

Cc No. 52958/16 Manoj Kumar Sehgal vs . Naresh Kumar Page No. 1 Of 20 Pages on 19 October, 2022

IN THE COURT OF METROPOLITAN MAGISTRATE,
KARKARDOOMA COURTS, DELHI.

Presided by: Sh. Akhil Malik

UNIQUE ID : 02402R0365632013

CC No. 52958/2016

PS: Mandawali

Sh. Manoj Kumar Sehgal

S/o Sh. Somnath Sehgal

R/o A-126/4, West Vinod Nagar,

Delhi-110092

..... Complainant

VERSUS

Sh. Naresh Kumar

S/o Late Sh. Ganga Ram

R/o H. No. 12/41, Geeta colony,

Delhi-110031

..... Accused

Complaint under section 138 of the Negotiable
Instruments Act, 1881

Offence complained of	:	U/s 138 NI Act
Date of institution	:	13-11-2013
Plea of Accused	:	Not guilty
Date of decision of the case	:	19-10-2022
Final Order	:	Acquittal

JUDGMENT

STATEMENT OF FACTS AND REASONS FOR DECISION

1. The accused is facing trial for commission of CC no. 52958/16 Manoj Kumar Sehgal Vs. Naresh Kumar Page No. 1 of 20 Pages offence punishable u/s 138 of The Negotiable Instruments Act, 1881 (in short, NI Act).

2. Facts in brief:

As per complaint, the complainant and the accused had friendly relations and accused persuaded the complainant to invest some money in his business of Cycle

Rickshaw.

Thereafter, the complainant and the accused made an agreement on 19-02-2013 to make the complainant sleeping partner and it was agreed that complainant would get a profit of Rs 10,000 per month against investment of Rs 2,00,000 which accused received on 19-02-2013. Accused gave agreed profit for two months and then again demanded Rs 70,000 from complainant to invest for short term. Complainant gave the same on assurance of accused.

However, as per complaint, accused did not pay profit for four months and the principle amount. After persistent demands from complainant, the accused in discharge of his liability issued cheque bearing number 674669 dated 01-08-2013 in sum of Rs. 3,10,000/- drawn on SBI, Khureji Khas branch to the complainant. The complainant presented the cheque for encashment. The cheque was returned unpaid with endorsement "Funds Insufficient" vide cheque return memo dated 20-09-2013. After receiving the cheque return memo, the complainant sent legal demand notice dated 10-10-2013 to the accused by registered post advising him to pay the amount of the cheque within 15 days of the receipt of the notice. The CC no. 52958/16 Manoj Kumar Sehgal Vs. Naresh Kumar Page No. 2 of 20 Pages accused did not pay the cheque amount for discharge of his liability even after expiry of statutory period of 15 days from the date of service of notice and hence, the present case.

3. Vide order dated 05-12-2013, cognizance of the offence u/s 138 NI of Act was taken by Ld. Predecessor of this court and the accused was summoned. On 02-01-2014 the accused put up his appearance before the court.

4. Vide order dated 08-01-2014, notice u/s 251 of Criminal Procedure Code, 1973 (in short, "Cr. P. C") was served upon accused. The accused did not plead guilty and claimed trial. The accused admitted his signature on the cheque. Accused stated that he had not issued the cheque to the complainant. He had given that cheque along with six other blank signed cheques as security to the maternal uncle of the complainant Sh. Rajeev Malhotra. Accused admitted that he had received legal notice from the complainant.

5. Vide order dt. 08-01-2014, matter was listed for Complainant's Evidence (in short, C.E).

Evidence of complainant

6. To substantiate his case, the complainant adduced his evidence by way of affidavit Ex. CW1/1. The complainant was examined as CW-1. The complainant reiterated the facts mentioned in the complaint. He relied upon the following documents in support of his averments; CC no. 52958/16 Manoj Kumar Sehgal Vs. Naresh Kumar Page No. 3 of 20 Pages i. Cheque bearing No. 674669 dated 01-08-2013 Ex. CW1/A. ii. Cheque return memo dated 20-09-2013 Ex. CW1/B. iii. Legal notice dated 10-10-2013 Ex. CW1/C. iv. Speed post receipts Ex. CW1/D. v. Tracking report Ex. CW1/E. vi. Acknowledgement of receipt Ex. CW1/F. Vii Partnership deed dt. 19-02-2013 Ex. CW1/G. Viii Duly

stamp and signed returning memo Ex. CW1/B-1. ix. Net tracking report of the speed post Ex. CW1/H.

7. The witness was cross-examined on behalf of accused. During the same, following notable points were stated:-

a. Complainant knew the accused for the last 15 years (approx) and the address of accused was 12/41, Geeta colony and 12/37, Geeta Colony. He did not know any other family members of accused. He again said that he knew nephew of accused who had once accompanied him. He was working as tailor and was getting salary of Rs. 13,500/- per month. He had never given any loan to the accused apart from the loan in question.

b. The accused had shown him a business plan at his shop for which he had asked for the present loan. He was living on rent. The stamp paper for the agreement Ex. CW1/G between the parties was purchased by the accused. He did not remember the address mentioned on Ex. CW1/G. His landlord was present at the time of execution of Ex. CW1/G. He had given the loan to the accused on 19-02-2013 around 12.00 noon at his house. The accused had assured him on 19-02-2013 itself that he will receive the agreement by evening or by morning next day. The said agreement was received by him on next day.

c. He had given the loan to the accused from his personal savings kept at home. He had one personal bank account and another bank account in name of his wife. He had requested the accused many times to return his money orally before filing the present complaint. He had not taken any other action against the accused to recover his money.

d. He had also made a police complaint against the accused in this regard. The accused had given him the cheque in question in filled condition which was having date of 01-08-2013. He did not CC no. 52958/16 Manoj Kumar Sehgal Vs. Naresh Kumar Page No. 4 of 20 Pages know who had filled the details of cheque in question or in whose presence the same was filled. He presented the cheque in question in his bank on 18-09-2013.

e. He had asked the accused before presenting the cheque in question and he presented the same on 18-09-2013. He has filed the police complaint after receiving the cheque in question. He denied the suggestion that cheque in question was handed over to him by his maternal uncle Sh. Rajiv Malhotra so that he can file a false case against the accused. He was aware that a complaint filed by Sh. Rajiv Malhotra was also pending in this court.

f. He did not take any receiving from the accused for the loan amount. He had never given loan to any other person apart from the accused. He had not entered into any

agreement like Ex. CW1/G with any other person. He had given the loan to the accused without taking any receiving on the basis of trust and friendship.

g. He has given the accused further loan of Rs. 70,000/-. After the loan of Rs. Two lac. He did not file ITR. He had PAN card in his name whose number he did not remember. He did not understand English completely but he was told about the contents of the agreement Ex. CW1/G after which he had signed the same. The accused had informed him about the contents of the agreement Ex. CW1/G. The accused had not signed on every page of agreement Ex. CW1/G but has signed at point A on page 22.

8. Vide order dated 18-09-2014, CE was closed and on 12-11-2014, accused was examined u/s 313 of Cr. PC. Accused reiterated the defence that was taken by him in his notice u/s 251. The accused averred that he saw complainant for the first time in court and had not taken any loan or investment money from the complainant ever. He had taken loan of Rs. 50,000/- from the complainant's maternal uncle which he had returned. He had not CC no. 52958/16 Manoj Kumar Sehgal Vs. Naresh Kumar Page No. 5 of 20 Pages entered into any agreement dt. 19-02-2013 with the complainant. The maternal uncle of the complainant had obtained his signature on two pages which appeared to be last page of agreement, but he was not shown other pages of any of the agreement. The signatures at point A in Ex. CW1/G were his signatures.

Accused further stated that he did not issue the cheque in question to the complainant rather he had given seven blank signed cheques to the maternal uncle of the complainant. Accused admitted that he received the legal notice.

Accused further stated that he is innocent and is not liable towards the complainant for any amount. He has filed a police complaint against the complainant at PS Geeta Colony for cheating.

9. The accused expressed his willingness to lead defence evidence (in short, DE). Accordingly, the matter was listed for DE.

10. An application u/s 315 of Cr. PC was moved on behalf of accused for examination of accused as defence witness. The application was allowed vide order dated 03-12-2014.

Defence Evidence

11. The accused appeared in witness box as DW-1. As per his testimony, he did not know the complainant and saw him in court for the first time. He never had any CC no. 52958/16 Manoj Kumar Sehgal Vs. Naresh Kumar Page No. 6 of 20 Pages transaction with him. The agreement Ex. CW1/G was not prepared in front of him, but he had signed on last page of Ex. CW1/G. He knew the maternal uncle of the complainant since 2-3 years. He had taken loan of Rs. 50,000/- from the uncle of complainant, Rajiv Kumar Malhotra about 1 to 1 1/2 years ago. He has also returned that loan in presence of his friend Naveen. He had given the cheque in question along with 6 other cheques in blank signed condition to Rajiv Kumar Malhotra as security for the loan of Rs. 50,000/-.

The cheque in question was misused.

He had not gone to any Notary for attestation of Ex. CW1/G He has also filed a police complaint at PS Geeta Colony against complainant and Rajiv Kumar Malhotra for misuse of his cheques, copy of which was marked as Mark DW1/1. He did not know any family member of the complainant except his maternal uncle. He did not know where the complainant lived. On receipt of legal notice, he talked to Rajiv Kumar Malhotra who assured him that he will speak to the complainant and nothing further will be done.

Sunny who is witness to Ex. CW1/G is his nephew and when he spoke to him, he denied his signatures on Ex. CW1/G. The address mentioned on Ex. CW1/G for Sunny was not correct and Sunny resided at 13/339, Geeta Colony.

He did not know who Mr. S.B. Yadav was, whose signatures were appearing as witness on Ex. CW1/G. The complainant did not sign Ex. CW1/G in front of CC no. 52958/16 Manoj Kumar Sehgal Vs. Naresh Kumar Page No. 7 of 20 Pages him. He did not know if signatures in name of complainant in Ex. CW1/G were genuine or not. He did not purchase stamp paper on which Ex. CW1/G had been executed.

Accused was cross-examined by counsel of complainant. During the same following notable points were stated:-

a. Accused admitted that he used to participate in Ramleela shows for last 15-20 years. He denied the suggestion that he or his son had visited the house of the complainant in Vinod Nagar. He knew Mr. Rajeev Malhotra as he had taken loan from him.

b. He did not remember when he signed at point A on Ex. CW1/G. He voluntarily stated that he had signed on two papers and given it to Mr. Rajeev Malhotra. The said two papers were part of a loan agreement with Rajeev Malhotra. He did not remember the date of the loan agreement. The last page of Ex. CW1/G was one of the two papers that he had signed and given to Rajeev Malhotra. The loan agreement with Rajeev Malhotra was executed on a Rs. 10/- stamp paper. He denied the suggestion that he had executed a loan agreement with the complainant on Rs. 100/- stamp paper on 19-02- 2013.

c. He was not aware of any police complaint filed against him by the complainant. Rajeev Malhotra had filed a complaint against him. He denied the suggestion that he executed a partnership agreement with Rajeev Malhotra.

d. Witness was confronted with partnership agreement dt. 17-10-2012 photocopy of which was marked as Mark DW1/C1. Witness admitted his signatures at point X on Mark DW1/C1. DW-1 voluntarily stated that he knew nothing about Mark DW1/C1. He had only signed on the last page and given it to Rajeev Malhotra for loan

agreement.

e. He did not know any person namely Keval Kishan @ KK. He does not know if his cheque of Rs. 4,00,000/- issued to Keval Kishan @ KK was dishonoured or not. He denied the suggestion that he was making payment to Keval Kishan @ KK on CC no. 52958/16 Manoj Kumar Sehgal Vs. Naresh Kumar Page No. 8 of 20 Pages monthly basis after settlement.

f. He denied the suggestion that he had issued several cheques to several persons which got dishonored. He denied the suggestion that he had entered into partnership agreement with several persons like Mark DW1/C1. He denied the suggestion that one witness appeared on his behalf at the time of execution of Ex. CW1/G. He stated that Sunny Chauhan had not signed Ex. CW1/G

12. Sh. Sunny appeared in witness box as DW-2. As per his testimony, he stated that the agreement Ex. CW1/G did not bear his signatures at point X and address mentioned below at point X on Ex. CW1/G was not his address. DW2 further deposed that he did not know any S.B. Yadav whose name was appearing as a witness on Ex. CW1/G. He supported the version of accused that cheque as taken by maternal uncle of complainant.

During his cross-examination, DW-2 stated that the seven cheques given by the accused to Mr. Rajeev Malhotra were not given in his presence and accused has informed him the he had given seven blank signed cheques to Mr. Rajeev Malhotra. He again denied his signatures on Ex. CW1/G

13. Sh. Rajeev Malhotra was examined as DW-3. As per his testimony, the complainant was his nephew who studied till class sixth. DW-3 deposed that he has not written the name of the payee on the cheque in question, amount in words, figures or the date on the cheque in question. He had not written the name Sunny at point X on Ex. CW1/G and he did not know CC no. 52958/16 Manoj Kumar Sehgal Vs. Naresh Kumar Page No. 9 of 20 Pages any Sunny and S.B. Yadav. He was not aware about Ex. CW1/G.

14. HC Subhash Mavi, PS Geeta Colony was examined as DW-4. He had brought the summoned record i.e. General complaint register 2014, containing DD entry No. 41-B dt. 03-01-2014 at page no. 4 at entry no. X-15 at point A. The photocopy of the same was Ex. DW4/1.

15. Sh. Madan Lal Gupta was examined as DW-5. In his examination, he deposed that he was appointed as a Notary Public by Government of India and his licence number was 4921 dt. 21-11-2007. He deposed that Ex. CW1/G was not notarized by him and he never signed on this document and the same document did not bear his stamp. He had no concern with document Ex. CW1/G(OSR) in any manner.

During his cross-examination, DW-5 stated that his notary licence was valid till 21-11-2017 and he renewed his notary licence in the year 2012. He stated that he usually notarized 5-10 entries approximately, however, on some days he did not notarize any documents. He did not authenticate

his notary register from DJ or any other authority. He stated that there was no such provision.

DW-5 in his further cross-examination brought his Notary register for year 2013. He submitted that his notary registry for period 07.05.2012 to 27.12.2012 was not available with him as same has been seized by IO of Police Station New Ashok Nagar in case FIR No. 568/14.

CC no. 52958/16 Manoj Kumar Sehgal Vs. Naresh Kumar Page No. 10 of 20 Pages He voluntarily stated that he had brought, copy of seizure memo of Notary register dated 10.07.2015. (Mark DW5/X).

He had brought his original seal. Copy of seal was Ex. DW5/X1.

He deposed that he did not enter every notarization in his Notary register compulsorily. He made entry in his Notary register whenever the party asked as well as on his own. He did attestation only when all the parties concerned were present. He did not necessarily made entry of attestation of affidavit in his notary register. He voluntarily stated that he attested affidavit only when the parties were present before him.

His cross -examination was deferred and on the next date of hearing he stated that he had not brought his Notary Register for the year 2013 as same had been misplaced. He had given information of the same at Police Post Tis Hazari Courts, Delhi. He had also lodged on line complaint for the same. Copy of his application was Ex. DW5/X2. Copy of his complaint was Mark DW5/X3.

In his further cross-examination, he denied the suggestion that he had not produced the notary register intentionally. He denied the suggestion that he lodged the complaint so as not to produce the notary register of year 2013 before this court.

He admitted that he had maintained Notary Fee Register as per Notary Rules 1956. He did not know whether it was possible that after taking the e-stamp paper, the person can make a fake stamp and get it CC no. 52958/16 Manoj Kumar Sehgal Vs. Naresh Kumar Page No. 11 of 20 Pages attested.

He denied the suggestion that he usually notarized documents without making entry in the Notary register. He further denied the suggestion that he had not maintained any Notary Fee Register.

13. Vide order dated 16-03-2021, DE was closed and matter was listed for final arguments.

14. I have heard arguments on behalf of both the parties, gone through the judgments relied upon by them and have carefully gone through the material on record.

Analysis and conclusion

15. To prove his case, Ld. Counsel for complainant emphasized that the cheque in question had been issued by the accused in discharge of his legal liability and all the ingredients of offence u/s 138 of

NI Act are fulfilled in the instant case. Ld. Counsel further emphasized that the accused failed to rebut the statutory presumption in favour of the complainant.

It was further argued that testimony of DW-2 Sunny and DW-5 Madan Lal Gupta was not trustworthy.

16. On the other hand, Ld. Defence counsel led emphasis on the following facts to seek acquittal of accused:

a). The accused had not issued the cheque for discharge of any liability. Accused did not know the complainant. He had given blank cheques to maternal uncle CC no. 52958/16 Manoj Kumar Sehgal Vs. Naresh Kumar Page No. 12 of 20 Pages of complainant as security for a loan of Rs 50,000 which was taken by him.

b) Ex CW1/G was not a partnership agreement but a loan agreement and complainant changed the pages. The said document is not proven as even the notary submitted that it did not bore his stamp. The witness Sunny too denied his signature.

c). The complainant failed to show his financial capacity to advance Rs 2,00,000 when he was earning Rs 13,500 per month and had a family depending upon him.

d). Complainant himself in his cross-examination stated that "I had given the loan to the accused without taking any receiving on the basis of trust and friendship." This is contradictory to his version of there being partnership deed dated 19-02-2013.

e). The partnership deed shows investment of 2 lacs by both the parties but the complaint, legal notice and affidavit of complainant are silent of the same.

17. Since accused is facing trial for commission of offence punishable u/s 138 of NI Act, it is necessary to discuss the essential ingredients of the offence.

To attract offence u/s 138 NI Act, following requirements must be fulfilled: -

1. The cheque was drawn by a person on an account maintained by him for payment of money.
2. The said cheque has been issued in discharge, in whole or in part, of any legal debt or other liability.
3. The said cheque has been presented to the bank within a period of three months from the date of cheque or within the period of its validity.
4. The aforesaid cheque, when presented for encashment, was returned unpaid/dishonoured.

5. The payee of the cheque issued a legal notice of demand to the drawer within 30 days from the receipt of information by him from the bank regarding the return of the cheque.

6. The drawer of the cheque failed to make the payment within 15 days of the receipt of aforesaid legal notice of demand.

18. Adverting to the facts of the case, in notice u/s 251 CC no. 52958/16 Manoj Kumar Sehgal Vs. Naresh Kumar Page No. 13 of 20 Pages Cr.P.C, the accused admitted his signature on the cheque in question. He also admitted that he had issued the cheque to the complainant and that the cheque pertained to his account. Factum of dishonor of the cheque is not in dispute. It is also not in dispute that the cheque was not presented within statutory period. Legal notice was dispatched within the statutory time limit and accused has admitted receiving the same. Institution of the complaint within limitation is also not in dispute.

19. Thus, the basic and significant question for determination is:

Whether the accused had issued the cheque in question in discharge of legally enforceable debt or liability?

20. It is material to discuss that a negotiable instrument including a cheque carries following presumptions in terms of Section 118 (a) and Section 139 of the NI Act:

Section 118 of the NI Act provides :

"Presumptions as to negotiable instruments: Until the contrary is proved, the following presumptions shall be made:

of consideration that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred was accepted, indorsed, negotiated or transferred for consideration;"

Section 139 of the N.I Act further provides as follows:

"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 CC no. 52958/16 Manoj Kumar Sehgal Vs. Naresh Kumar Page No. 14 of 20 Pages 138 for the discharge, in whole or in part, of any debt or other liability."

21. Thus, the combined effect of Section 118(a) and Section 139 of NI Act raises a presumption in favour of the holder of the cheque that he has received the same for discharge, in whole or in part of any debt or other liability. However, the said presumptions are rebuttable in nature.

22. In Rangappa V. Sri Mohan, (2010) 11 SCC 441, a three-judge bench of Apex Court observed that:-

"Section 139 of the NI Act is stated to be an example of a reverse onus clause which is in tune with the legislative intent of improving the credibility of negotiable instruments."

23. The Hon'ble Supreme Court further observed that the offence under Section 138 of the NI Act is at best a regulatory offence and largely falls in the arena of a civil wrong and therefore the test of proportionality ought to guide the interpretation of the reverse onus clause. The accused is not expected to discharge an unduly high standard of proof and he is only required to raise a probable defence or creating doubt about the existence of a legally enforceable debt or liability for thwarting the prosecution. The standard of proof for doing so would be on the basis of "preponderance of probabilities".

24. The court has to now consider whether the accused has been successful in discharging the burden of proof.

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25. Counsel for accused has argued that accused did not know the complainant and saw him for the first time in court only. It was also argued that complainant did not have the financial capacity to advance/invest Rs 2,70,000 (2,00,000 initial investment + 70,000 further investment/loan) on a salary of Rs 13,500 per month.

26. Complainant in his cross-examination stated that he knew the accused for roughly 15 years. He stated that he did not know any other family member of accused apart from his nephew whom he saw once. He stated that he had never visited the house of accused.

Complainant submitted that he had never given loan to any other person and had not entered into a document like Ex. CW1/G with any other person. He claimed he had given the loan without any receiving to accused on the basis of trust and partnership.

27 I find merit in the submission of counsel for accused that it is not very probable for a person with a salary of Rs 13,500 who is living on rent to advance loan of Rs 2,70,000 to a person whose house he had never visited and that too without any receipt/acknowledgement. No document or evidence was brought by complainant showing he had any prior relation or acquaintance with the complainant.

28. In Basalingappa v. Mudibasappa, (2019) 5 SCC 418: AIR 2019 SC 1983, the Hon'ble Supreme Court has observed as follows:

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"During his cross-examination, when financial capacity to pay Rs. 6 lakhs to the

accused was questioned, there was no satisfactory reply given by the complainant. The evidence on record, thus, is a probable defence on behalf of the accused, which shifted the burden on the complainant to prove his financial capacity and other facts.

29. Reliance can also be placed on judgment of hon'ble Supreme Court of India in K. Prakashan Vs P.K. Surenderan, (2008) 1 SCC 258 where it was declared that :-

"The criminal court while appreciating the evidence brought on record may have to weigh the entire pros and cons of the matter which would include the circumstances which have been brought on record by the parties. The complainant has been found to be not a man of means. He had allegedly advanced a sum of Rs. 1 lakh on 13.01.1994. He although had himself been taking advances either from his father or brother or third parties, without making any attempt to realize the amount, is said to have advanced sums of Rs. 86,000/- on 8.06.1994. Likewise he continued to advance diverse sums of Rs. 28,000/-, Rs. 50,000/-, Rs. 40,000/- and Rs. 12,000/- on subsequent dates. It is not a case where the appellant paid any amount to the respondent towards repayment of loan. He even did not charge any interest. He had also not proved that there had been any commercial or business transactions between himself and the appellant. Why the appellant required so much amount and why he alone had been making payments of such large sums of money to the appellant has not been disclosed. According to him, he had been maintaining a diary. A contemporaneous document which was in existence as per the admission of the complainant, therefore, was required to be brought on records. He failed to do so. He also did not examine his father and brothers to show that they were men of means and in fact CC no. 52958/16 Manoj Kumar Sehgal Vs. Naresh Kumar Page No. 17 of 20 Pages advanced a huge sum to him only for the purpose of grant of loan by him to the appellant. "

30. Counsel for complainant has argued that the partnership deed Ex. CW1/G is reflective of the fact that complainant had given Rs 2,00,000 to the accused.

Ld. counsel for accused has denied the validity of partnership deed and states that accused had only signed on the last page and previous pages were changed by complainant. The partnership deed was not registered and further, the notary public too stated that he did not notarize or sign the partnership deed. Witness DW-2 denied his signature on the document and complainant did not examine the other witness Sh. S.B. Yadav.

Counsel for complainant pointed out that even the last page of the document CW1/1 on which signature of accused is admitted it is expressly written that :-

"That the partnership shall further invest their capital in the said firm, as per business requirement time to time"

which shows that accused was clearly aware that the document was a partnership deed.

31. It is worth mentioning that para 2 and para 3 of the questioned document CW1/G states that :-

"2. That the partners have invested their capital in the above said partnership business, according to the entry of partnership books."

"3. That both the parties have invested equal amount ie.Rs 2,00,000(Rs 2 Lacs) in the above said business "

From this, it logically follows that both parties have CC no. 52958/16 Manoj Kumar Sehgal Vs. Naresh Kumar Page No. 18 of 20 Pages invested equal amount of Rs 2,00,000. The partnership deed does not talk about amount of Rs 2,00,000 being due upon the accused. It does not state that complainant had invested the amount but accused had not. It only states that accused will pay Rs 10,000 per month to the second party. CW-1/G was prepared on 19-02-2013 and cheque in question bears date 01- 08-2013.

Therefore, even if we rely upon CW1/G validity of which has been denied by the accused, notary and witness, it fails to show how accused had Rs 3,10,000 due against the complainant.

32. Ld. Counsel for complainant also emphasized on the following contradictions in the version of accused :-

Accused in his examination in chief stated that he had returned the loan in the presence of Naveen whereas in connected matter titled "Rajeev Malhotra vs Naresh Kumar bearing CC no. 52473/16 accused stated that he returned the loan in the presence of Sunny and Vishal. Accused has himself referred to CW1/G as partnership deed and not as loan agreement in the complaint Ex DW5/1 filed by him.

33. These inconsistencies do not help the complainant because complainant himself has repeatedly stated that he had given loan to accused. "I have never given any loan to the accused apart from the loan in question" "I had given the loan to the accused without taking any receiving on the basis of trust and friendship.")Cross-examination dated 18.09.2014). Whereas as per his complaint, he contributed Rs 2,00,000 as investment in terms of Ex. CW1/G. It is also settled position of the law that the case of the complainant CC no. 52958/16 Manoj Kumar Sehgal Vs. Naresh Kumar Page No. 19 of 20 Pages should stand on its own legs. It cannot take advantage of the weakness of the defence, nor can the court, on its own make out a new case for the complainant and convict the accused on that basis. If defence version is incorrect, it does not mean that the version of complainant is necessarily correct.

34. In the present case, after considering the totality of the facts and circumstances along with the evidence available on record, it becomes clear that the accused has successfully raised a probable defence in his favour by poking holes in the version of complainant, challenging his financial capacity and showing that cheque was not given for discharge of liability of Rs 3,10,000.

The complainant, on the other hand has miserably failed to establish one of the fundamental ingredients of Section 138 of the Act, i.e. that the dishonoured cheque was issued in discharge of a legally recoverable debt or liability.

35. In view of the evidence adduced, documents put forth and arguments advanced by the parties and further in view of the above discussion, the court is of the considered view that the accused Naresh Kumar is not guilty of offence under Section 138 of Negotiable Instruments Act, 1881 and accordingly, he is hereby acquitted under Section 138 of Negotiable Instruments Act, 1881.

AKHIL	Digitally signed by AKHIL MALIK Date: 2022.10.19 18:02:38 +0530
MALIK	

Announced in the open Court
today i.e. 19-10-2022

(AKHIL MALIK)
MM (Municipal) East District
Karkardooma Court/ Delhi.

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