

Sunita Rani Bhardwaj (Deceased) vs Sushil Khanna on 27 September, 2018

IN THE COURT OF MS. SHAMA GUPTA
METROPOLITAN MAGISTRATE – I (NORTH-WEST)
ROHINI COURTS, DELHI

New Case No. : 4569/16

Sunita Rani Bhardwaj (deceased)
Through her Legal Heir, Sh. Sikander Lal Bhardwaj, husband of the
deceased, R/o H No. B-147, New Janki Puri,
Uttam Nagar, New Delhi-59. Complainant

Versus

Sushil Khanna
S/o Khairati Lal Khanna,
R/o H No. B-147, New Janki Puri,
Uttam Nagar, New Delhi-59. Acc

The offence complained of or proved : U/s 138 NI Act
The plea of the accused person : Pleded not guilty
Final order : Convicted
Date of institution of complaint : 03.04.2018
Date on which reserved for judgment : 27.09.2018
Date of pronouncement of judgment : 27.09.2018

BRIEF FACTS AND REASONS FOR DECISION OF THE CASE

1. Vide this judgment, I shall decide the complaint case under Section 138 Negotiable Instruments Act 1881 (as amended up to date) filed by the complainant.

2. Brief facts necessary for the disposal of the present case, as per the averments in the complaint are that the accused was known to the complainant since long and the accused also establish family relation Case No. : R□ 4569/16 Sunita Rani Bhardwaj Vs. Sushil Khanna Page no. 1 of 20 with the complainant and her husband. It is stated that in the third week of May 2017, the accused approached the complainant and her husband and asked for a personal loan of Rs. 10,00,000 / □, as the accused was in urgent need of money. It is further averred that since the complainant was having good relations with the accused therefore, the complainant gave Rs. 10,00,000/□ to the accused, through four different cheques, as per the convenience of the accused and the accused promised that besides returning the said amount, he will also pay a monthly benefit of Rs. 10,000/□ to the complainant. It is further averred that a written agreement was also entered between the

accused, the complainant and her husband and the accused undertakes to take care of the complainant and her husband. It is further averred that on 25.05.2017, the accused approached the complainant and further demanded Rs. 4,70,000/□ and the complainant gave the said amount to the accused through RTGS. It is further averred that a dispute arose between the accused and the complainant, in the month of July, 2017 therefore, the complainant demanded the entire amount back from the accused, after which, the accused issued a post dated cheque no. 062269 dated 30.10.2017 of Rs. 14,70,000/□, in favor of the complainant. It is further averred that on assurance of the accused, the complainant presented the said cheque in her bank i.e. Bank of Baroda, Pooth Kalan, Delhi 86, however, the same was returned dishonored with the remarks "Funds Insufficient", vide returning memo dated 06.11.2017. It is further averred that the complainant apprised the accused about the dishonor of the said cheque but, the accused failed to return the said amount. It is further averred that the Case No. : R□ 4569/16 Sunita Rani Bhardwaj Vs. Sushil Khanna Page no. 2 of 20 complainant registered a police complaint against the accused at P.S. Dabri and in the P.S., the accused came and apologized before the SHO P.S. Dabri and requested the complainant to give three months time for repayment of the said loan amount. It is further averred that the accused also issued three cheques bearing no. 203461, 203462 and 203463, all dated 15.02.2018, of Rs. 5,00,000/□ Rs. 5,00,000/□ and Rs. 4,70,000/□ respectively (herein afterwards referred as impugned cheques) drawn on Allahabad Bank, Plot No. 201, Bindapur, New Delhi, which were returned dishonored for the reasons "Funds Insufficient", vide returning memo dated 17.02.2018. It is further averred that the complainant had got registered an FIR no. 78/18 u/s 323/342/506 IPC P.S. Dabri, against the accused. It is further pleaded that the complainant issued a legal notice dated 01.03.2018 but, despite receipt of the said notice, the accused failed to pay any amount to the complainant consequently, the complainant filed the present complaint for prosecution of the accused under Section 138 of Negotiable Instruments Act, 1881.

3. The complainant lead her pre□suming evidence by way of affidavit Ex. CW□ 1/A and had placed reliance on Ex. CW 1/1, which is the loan agreement executed between the parties; Ex. CW1/2 is the copy of statement of account of the complainant showing the payment of Rs. 4,70,000/□ to the accused through RTGS; Ex. CW1/3 is cheque no. 062269 of Rs. 14,70,000/□ which was earlier issued by the accused to the complainant to discharge his liability; Ex. CW1/4 is the returning memo qua cheque no. 062269; Ex. CW1/5 is the statement Case No. : R□ 4569/16 Sunita Rani Bhardwaj Vs. Sushil Khanna Page no. 3 of 20 given by the accused to the SHO P.S. Dabri; Ex. CW1/6 to Ex. CW1/8 are the cheque no. 203461, 203462 and 203463, all dated 15.02.2018 of Rs. 5,00,000/□ , Rs. 5,00,000/□ and Rs. 4,70,000/□, respectively, all drawn on Allahabad Bank, Plot no. 201, Bindapur, New Delhi; Ex. CW1/9 is the returning memo dated 17.02.2018; Ex. CW1/10 is the

copy of FIR no. 78/18; Ex. CW1/11 is the legal notice; Ex. CW1/12 and CW1/13 are the postal receipts; Ex. CW1/14 is the tracking report of registered AD cover; Ex. CW1/15 is the tracking report of courier and Ex. CW1/16 is the original complaint. On the basis of material available on record, summons were issued against the accused vide order dated 12.04.2018 for the offence under Section 138 Negotiable Instrument Act, 1881.

4. On appearance of the accused, a separate notice under Section 251 Cr. P.C, dated 11.05.2018 was given to the accused, to which the accused pleaded not guilty and claimed trial.

5. In post summoning evidence, the complainant adopted the pre-summoning affidavit as well as the documents. CW1 was duly cross examined by Ld. LAC for the accused.

6. After conclusion of complainant's evidence, the statement of the accused was recorded under Section 313/281 Cr. PC, in which the entire incriminating evidence along with the exhibited documents were put to the accused Sushil Khanna, to which the accused stated that he has been falsely implicated in this case and he had not signed Case No. : R□ 4569/16 Sunita Rani Bhardwaj Vs. Sushil Khanna Page no. 4 of 20 any loan agreement but, a blank stamp paper as well as the impugned signed cheques were obtained from him by the complainant and her husband in P.S. Dabri, by torturing him. He further stated that he had obtained amount of Rs. 14,70,000/□, from the complainant but, the same was not qua any loan and the said amount was disbursed to him by the complainant, as he had allowed the complainant and her husband to reside with him in his premises and was also paying the rent of the said premises and further amount towards the maintenance of the complainant and her husband. He further stated that he had also issued cheque Ex. CW1/3 to the complainant, but, the same was blank signed by him. The accused further opted to lead defence evidence.

7. During the course of his defence evidence, the accused examined Baldev Raj as DW1 and Laxmi Khanna, wife of the accused as DW2. DW□ 1 deposed that the accused is his friend and he does not know the complainant and her husband. He further deposed that the complainant and her husband are residing along with the accused at the tenanted premises of the accused, which consists of two rooms, out of which one room was occupied by the accused and the second room was occupied by the complainant and her husband. He further deposed that the accused used to make certain payments to the complainant from time to time starting from July, 2017. He further deposed that the accused had paid Rs. 3,00,000/□ to the complainant on 15.07.2017, Rs. 2,50,000/□ in August, 2017, Rs. 1,75,000/□ in September, 2017, Rs. 75,000/□

by cheque on 01.10.2017, Rs. 1,50,000/□ on 15.10.2017, Rs. 2,25,000/□ in November, 2017, Rs. 3,25,000/□ in December, 2017 in Case No. : R□ 4569/16 Sunita Rani Bhardwaj Vs. Sushil Khanna Page no. 5 of 20

his presence. DW1 was also being cross examined by Ld. Counsel for the complainant. Further, DW2 stated that an amount of Rs. 14,70,000/□ was given by the complainant's husband to the accused for the purpose of saving tax and the said amount had been repaid by her husband. She further deposed that her husband had paid the said amount i.e Rs. 3,00,000/□ in July, 2017, Rs. 2,75,000/□ in August, 2017, Rs. 2,00,000/□ in September, 2017, Rs. 75,000/□ by cheque on 01.10.2017, Rs. 1,75,000/□ on 15.10.2017, Rs. 2,25,000/□ in November, 2017, Rs. 2,00,000/□ in December, 2017. She further deposed that apart from the abovesaid payment, her husband was also paying the rent of Rs. 10,000/□ p.m of the room, in which the complainant and her husband were residing and her husband was also paying the expenses of the complainant and her husband towards food, medicines as well as towards daily expenses. She further deposed that in November, 2017, the complainant and her husband along with the neighbors, took her husband to the P.S. and obtained his signatures forcefully on certain papers. DW2 was also being cross examined by Ld. Counsel for the complainant.

8. Final arguments were thereafter addressed by Ld. Counsel for the legal heir of the deceased complainant, as the complainant died after part final arguments were heard as well as by Ld. LAC for the accused. I have heard the arguments addressed by Ld. Counsel for both the parties and perused the entire material available on record.

9. In order to bring home the guilt of the accused, the Case No. : R□ 4569/16 Sunita Rani Bhardwaj Vs. Sushil Khanna Page no. 6 of 20 complainant has to prove not only unbroken chain of events leading to the commission of actual offence on record but, also the ingredients of the offence complained of.

10. The main ingredients of Section 138 of the Negotiable Instruments Act, 1881 are listed as follows:□

(a) The accused issued a cheque on an account maintained by him with a bank.

(b) The said cheque has been issued in discharge of any legal debt or other liability.

(c) The cheque has been presented to the bank within the period of six months from the date of the cheque or within the period of its validity.

(d) When the aforesaid cheque was presented for encashment, the same was returned unpaid / dishonored.

(e) The Payee of the cheque issued a legal notice of demand within 30 days from the receipt of information by him from the Bank regarding the return of cheque

(f) The Drawer of the cheque failed to make the payment within 15 days of the receipt of the aforesaid legal notice of demand.

11. If the aforesaid ingredients are satisfied then, the drawer of the cheque shall be deemed to have committed an offence punishable under Section 138 Negotiable Instruments Act.

12. Now, let us deal with each ingredient of Section 138 of Case No.: R□ 4569/16 Sunita Rani Bhardwaj Vs. Sushil Khanna Page no. 7 of 20 Negotiable Instruments Act, 1881 to ascertain whether the complainant has been able to prove the case against the accused or not.

WHETHER THE CHEQUES WERE ISSUED OR NOT BY THE ACCUSED

13. In the present matter, while answering to the question at the time of framing of notice u/s 251 Cr. P.C, the accused admitted that the impugned cheques were issued by him and duly filled by him, however, he had taken the defence that the same were obtained from him, by exercising force and coercion by SHO P.S. Dabri. The accused had put the said defence to the complainant/ CW1, during the course of her cross examination, wherein she admitted that the impugned cheques were signed by the accused in the P.S., towards settlement but, she denied that the same were got forcibly signed from the accused, in connivance with the police officials. To prove his defence, the accused had further examined his wife Laxmi Khanna, as DW2, who also deposed that the impugned cheques were being obtained from her husband forcibly in the P.S., in the month of November, 2017. She also deposed that at the relevant time, her neighbors were also present in the P.S. but, her testimony is silent as to her presence in the P.S., at the relevant time. Consequently, the testimony of DW2 is not sufficient to prove the alleged factum of exercise of coercion or force by the SHO P.S. Dabri, or collusion or connivance between the police officials, the complainant and her husband, in obtaining the impugned cheques forcibly from the Case No. : R □ 4569/16 Sunita Rani Bhardwaj Vs. Sushil Khanna Page no. 8 of 20 accused. The accused further failed to examine any neighbour, who as per the testimony of DW2, were present in the P.S., at the relevant time and also failed to place on record any complaint filed by him, either against the complainant or the police officials of P.S. Dabri, for the alleged torture. Further, if the averment of the accused is accepted to be true on its face value, that the impugned cheques were being obtained from him by exercise of force or coercion then, the question which arose for

consideration is, why he had not given any instructions to his bank to stop the payment, as perusal of the record reveals that the impugned cheques were returned dishonored vide cheque returning memo dated 17.02.2018, Ex. CW1/9, for the reason "Funds Insufficient".

14. At this juncture, it is relevant to mention that merely because the impugned cheques were obtained from the accused in the P.S., the same does not imply exercise of force or coercion. The accused is specifically required to prove that the cheque in question were obtained from him in the P.S., by the exercise of force or coercion. During the course of her examination in chief, the complainant relied upon Ex. CW1/5, which is the letter written by the accused to the SHO P.S. Dabri, in which he admitted handing over of three cheques of Rs. 14,70,000/□, to the complainant on 11.11.2017 and when the accused was being asked about the said document, in his statement u/s 313 Cr. P.C, he remained silent as to execution of Ex. CW1/5 by him. Thus, the due execution of impugned cheques Ex. CW1/6 to CW1/8 by the accused in favor of the complainant stood proved by the Case No. : R□ 4569/16 Sunita Rani Bhardwaj Vs. Sushil Khanna Page no. 9 of 20 testimony of CW1, which remains unrebutted, as the accused miserably failed to prove his defence.

WHETHER THE CHEQUES WERE PRESENTED WITHIN THE PERIOD OF VALIDITY

15. Perusal of the record reveals that the cheque Ex.CW1/6 to Ex. CW1/8 were returned dishonored vide cheque returning memo Ex. CW1/9 dated 17.02.2018, which is not disputed by the accused. This clearly shows that the impugned cheques were presented within stipulated period of three months from the date of issuance of the cheques.

DISHONOUR OF THE CHEQUES IN QUESTION

16. In the instant case, the complainant exhibited cheque returning memo which is Ex. CW1/9, which shows that cheques Ex. CW1/6 to Ex. CW1/8 dated 15.02.2018, got dishonored on 17.02.2018. The dishonor of the impugned cheques have not been disputed by the accused, nor the cheque returning memo has been challenged by the accused. Therefore, considering the entire evidence on record, it stands duly proved that the impugned cheques were dishonored vide cheque returning memo Ex. CW1/9, dated 17.02.2018, with the reason "Funds Insufficient".

SERVICE OF LEGAL NOTICE OF DEMAND UPON THE ACCUSED Case No. : R□ 4569/16 Sunita Rani Bhardwaj Vs. Sushil Khanna Page no. 10 of 20

17. In the instant case, the accused had taken contradictory stand regarding receipt of legal notice of demand Ex. CW1/11. While

answering to the question being put to him at the time of framing of notice u/s 251 Cr. P.C, the accused stated that he had received the legal demand notice but, he had not replied to the same however, when the statement of the accused u/s 313 Cr. P.C was recorded, he denied receipt of any such legal notice of demand. During the course of her examination in chief by way of affidavit Ex. CW1/A, the complainant specifically averred that she had sent legal demand notice dated 01.03.2018, Ex. CW1/11 to the accused at his address, which was duly served upon the accused by postal receipt Ex. CW1/12 and CW1/13. The accused failed to put any question to the complainant, as to non receipt of the said legal demand notice. Further, perusal of the record reveals that legal notice of demand Ex. CW1/11, bears the same address of the accused, which is mentioned on the complaint and on which the accused was being served in the present case and further, which was furnished by the accused in the bail bonds. Therefore, considering the fact that the legal notice Ex. CW1/11 was sent to the accused vide Ex. CW1/12 and Ex. CW1/13, at the same address, on which the accused was being served in the present case and the said address was also being mentioned by him in his bail bonds, therefore this court is of the considered opinion that the legal notice of demand was served upon the accused.

WHETHER THE CHEQUES IN QUESTION WERE ISSUED IN DISCHARGE OF ANY LEGAL DEBT OR OTHER LIABILITY Case No. : R□
4569/16 Sunita Rani Bhardwaj Vs. Sushil Khanna Page no. 11 of 20

18. In the case in hand, the complainant specifically stated in her examination in chief by way of affidavit Ex. CW1/A, that the accused issued the impugned cheques Ex. CW1/6 to Ex. CW1/8, in discharge of his legal liability towards the repayment of Rs. 14,70,000/□, being obtained by the accused from the complainant. In his statement under Section 313 Cr. PC, as well as when notice of accusations u/s 251 Cr. P.C was given to the accused, the accused admitted that he had obtained an amount of Rs. 14,70,000/□ from the complainant from time to time but, he raised the defence that the said amount was not towards loan and the same was given by the complainant and her husband to him, so that the accused would maintain the complainant and her husband and would take care of them. He further stated that the contents of the impugned cheques were also filled by him however, he raised the defence that the same were being obtained from him by the exercise of force or coercion by SHO P.S. Dabri, in connivance with the complainant and her husband.

19. Before deciding this issue, let us go through the relevant provisions of law.

Section 46 of the Negotiable Instruments Act speaks of the delivery, it reads as follows:□
"The making, acceptance or endorsement of a promissory notice, bill of exchange or cheque is completed by delivery, actual or constructive."

Section 118 (b) of the Negotiable Instruments Act provides that until the contrary is proved there is presumption that every Case No. : R □
4569/16 Sunita Rani Bhardwaj Vs. Sushil Khanna Page no. 12 of 20
Negotiable Instrument bearing a date was made or drawn on such date.

20. Moreover, there is a presumption in favour of the complainant under Section 118 (a) Negotiable Instruments Act that until the contrary is proved, it will be presumed that every negotiable instrument was drawn for consideration and every such instrument when it has been accepted, endorsed, negotiated or transferred was accepted, endorsed, negotiated or transferred for consideration. Further, Section 139 of the Negotiable Instruments Act, 1881 provides that it shall be presumed, until the contrary is proved, that the holder of the cheque received the cheque, of the nature referred in the Section 138, for the discharge in whole or in part of his debt or liability.

21. The statutory presumptions given in the above mentioned Sections are in favor of the complainant, as the complainant by her evidence duly proved that the accused issued the impugned cheques Ex. CW1/6 to Ex. CW1/8, in discharge of legally enforceable debt, as the complainant had advanced Rs. 14,70,000/□ to the accused. Further, at the stage, when notice of accusations were explained to the accused and while answering to the question U / s 313 Cr.P.C, the accused admitted that Ex. CW1/6 to CW1/8 were being issued and duly filled by him and handed over to the complainant. He only raised the defence that the same were issued, due to exercise of force or coercion by the SHO P.S. Dabri, in collusion or in connivance with the Case No. : R □
4569/16 Sunita Rani Bhardwaj Vs. Sushil Khanna Page no. 13 of 20
complainant and her husband. The accused had put the said defence to the complainant/ CW1, during the course of her cross examination, wherein she admitted that the impugned cheques were signed by the accused in the P.S. towards settlement, but, she denied that the same were got forcibly signed from the accused, in connivance with the police officials. To prove his defence, the accused had further examined his wife Laxmi Khanna as DW2, who also deposed that the impugned cheques were being obtained from her husband forcibly in the P.S., in the month of November, 2017. She also deposed that at the relevant time, her neighbours were also present in the P.S. but, her testimony is silent as to her presence in the P.S., at the relevant time. Consequently, the testimony of DW2 is not sufficient to prove the alleged factum of exercise of coercion or force by the SHO P.S. Dabri, or collusion or connivance

between the police officials, the complainant and her husband, in obtaining the impugned cheques forcibly from the accused. The accused further failed to examine any alleged neighbour, who as per the testimony of DW2, were present in the P.S., at the relevant time and also failed to place on record any complaint filed by him either against the complainant or the police officials of P.S. Dabri, for the alleged torture. Further, if the averment of the accused is accepted to be true on its face value that the impugned cheques were being obtained from him, by exercise of force or coercion then, the question which arose for consideration is, why he had not given any instructions to his bank to stop the payment, as perusal of the record reveals that the impugned cheques were returned dishonored vide cheque returning memo dated 17.02.2018, Ex.

Case No. : R□4569/16 Sunita Rani Bhardwaj Vs. Sushil Khanna Page no. 14 of 20
CW1/9, for the reason "Funds Insufficient".

22. At this juncture, it is relevant to mention that merely because the impugned cheques were obtained from the accused in the P.S. does not imply exercise of force or coercion. The accused is specifically required to prove that the cheque in question were obtained from him in the P.S., by the exercise of force or coercion. During the course of her examination in chief, the complainant relied upon Ex. CW1/5, which is the letter written by the accused to the SHO P.S. Dabri, wherein the accused admitted handing over of three cheques of Rs. 14,70,000/□, to the complainant on 11.11.2017 and when the accused was being asked about the said document in his statement u/s 313 Cr. P.C, he remained silent as to execution of Ex. CW1/5 by him.

23. The accused further raised the defence that he had also returned the said amount to the complainant. During the course of cross examination of the complainant/ CW1, Ld. Legal Aid Counsel for the accused had put question to the complainant, regarding the repayment of the said amount in cash to the complainant from time to time i.e. Rs. 3,00,000/□ on 15.07.2017, Rs. 2,50,000/□ on 15.08.2017, Rs. 2,75,000/□ on 15.09.2017, Rs. 1,50,000/□ on 15.10.2017, Rs. 2,20,000/□ on 15.11.2017, and Rs. 2,00,000/□ on 15.12.2017, which CW1 denied. To prove the said defence, the accused had examined DW1 and DW2, however, there are contradictions, as to repayment schedule, as deposed by DW1, DW2 and the defence of the accused, Case No. : R□4569/16 Sunita Rani Bhardwaj Vs. Sushil Khanna Page no. 15 of 20
as put to the complainant by Ld. LAC for the accused. As per DW1, the accused had made the payment of the said amount i.e. Rs. 3,00,000/□ on 15.07.2017, Rs. 2,50,000/□ in August, 2017, Rs. 1,75,000/□ in September, 2017, Rs. 75,000/□ by cheque on 01.10.2017, Rs. 1,50,000/□ on 15.10.2017, Rs. 2,25,000/□ in November, 2017, Rs. 3,25,000/□ in December, 2017 whereas, DW2 deposed that the accused had made the said payment i.e. Rs. 3,00,000/□ in July, 2017, Rs. 2,75,000/□ in August, 2017, Rs. 2,00,000/□ in September, 2017, Rs. 75,000/□

by cheque on 01.10.2017, Rs. 1,75,000/□ on 15.10.2017, Rs. 2,25,000/□ in November, 2017, Rs. 2,00,000/□ in December, 2017. As per the defence of the accused put to the complainant during the course of her cross examination, the accused had paid Rs. 2,50,000/□ to the complainant in August, 2017, which as per DW1 was also Rs. 2,50,000/□ but, DW2 deposed that the accused had paid an amount of Rs. 2,75,000/□ Similarly, there are contradictions regarding the alleged re □ payment for the month of September to December, 2017, as per the defence of the accused put to the complainant and as per the testimony of DW1 and DW2.

24. Further, as per the defence put by the accused, he had made the entire payment to the complainant in cash from July, 2017 till 15.12.2017, as per the above mentioned schedule, whereas DW1 and DW2 had further deposed as to one additional payment of Rs. 75,000/□ by cheque on 01.10.2017. The accused failed to give the details of the said cheque and also failed to place on record the copy of the alleged cheque to substantiate the said defence. Further, he also Case No. : R□ 4569/16 Sunita Rani Bhardwaj Vs. Sushil Khanna Page no. 16 of 20 failed to place on record his bank statement to show the debit of the said amount from his account. Thus, the payment of the alleged amount of Rs. 75,000/□ by cheque also remains unproved.

25. The accused in the present matter, had also not placed on record any receipt to show the re □ payment of the alleged amount for the month of November and December, 2017, despite the fact that as per DW2, her husband/ accused was being taken to the P.S. Dabri, by the complainant and her husband in November, 2017, and his signatures were being obtained forcibly on certain blank papers in the P.S., including the stamp paper, on which the loan agreement Ex. CW1/1 was got executed. Thus, as per DW2, dispute arose between the complainant and the accused in November, 2017, thus it is highly improbable on the part of the accused to make further payment to the complainant in cash without obtaining any receipt thereof. Further, perusal of loan agreement Ex. CW1/1, which as per the accused was also blank signed by him, prima facie reveals that it also contains an endorsement in the handwriting of the accused dated 27.07.2017, wherein, he admitted handing over of earlier cheque Ex. CW1/3 to the complainant and if, the said document was blank signed by him in November, 2017, then the question of said endorsement at the bottom of Ex. CW1/1 does not arise. The accused failed to put any question to CW1 so as to deny that the said endorsement was not made by him and the signatures below the same was never appended by him.

26. Thus, the accused failed to rebut the presumption as Case No. : R□ 4569/16 Sunita Rani Bhardwaj Vs. Sushil Khanna Page no. 17 of 20 contemplated by Section 118 (a), (b) and Section 139 of Negotiable

Instruments Act. Therefore, it stands duly proved that the cheque Ex. CW1/6 to Ex. CW1/8 were received by the complainant from the accused towards the discharge of legal debt or liability.

THE DRAWER OF THE CHEQUE HAS FAILED TO MAKE THE PAYMENT WITHIN 15 DAYS OF THE RECEIPT OF SAID NOTICE

27. In the instant case, the complainant/ CW1 deposed that despite service of legal notice of demand, the accused failed to pay the impugned cheque amount. As per the defence put by the accused, he had repaid the entire amount, prior to receipt of legal notice of demand. During the course of cross examination of the complainant/ CW1, Ld. Legal Aid Counsel for the accused had put the question to the complainant regarding the repayment of the said amount in cash from time to time i.e. Rs. 3,00,000/□ on 15.07.2017, Rs. 2,50,000/□ on 15.08.2017, Rs. 2,75,000/□ on 15.09.2017, Rs. 1,50,000/□ on 15.10.2017, Rs. 2,20,000/□ on 15.11.2017, and Rs. 2,00,000/□ on 15.12.2017, which CW1 denied. To prove the said defence, the accused had examined DW1 and DW2, however, there are contradictions as to the repayment schedule, as deposed by DW1, DW2 and the defence of the accused, as put to the complainant by Ld. LAC for the accused. As per DW1, the accused had made the payment of the said amount i.e. Rs. 3,00,000/□ on 15.07.2017, Rs. 2,50,000/□ in August, 2017, Rs. 1,75,000/□ in September, 2017, Rs. 75,000/□ by cheque on 01.10.2017, Rs. 1,50,000/□ on 15.10.2017, Rs. 2,25,000/□ in Case No. : R □ 4569/16 Sunita Rani Bhardwaj Vs. Sushil Khanna Page no. 18 of 20 November, 2017, Rs. 3,25,000/□ in December, 2017 whereas, DW2 deposed that the accused had made the said payment i.e. Rs. 3,00,000/□ in July, 2017, Rs. 2,75,000/□ in August, 2017, Rs. 2,00,000/□ in September, 2017, Rs. 75,000/□ by cheque on 01.10.2017, Rs. 1,75,000/□ on 15.10.2017, Rs. 2,25,000/□ in November, 2017, Rs. 2,00,000/□ in December, 2017. As per the defence of the accused put to the complainant during the course of her cross examination, the accused had paid Rs. 2,50,000/□ to the complainant in August, 2017, which as per DW1 was also Rs. 2,50,000/□ but DW2, deposed that the accused had paid an amount of Rs. 2,75,000/□ Similarly, there are contradictions regarding the alleged repayment, for the month of September to December, 2017, as per the defence of the accused put to the complainant and as per the testimony of DW1 and DW2.

28. Further, as per the defence put by the accused, he had made the entire payment to the complainant in cash from July, 2017 till 15.12.2017, as per the above mentioned schedule, whereas DW1 and DW2 had further deposed as to one additional payment of Rs. 75,000/□ by cheque on 01.10.2017. The accused failed to give the details of the said cheque and also failed to place on record the copy of the alleged cheque to substantiate the said defence. Further, he also failed to place on record his bank statement to show the debit of the said amount from his account. Thus, the payment of the alleged amount of Rs. 75,000/□

by cheque, also remains unproved.

29. The accused in the present matter, had also not placed on record Case No. : R□ 4569/16 Sunita Rani Bhardwaj Vs. Sushil Khanna Page no. 19 of 20 any receipt to show the re□payment of the alleged amount for the month of November and December, 2017, despite the fact that as per DW2, her husband/ accused was being taken to the P.S. Dabri, by the complainant and her husband in November, 2017 and his signatures were being obtained forcibly on certain blank papers in the P.S., including the stamp paper on which the loan agreement Ex. CW1/1 was got executed. Thus, as per DW2, dispute arose between the complainant and the accused in November, 2017, thus it is highly improbable on the part of the accused to make further payment to the complainant in cash, without obtaining any receipt thereof. Thus, the alleged repayment of the amount of Rs. 14,70,000/□ by the accused to the complainant remains unproved. Thus, considering the evidence on record, it stands proved that the accused had failed to make the payment of the amount mentioned in the impugned cheques within 15 days of the receipt of the legal notice of demand.

30. In view of the aforesaid discussion, I am of the considered opinion that the complainant had proved her case against the accused beyond reasonable doubt.

Accordingly, the accused Sushil Khanna stands convicted of the offence under Section 138 of Negotiable Instruments Act, 1881.

Dasti copy of the judgment be provided to the convict.

GUPTA
GUPTA
GUPTA
Date: 2018.09.28
13:32:12 +0530

Announced in the open court
on 27th September, 2018

(SHAMA GUPTA)
METROPOLITAN MAGISTRATE
ROHINI DELHI

Case No. : R-4569/16

Sunita Rani Bhardwaj Vs. Sushil Khanna

Page no