissible about a matter on which the promissory note is silent, On this point proviso 2 to Section 92 of the Evidence Act is very clear. It allows proof of any separate oral evidence about any matter on which a document is silent and which is not inconsistent with its terms, and it provides that in admitting the evidence the Court must have regard to the degree of formality of the document. The promissory note in suit is silent as to the place of payment. It cannot, therefore, be maintained that evidence to prove the place of payment would be an evidence contradicting, varying, adding to or subtracting from any term of the promissory note. As to the degree of formality of the document on which the admissibility of evidence depends, it will vary according to the care, elaboration and details with which the terms of the document are set forth therein. (emphasis added).

39. Further, in *Leena Roy Choudhary v. Most. Indumati Bose*, 1979 SCC OnLine Pat 40, the same position has been re-iterated:

15. I may further state that it is obvious from the perusal of the terms of the compromise decree which I have set out already that they do not contain all the terms and conditions of the lease. The compromise decree merely specifies the portion of the building which was to remain in possession or to be used by the lessee and the rent payable therefor. It is silent about the other terms and conditions of the tenancy. It is well settled that if the document does not record or purport to record all the terms of the contract between the parties, there is nothing in Section 92 of the Evidence Act which prohibits the Court from considering the evidence regarding other terms and conditions of the contract which are not in conflict with the terms and conditions mentioned in the contract. See the decision of the Judicial Committee of the Privy Council in *Md. Akbar Khan v. Attar Singh*. [A.I.R. 1936 Privy Council 171.]

40. Therefore, for proviso 2 to section 92 of Indian Evidence Act to apply, the following two conditions must be satisfied: (i) On the matter on which the DEVANSH Digitally signed by DEVANSHU SAJLAN U SAJLAN Date: 2021.09.09 14:43:05 +05'30' CC No. 4062/16 Baljeet Singh v. Dharamvir 18 of 23 document is silent, a separate oral agreement should be made related to it; and (ii) such oral agreement should not be inconsistent with the terms of the document. Illustration (g) to section 92 provides a succinct example of the principle embodied in proviso 2 to section 92 of Indian Evidence Act:

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words "Bought of A a horse for Rs. 500". B may prove the verbal warranty.

41. In the aforesaid illustration, there is a written sale agreement and a separate oral warranty agreement, and it has been provided that the proof of verbal warranty is allowed. Similarly, in the present case, there is a written loan agreement Ex. DW2/1 and a separate oral agreement in relation to third-party guarantee. The accused, DW2 and DW3 have deposed in their testimony that at the time of execution of the agreement Ex. DW2/1, the parties also entered into a separate oral

agreement, whereby the accused and DW3 were asked to stand as guarantors (and provide security cheques) in relation to the loan advanced to DW2 under the agreement Ex. DW2/1.

42. The agreement Ex. DW2/1 is silent on the point of third-party guarantee. There is no provision in it which provides for third parties standing as guarantors. While it does contain a solitary clause on personal security provided by DW2 (in the form of two blank signed cheques), there is no clause on third-party guarantee in the said agreement. Therefore, the agreement Ex. DW2/1 is silent on the aspect of third- party guarantee. Furthermore, oral testimony of the accused, DW2 and DW3 is not inconsistent with any term of agreement Ex. DW2/1. The testimony with respect to the factum of accused and DW3 providing security cheques as guarantors is not inconsistent with any term of the loan agreement Ex. DW2/1.

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43. In light of the aforesaid, I am of the considered view that the testimony of the defense witnesses in relation to security cheques having been provided by the accused and DW3 is admissible by virtue of proviso 2 to section 92 of Indian Evidence Act.

#### III.4. Objection 2 by the complainant: DW2 and DW3 are interested witnesses

44. It has been contended by learned counsel for the complainant that the testimony of DW2 and DW3 needs to be disregarded since they are interested witnesses. It has been submitted that the complainant had granted loans to the accused, DW2 and DW3, and all three have colluded with each other by deposing against the complainant in the cases pending against them in order to mutually benefit each other.

45. The law in relation to interested witnesses is well established. It is a settled position of law that the evidence of an interested witness is required to be carefully scrutinized and appreciated before any conclusion is made to rest upon it. The evidence of such witnesses should be scrutinized with a little care. However, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other. In case the evidence has a ring of truth to it and is trustworthy, there is no embargo on relying upon the same. (See Anil Rai v. State of Bihar, (2001) 7 SCC 318, State of U.P. v. Jagdeo, (2003) 1 SCC 456, Dahari v. State of U.P. (2012) 10 SCC 256, Raju v. State of T.N. (2012) 12 SCC 701).



46. In the present case, the accused, DW2 and DW3 have largely deposed on the same lines. Despite intense cross-examination, their version could not be shaken by learned counsel for the complainant. The testimony of both the defense witnesses (DW2 and DW3) is consistent on the following material points:

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- (a) The agreement (Ex. DW2/1) was typed/ prepared at Janakpuri, Delhi;
- (b) It was prepared upon the instructions of the complainant over telephone;
- (c) The accused, DW2 and DW3 went with the agreement (after getting it prepared at Janakpuri) to the house of the complainant;
- (d) The agreement was signed at the house of the complainant;
- (e) At the time of execution of Ex. DW2/1, the accused was forced to stand as a guarantor for DW2 and provide a security cheque upon the insistence of the complainant; and
- (f) The security cheques were handed over to the complainant by the accused and DW3 at the house of the complainant at the time of execution of Ex. DW2/1.

47. Despite careful scrutiny, there is no inherent consistency in the testimonies of DW2 and DW3. Further, learned counsel for the complainant has not pointed out any material contradiction between the testimony of DW2 and DW3. Therefore, the testimony of DW2 and DW3 appears trustworthy, cogent, and reliable. Accordingly, I am not in agreement with learned counsel for the complainant that the testimony of DW2 and DW3 needs to be disregarded on account of DW2 and DW3 being interested witnesses.

III.5. Conclusion: Probable Defense established.

48. After admitting and considering the testimony of the defense witnesses, I am of the considered view that the accused has been able to establish that either the debt did not exist, or its non-existence is so probable that a prudent man would under the circumstances of the case, act upon the plea that it did not exist. The reason for the same is as follows:

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- (a) The complainant has himself admitted that he entered into a written agreement with DW2 for advancement of a loan amount of Rs. 5 lakhs (Ex. DW2/1).

However, at the same time, he has submitted that he did not execute any agreement while advancing a sum of Rs. 10 lakhs to the accused. It is inconceivable that a person who executes a loan agreement at the time of advancing a loan of Rs. 5 lakhs to a person would not execute any documentation while advancing a loan of Rs. 10 lakhs to another person. It is difficult to accept that such a person would extend a loan of an exorbitant amount of Rs. 10 lakhs without keeping any safeguard for his financial interest. No explanation for this omission has been furnished.

(b) The complainant has not been able to produce any witness to the alleged loan transaction between the complainant and the accused.

(c) The testimony of DW2 and DW3 appears to be trustworthy. They have cogently deposed to the effect that the accused never took any loan from the complainant and the present cheque in question was only given as a security cheque for the loan amount of Rs. 5 lakhs taken by DW2 from the complainant (by virtue of Ex. DW2/1).

(d) By virtue of the testimony of DW2 and DW3, the accused has been able to raise a probable defense that the complainant has misused the security cheque given at the time of execution of the agreement Ex. DW2/1.

(e) It is worth pointing out here that the burden of rebuttal that the defence is saddled with is only of the standard of preponderance of probabilities. The defence only has to put forward a defence which a prudent man might find plausible in ordinary circumstances.

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(f) The version of the accused is plausible in nature. On the other hand, the version of the complainant does not appear to be plausible. It is difficult to accept that the complainant gave a friendly loan to the accused without executing any agreement/ documentation while just a few months back, he had given a loan of Rs. 5 lakhs to DW2 after duly executing a written agreement.

## F. CONCLUSION

49. In the backdrop of the above discussion, I am of the considered opinion that the accused has successfully raised a probable defence in his favour and the complainant has failed to prove his case beyond reasonable doubt.

50. In the result of analysis of the present case, the accused Dharamvir is hereby acquitted from the charge of offence punishable under Section 138 of the Negotiable Instruments Act. Accused has already furnished bail bond and surety bond in terms of section 437-A CrPC. Accordingly, the bail

bond and surety bond of accused, furnished at the time of first appearance, are cancelled, and the surety is discharged. Documents of surety be returned after cancellation of endorsements thereon.

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Announced in the Open  
Court on 09.09.2021

(Devanshu Sajlan)  
MM (NI Act-05), West, THC  
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