

## Vasim Sikandar vs . Yogesh Handa Page 1 Of 11 on 5 January, 2023

IN THE COURT OF SH. ANSHUL SINGHAL,  
MM (NI ACT)-03, ROUSE AVENUE COURT COMPLEX,  
NEW DELHI DISTRICT, NEW DELHI

In the matter of: CC No.: 1644/2019  
CNR NO.:DLND020023722019

Vasim Sikandar,  
Proprietor of M/s Zabby's,  
93, 27 & 28 World Trade Centre,  
Barakhamba Road,  
New Delhi-110001.

.....Complainant

versus

Sh. Yogesh Handa  
Proprietor of M/s Handa Surgical Works,  
Gali Vikram, Lohgarh Gate,  
Amritsar, Punjab-143006.

.....Accused

### JUDGMENT

Date of Institution of Complaint : 22.01.2019 Offence Complained of : u/s. 138 of NI Act Plea of  
Accused : Not Guilty Date of Final Arguments Heard : 17.12.2022 Decision Qua Accused : Convicted  
Date of Decision : 05.01.2023 BRIEF STATEMENT OF REASONS FOR DECISION

1. Vide this judgment, I shall dispose of the present complaint u/s. 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the NI Act) filed by the complainant against accused on account of dishonour of cheque bearing no.

057442 for a sum of Rs. 2,25,000/- dated 12.10.2018 drawn on Axis Bank issued by the accused in favour of the complainant (hereinafter referred to as the cheque in question).

2. Brief facts of the case as per the complaint are that the complainant had acquired the medical item of "Trial Cases"

which are manufactured by the accused at their manufacturing facility in Amritsar, Punjab. It is further stated that the complainant accepted the offer of the accused to supply the above mentioned item and accordingly, complainant has placed the order with mutually agreed terms and conditions for the supply of said item.

3. It is further submitted that the complainant was requested to pay an amount of Rs. 1,12,000/- which he paid to the accused vide cheque No. 571506 dated 03.08.2015 as advance payment for supplying the material as per the terms of agreement with accused. It is further submitted that since the complainant had required the above mentioned item of Trial cases urgently and regularly, the accused informed the complainant about his financial difficulties of not having sufficient funds to procure raw material and hence, he requested a loan of Rs. 2,25,000/- from the complainant. It is further submitted that in addition to the above stated amount of Rs.1,12,000/-, the complainant also advanced a loan in the sum of Rs.2,25,000/- in cash and an agreement was executed in this regard.

4. It is further submitted that in order to discharge his liability, the accused issued the cheque in question but the same was returned dishonoured with remarks "Funds Insufficient" vide cheque return memo dated 15.12.2018. That thereafter, a legal notice was sent to the accused dated 21.12.2018 and since no payment was made within 15 days of the service of legal notice, then the present case has been filed.

5. Pre-summoning evidence was concluded on 24.01.2019 and summons were issued to accused on the very same day. The accused entered his appearance on 10.10.2019 and furnished bail bonds on the same day.

6. A notice explaining the accusation to the accused u/s. 138 of N.I.Act was served on 10.10.2019 and his plea was recorded. The accused pleaded not guilty and claimed trial. The accused took a plea that he has signed the cheque in question, however, he did not fill the same. The accused admitted to the receipt of legal notice. It is his case that the complainant requested him to increase his supplies and assured him that he will support his business by giving some advance which he can use for investment. He has further submitted that the cheque in question was given only for security purposes and that he has already cleared all his dues.

7. Oral application u/s. 145(2) N.I.Act moved on behalf of the accused was allowed vide order dated 10.10.2019. During complainant's evidence (CE), the complainant has examined himself as CW1, who has relied upon his evidence by way of affidavit and has relied on the following documents:-

1. Copy of cheque amounting to Rs. 1,12,000/- Ex-CW1/A
2. Original loan agreement Ex-CW1/B
3. Original Cheque in Question Ex-CW1/C
4. Original Bank Return Memo Ex-CW1/D
5. Legal Demand Notice Ex-CW1/E
6. Original Speed Post Receipt Ex-CW1/F

7. Delivery report Ex-CW1/G

8. The right of the accused to cross examine CW1 was closed vide order dated 04.10.2021 as despite repeated opportunities CW1 was not cross examined on behalf of the accused. Since no other witness was sought to be examined on behalf of complainant, accordingly, CE was closed vide separate statement of the complainant recorded on 04.10.2021.

9. Accused was thereafter examined u/s. 281 r/w. Section 313 CrPC on 24.03.2022, and the entire incriminating evidence was put to him. During statement of the accused u/s 313 CrPC, the accused has taken a similar stand as taken by him at the time of recording of his plea of defence while framing of notice. He has additionally stated that he had signed Ex-CW1/B on blank paper and contents have been filled by the complainant. Since accused chose to lead DE, matter was adjourned for leading DE on behalf of the accused.

10. An application u/s. 315 CrPC was filed on behalf of the accused seeking permission of this court to examine himself as a witness for the defence and the said application was allowed vide order dated 24.08.2022 of this court. In his defence, accused has examined himself as DW1 and Sh. Sukhdev Raj as DW2. Both of them have been duly cross examined on behalf of the complainant and discharged. Accused has sought not to examine any other witness & DE was closed vide separate statement of the accused recorded on 15.10.2022 and accordingly, matter was adjourned for final arguments.

11. Final arguments were heard by this court on 17.12.2022. I have heard counsel for the parties, perused the record and have gone through the relevant provisions of the law.

12. At the very outset, it is pertinent to lay down the ingredients of the offence u/s. 138 of NI Act. In Jugesh Sehgal vs. Shamsher Singh Gogi, (2009) 14 SCC 683, the Hon'ble Supreme Court of India culled out the following ingredients in order to constitute an offence u/s. 138 of NI Act:

"13. It is manifest that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled:

(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;

(ii) the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) 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;

(iv) that cheque is returned by the bank unpaid, either because of 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;

(v) 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;

(vi) 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.

Being cumulative, it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act."

13. Ld. Counsel for the complainant has submitted that there exists legally enforceable liability in favour of the complainant on the basis of presumption under section 139 NI Act, on the basis of loan agreement and copy of cheque which are Ex- CW1/B and Ex-CW1/A respectively and also on the basis of the averments made in the complaint and the evidence by way of affidavit. He has further submitted that the cheques in question were issued to the complainant by the accused in discharge of legally enforceable debt or liability and the dishonour of the said cheque is proved by bank return memo already placed on record. Further, legal demand notice has been duly served on the accused. He has further submitted that the complainant received no payment within 15 days of the service the legal notice. Ld. Counsel for complainant has thus submitted that all the ingredients laid down u/s. 138 NI Act are fulfilled and the accused should be convicted.

14. Before moving forward with the contentions of the accused, it is pertinent to discuss the relevant provisions of law which deal with legally enforceable debt or liability under the NI Act which are section 118(a) and 139 of the NI Act. Section 118(a) of the NI Act deals with the presumption of consideration and section 139 of NI Act deals with presumption of legally enforceable debt or liability and reads as follows:

"118. Presumptions as to negotiable instruments-

Until the contrary is proved, the following presumptions shall be made:

(a) of consideration: that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, endorsed,

negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;

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### 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."

15. It is further pertinent to mention the relevant judgments on the point of presumption of legally enforceable debt or liability. Reliance is placed by this court upon the judgments of Hon'ble Supreme Court of India in Rangappa v. Sri Mohan, (2010) 11 SCC 441, Kumar Exports vs. Sharma Carpets, (2009) 2 SCC 513, and Bir Singh vs. Mukesh Kumar, (2019) 4 SCC 197, wherein it has been held that the presumption u/s. 139 NI Act is a presumption of law and not presumption of fact. It has further been held that it is not necessary that the cheque must have been filled by the accused himself and the accused may be liable even when the cheque has been filled by the complainant. The essential requirement is that the liability must exist on the date of the presentation of the cheque in question. It has been further held that once the signatures on the cheque are admitted then the court is bound to raise presumption u/s. 118 r/w. 139 NI Act regarding existence of legally enforceable debt or liability.

16. In the facts of the present case, the signatures on the cheques in question have been admitted. Accordingly, this court raises presumption under section 118(a) r/w. section 139 of NI Act that the cheque in question was issued by the accused to the complainant in discharge of legally enforceable debt or liability and it is now on the accused to raise a probable defence and to prove his case on the basis of preponderance of probabilities.

17. The primary defence taken by the accused is that no loan as stated in the complaint has ever been advanced to the accused by the complainant and a false case has been filed by the complainant against the accused by misusing security cheque of the accused in the possession of the complainant. It is his case that he had taken an advance of only Rs.1,00,000/- and he has already made supplies of an equivalent amount.

18. The central case of the accused is that he has already supplied materials to the complainant equivalent to the amount so advanced and hence, there is nothing due in favour of the complainant qua the advanced amount or the alleged loan in question. In this regard, reliance has been placed by the accused on his own ledger accounts, copy of which is Mark DW1/1.

19. Per Contra, ld. counsel for the complainant has submitted that document Mark DW1/1 is a self created document and hence, cannot be relied upon. He has further submitted that the document should not inspire confidence of the court as the same has been written at one time and the same is evident by the handwriting used on the same. He has further submitted that the sum of

Rs.2,25,000/- was given to the accused not as an advance, but as a loan for financial help.

20. This court cannot place reliance on document which is Mark DW1/1 because, the same is not supported with any sales invoice, any proper accounts made according to the accounting standards duly certified by a chartered accountant. Merely entering some details in a diary for private purposes cannot substitute proof by cogent evidence in a court of law. Even if the same was duly supported with sales invoice and delivery challan, then also the same could have been accepted as proof, however, without any supporting document, the document Mark DW1/1 cannot be accepted to be proof of the fact that the accused has supplied materials to the complainant equivalent to the amount of alleged loan in question.

21. To dispute the veracity of the loan agreement which is Ex- CW1/B, Ld. counsel for the accused has submitted that the same bears the date 18.03.2013 and the name of Sh. Azim Sikandar. Ld. counsel for the complainant has submitted that the said paper has been placed on record merely to show an agreement between the parties and acknowledgement by the accused.

22. In my considered opinion, same may or may not be an irregularity as per the Indian Stamp Act, but the same does not invalidate the duly executed agreement between both the parties. Firstly, though the accused is stating that he had signed on blank stamp paper which has been converted into a loan agreement, however, the same is not supported with any shred of evidence whatsoever. Secondly, no plausible reason has been put forth before this court as to why the accused would sign on a blank paper and hand over the same to the complainant. The only statement being made before this court is that the same was bonafide and because of a professional relationship of trust. Thirdly, nothing has been brought on record to show as to what steps have been taken by the accused to seek return of the blank signed paper or the blank signed cheque in question from the complainant, as soon as he had allegedly supplied the material against the loan in question. Fourthly, perusal of the said agreement shows that the signatures of the accused have been done and the contents of the agreement have been written in the same ink and the signatures of the complainant have been done in a different ink. Lastly, the burden to prove the fact that the accused had signed a blank paper and nothing was written on it, is on the accused himself and the accused has failed to discharge his burden.

23. Another point to be considered is the apparent contradiction between the contents of the complaint and the documents placed on record. As per the complaint, the complainant had given the advance of Rs.1,12,000/- first in point of time and thereafter, the transaction in question has taken place. As per the documents placed on record, the advance of Rs.1,12,000/- was given vide cheque dated 03.08.2015 and the loan of Rs.2,25,000/- was given on 03.07.2015. Ld. counsel for the complainant has submitted that the cheque was given as a post-dated cheque and there is no contradiction in the alleged sequence of events. Ld. counsel for the accused has submitted that this fact has been averred before this court for the first time during final arguments and there is no such mention in the complaint. I have heard the rival submissions on this point.

24. It is to be noted here that the complainant has not been cross-examined on behalf of the accused. Hence, the complainant was never provided with an opportunity to explain the alleged

contradiction. Moreover, since the complainant has not been cross-examined, his statement and averments have gone uncontroverted. In my considered opinion, the contradiction, if any, in the sequence of transaction is not material as the complainant is not claiming anything against the cheque of Rs. 1,12,000/- in the present transaction and has solely based his case on the document which is Ex-CW1/B and the cheque in question.

25. In view of the above discussion and in view of the judgments of Hon'ble Superior Courts as stated above, in my considered opinion, the accused has been not able to raise a probable defence and has not been able to prove his defence on the basis of preponderance of probabilities that there is no legally enforceable debt or liability in favour of the complainant and against the accused equivalent to the amount of cheque in question as on the date of its drawal or on the date of its presentation. Thus, the accused has not been able to rebut the presumption u/s. 118 r/w. section 139 NI Act.

26. Complainant has been able to prove his case beyond reasonable doubt qua the accused and in respect of the cheque in question. The complainant has been able to prove his case on the basis of evidence on record and presumption u/s. 118 r/w. section 139 NI Act.

27. In view of the aforesaid, accused Yogesh Handa , is hereby convicted of offence under section 138 Negotiable Instruments Act.

Note: This judgment contains 11 signed pages and each page has been signed by the undersigned.

Announced in Open Court	(Anshul Singhal)
on 05.01.2023	MM(N.I. Act) -03/NDD/RACC/ND