Tarandeep Singh Narula vs State on 13 August, 2020

IN THE COURT OF NAVEEN GUPTA,
ADDL. SESSIONS JUDGE - 05 (SHAHDARA DISTRICT)
KARKARDOOMA COURTS, DELHI

Crl. Appeal No. 47/2019
Case ID No. 180/2019
PS: Anand Vihar

In the matter of:-

Tarandeep Singh Narula,
S/o Shri G.S. Narula,
R/o 783/E, First Floor,
Jheel Khureja,
Delhi - 110 051. ..... Appellant

Versus

1. State
(Government of NCT of Delhi)

2. Priyanka Sharma
W/o Sh. Gaurav Sharma,
R/o A-31/53-B, Bhatia Gali,
Maujpur, Delhi - 110 053. ..... Respondents

Date of institution : 21.09.2019
Date of reserving the order : 28.07.2020
Date of order : 13.08.2020

ORDER

1. This is an appeal filed by Tarandeep Singh Narula, appellant/accused (hereinafter referred as 'accused'), challenging the judgment dated 29.07.2019 and the order on sentence dated 29.08.2019, whereby the accused has been convicted for offence under Section 138 of the Negotiable Instruments Act (for short 'NI Act') and sentenced to undergo simple imprisonment of six months and to pay fine of Rs. 2 lac to be paid as compensation to the complainant and in default of payment of fine, further simple imprisonment for three months.

2. Brief facts of the case leading to the filing of present appeal are that the complainant/respondent No. 2 herein, Priyanka Sharma (hereinafter referred as 'complainant'), filed a complaint under Section 138/142 of NI Act against the accused stating that she had granted a friendly loan of Rs. 1,60,000/- to the accused on 04.02.2015, who, in turn, promised to repay the same within four months. An MOU Ex. CW-1/1 had been executed between her and accused in this regard. The

accused had issued a cheque bearing no. 119416, Ex. CW-1/2, for the amount of Rs.1,60,000/-. Thereafter, the accused, on one pretext or another, kept on gaining time and at last, in the month of November, 2015, the accused asked the complainant to present the cheque in the second week of December, 2015.

The complainant presented the said cheque with her bank, but the same was returned/dishonoured by her banker with the remarks 'account closed' vide returning memo dated 15.12.2015, Ex. CW-1/3. After dishonour of the said cheque, the complainant sent a legal notice dated 14.01.2016 Ex. CW-1/4 to the accused calling upon him to make the payment of the aforesaid dishonoured cheque amount. The speed post receipt Ex. CW-1/5 and delivery report Ex. CW-1/6 were placed on record. But, the accused did not make the payment within the statutory period. Hence, the complainant filed the complaint against the accused on 27.02.2016.

3. Thereafter, accused was summoned and copies of the complaint and annexed documents were supplied to him. Notice under Section 251 Cr.P.C. was served upon the accused on 19.05.2016. The accused filed an application under Section 145 (2) N.I. Act, stating that he has already repaid Rs.1,50,000/- to the husband of complainant and thus, only Rs.10,000/- is remaining balance against the impugned security cheque/loan.

In support of her case, the complainant examined herself as CW-1. After recording of statement of accused under Section 313 Cr.P.C., accused examined himself and two other witnesses. After hearing final arguments, Ld. Trial Court convicted the accused for the offence punishable under Section 138 NI Act. Hence, this appeal has been filed by the accused challenging his conviction and order of sentence.

4. Arguments have been advanced by the Counsels for the appellant as well as the respondent No. 2.

5. Ld. Counsel for the appellant has argued that Ld. Trial Court has failed to appreciate the evidence on record in right perspective. Firstly, in the case pertaining to Section 138 NI Act, the accused is supposed to rebut the presumption of Section 139 NI Act on the basis of preponderance of probability. He is not required to prove his defence beyond reasonable doubt. In the present case, the accused has claimed to have repaid Rs.1,50,000/- out of the loan amount of Rs.1,60,000/- and to prove his such defence, he had examined three witnesses including himself. Further, from the testimony of defence witnesses, the accused has proved that he had repaid Rs.1,50,000/- to the husband of complainant. But, Ld. Trial Court has not considered the weight of testimony of defence witnesses at par with that of complainant. He has further argued that Ld. Trial Court has given precedence to the aspect of source of money which is claimed to be repaid to the husband of complainant than the fact of repayment to him by the accused.

Ld. Counsel has further argued that Ld. Trial Court cast doubt on non- examination of Sh. Rajiv Mehra by the accused, who had claimed that the impugned loan transaction had been executed in the presence of Sh. Rajiv Mehra and also, he was present at the time of payment of Rs.50,000/- by the accused to the husband of complainant on 10.04.2015 and he was also informed telephonically by the accused about payment of Rs.50,000/- by the accused on 16.05.2015. Ld. Counsel has argued

that since Sh. Rajiv Mehra was known to both the parties, hence, he did not depose on behalf of the accused.

Ld. Counsel has contended that even the complainant, in her cross-examination, did not deny visit of her husband to the house of accused on 10.04.2015. Moreover, when the accused had claimed in the application moved under Section 145(2) NI Act that he had repaid Rs.1,50,000/- to the husband of the complainant and further, there was no privity of relation between the accused and complainant in respect of the impugned loan transaction as well as the repayment, the complainant must have examined her husband to controvert the defence taken by the accused. Further, since the accused has proved his defence of repayment of Rs.1,50,000/- against the impugned loan transaction, the impugned cheque should have been considered as security cheque only and the said cheque cannot be held to have been issued in discharge of any debt or any other liability. Thus, the present revision petition shall be allowed and the accused shall be acquitted.

6. Ld. Counsel for the respondent No. 2 has argued that the accused could not prove the alleged repayment of Rs.1,50,000/- to the complainant. Thus, following the presumption provided under Section 118 and 139 of NI Act existing in favour of the complainant, Ld. Trial Court has rightly convicted the accused. Hence, the present revision petition shall be dismissed.

7. In order to ascertain whether the accused has committed the offence punishable under Section 138 NI Act, it is deemed fit to examine the necessary ingredients which are required to be proved by the complainant, which are as follows:-

a) The cheque has been drawn on an account maintained by a person in a bank for payment of a certain amount of money to another person from out of that account;

b) The cheque has been issued for the discharge, in whole or in part, of any legal and enforceable debt or other liability;

c) 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;

d) That cheque has been 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;

e) The payee or the holder in due course of the cheque has made a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

f) 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.

8. Firstly, this Court wishes to mention that Ld. Counsel for the revisionist/accused has raised objections against the appreciation of evidence done by Ld. Trial Court on material aspects related to the present case. In these circumstances, this Court is constrained to re-appreciate the evidence led by the parties before Ld. Trial Court. Though this Court is well aware of the principle laid down by the Hon'ble Supreme Court in Ghurey Lal v. State of UP, (2008) 10 SCC 450, that the Appellate Court must always give proper weight and consideration to the findings of the Trial Court. The various facets of the present case are taken up one by one.

The impugned loan transaction

7. The complainant in her complaint has submitted that the accused and the husband of complainant were known to each other. The accused approached her husband in January, 2015 and asked the complainant to lend him (accused) a sum of Rs.1,60,000/- for four months. In her testimony, as CW-1, she deposed in her cross- examination conducted on 01.09.16 that she met the accused in November-December, 2014. She denied the suggestion given by the accused that she did not know the accused personally before filing the present case.

8. At this stage, the testimony of the accused, as DW-1 becomes important on this aspect. In his examination-in-chief recorded on 14.07.2017, he deposed that on 04.02.2015, he went to the office of husband of complainant alongwith blank stamp paper. Mr. Gaurav Sharma had already prepared the agreement and he signed the same. On the same day, Mr. Gaurav Sharma handed over him four cheques, three cheques of Rs.40,000/- each and one cheque of Rs.20,000/- all dated 04.02.2015. He got signed one loan agreement, stamp paper. The three cheques of Rs.40,000/- each and Rs.20,000/- were given to him, which were signed by Mr. Gaurav Sharma as Priyanka Sharma saying that he used to operate the account of his wife Priyanka Sharma.

9. Surprisingly, the complainant did not put any question to the accused, during his cross-examination, to controvert him on this aspect. In other words, the complainant did not challenge the abovesaid version of the accused. To verify the veracity of the version of accused, this Court has examined the documents annexed by the complainant with her complaint. She has placed four cheques, through which part loan amount of Rs.1,40,000/- had been paid to the accused, as Mark-A. The signatures of Priyanka Sharma appended upon those four cheques dated 04.02.2015 differ substantially from the signatures put by the complainant in her complaint, at the time of recording of her testimony before the Court as well as in the vakalatnama signed in favour of her counsel. It is worth mentioning that with the naked eye, the difference could be observed that the alphabet 'r' in the signatures of Priyanka Sharma upon the above- mentioned cheques is different from the alphabet 'r' in the admitted signatures. Any person do not write alphabet 'r' in two different manner in his/her signatures.

10. By not disputing the version of accused on this aspect and the abovesaid observation of the Court, the same leads to infer that husband of the complainant had operated the account of the complainant by placing her signatures on the cheques through which the impugned loan amount

was disbursed to the accused. This Court put a question to itself whether such complaint which is based upon an illegal transaction of operating the bank account by forging the signatures of other person shall be entertained or not. However, the Court wishes to proceed further and examine other aspects of the present case.

The contents of MOU and the date of issuance of the impugned cheques

9. In the MOU dated 04.02.2015, Ex. CW-1/1, it has been stipulated that the second party (accused) will repay back the said amount of Rs.1,60,000/- within four months of this agreement. It has been further mentioned in para-3 that the accused has provided a cheque of Rs.1,60,000/- dated 26.11.2015 as security amount to the complainant. It is beyond comprehension that when a loan has been granted on 04.02.2015, to be repaid within four months, the creditor (complainant) would accept/receive a cheque for repayment of the loan bearing date of 26.11.2015 i.e. giving time of repayment of more than nine and half months.

10. At this stage, the testimony of CW-1 becomes relevant on this aspect. She, in her cross-examination conducted on 01.09.2016, deposed that the same (the impugned cheque) was signed and the amount filled up by the accused himself. At the time of advancing the loan, the payee column and the date column was filled up by her husband. In her cross-examination recorded on 19.04.2017, she deposed that the date on the cheque in question was put by her husband on the asking of accused after his repeated request and he had asked to put the date of 26.11.2015 after Diwali. The accused, too, in his deposition before Ld. Trial Court stated that he gave one signed cheque of ICICI Bank without any name and date for Rs.1,60,000/- filled in word and figure to the husband of complainant. The said version of accused was not controverted by the complainant during his cross-examination.

11. The abovesaid observation regarding MOU and the versions of complainant and accused in this regard prove that at the time of the impugned loan transaction, the impugned cheque had been handed over to the husband of complainant without bearing any date. This aspect would be taken up again at the time of examining the aspect whether the accused has made repayment of the loan or not.

Application under Section 145(2) NI Act and defence of the accused

12. During trial, the accused moved an application under Section 145(2) NI Act, requesting to grant permission to cross-examine the witnesses of complainant. In his application, the accused had inter-alia taken a plea of defence that he had made payment of Rs.1,50,000/- to the husband of complainant in the shape of Rs.50,000/- each in cash against the cheque in question. Ld. Trial Court has observed that the submissions made in the abovesaid application, do not bear the details as provided by the defence witnesses and further, since the accused did not give all details at the very first instance i.e. in his application moved under Section 145(2) NI Act, thus, the testimony of DW-2, neighbour of the accused and of DW-3, father of the accused are afterthought and thereby, not convincing.

13. It is pertinent to note that in his application moved under Section 145(2) NI Act, the accused had mentioned all the material particulars in respect of his plea of defence such as part payment of the loan taken by him on 10.04.2015 and further, in the months of May and June, 2015. He had further stated that the husband of the complainant came in the month of October, 2015 again. This Court is of the view that at the stage of moving an application under Section 145(2) NI Act, accused is not expected to provide each and every detail of his plea of defence so as to prepare the complainant or his/her witnesses beforehand as to what questions will be put to them during their cross-examination. This Court is of the view that under the provision of Section 145(2) NI Act, the accused through an application is to satisfy the Court that he has a reasonable plea of defence entitling him to summon and examine any person giving evidence on affidavit as to the facts contained therein.

Contents of affidavit of complainant as well as her cross-examination in respect of defence of the accused

14. In her complaint as well as evidence affidavit Ex. CW-1/A, the complainant stated that she through her husband contacted the accused and reminded him about the commitment to refund the amount taken by him as friendly loan. The said version is evasive and does not provide any detail as to on which specific dates between the date of payment of loan and date of presentation of the cheque for encashment, the husband of the complainant contacted or visited the accused asking him about repayment of the loan.

15. The complainant gave evasive answers to the questions put by the accused on this aspect. First of all, she stated in her cross- examination conducted on 19.04.2017 that her husband used to visit the house of accused where his family members only used to meet him. Probably, her husband visited the house of accused in June, July, 2015. She cannot say that her husband visited the house of accused on 10.04.2015. Her husband might have visited the accused in October, 2015. Though she denied the suggestions put by the accused in respect of his defence of repayment made to her husband.

Statement of the accused recorded under Section 313 of Cr.P.C.

16. In his statement, the accused stated that he agreed to return the said amount from April, 2015 in three monthly installments. On 10.04.2015, the husband of complainant and Mr. Rajiv Mehra came to his house and took Rs.50,000/- from him. On 15/16.05.2015, the husband of complainant alone came to his house and took Rs.50,000/- in cash from him. He also telephoned Mr. Rajiv Mehra in this regard and disclosed to him regarding payment. On 18.06.2015, the husband of complainant came to his house and started abusing his mother as he was not available nor his father was available in the house. His father thereafter came and arranged Rs.50,000/- from one of their neighbour namely Ramesh Nagpal and accordingly, said amount was given to husband of complainant.

17. The accused has explained as to when and in what circumstances, the repayment of Rs.1,50,000/- was made to the husband of the complainant. It is to be examined whether the accused was consistent and remained firm during his defence evidence.

Defence Evidence

18. It is reiterated that the accused had claimed to have repaid Rs.1,50,000/- by paying Rs.50,000/- each on 10.04.2015 and in the months of May and June, 2015. In respect of the payment made on 10.04.2015, the accused deposed as DW-1 that the husband of complainant alongwith Mr. Rajiv Mehra came at his house on 10.04.2015 and collected Rs.50,000/- as first installment. His father, DW-3, deposed the same. Though, he added his presence at the spot at the time of the said payment. It is pertinent to note that DW-3 identified the husband of complainant, who was present in the court during his examination conducted on 04.05.2019.

19. When a question was put to accused that he did not take any receipt for the repayment, he voluntarily stated that the said amount was handed over in the presence of a common friend Mr. Rajiv Mehra. The accused has given a plausible explanation for not taking any receipt of payment made on 10.04.2015.

20. Ld. Trial Court has observed that for the reason best known to the accused, Mr. Rajiv Mehra has not been examined. It is pertinent to note that Ld. Counsel for the revisionist/accused has argued that since Mr. Rajiv Mehra was a common friend of both accused and husband of complainant, hence, he could not have deposed on behalf of the accused. It is worth noting that during trial of the present case, the accused moved an application for summoning the witnesses including Mr. Rajiv Mehra. But summons issued to the witness Mr. Rajiv Mehra were received back unexecuted. Thus, it cannot be said outrightly that the accused did not take any step to examine Mr. Rajiv Mehra. Moreover, the argument of Ld. Counsel for the revisionist/accused on this aspect appears to be convincing as well.

21. Surprisingly, the complainant did not put any suggestion, neither to DW-1 nor to DW-3, that husband of complainant did not visit house of the accused on 10.04.2015. It has already been observed that the complainant had deposed that she could not say whether her husband visited the house of the accused on 10.04.2015.

22. In these circumstances, when the accused had claimed to have made payment of Rs.50,000/- to the husband of complainant on 10.04.2015, not only in his application moved under Section 145(2) NI Act, and putting the same to the complainant in her cross-examination and also in his statement under Section 313 Cr.P.C. as well as in his deposition as DW-1, it cannot be said that it is an afterthought. The accused has been able to establish a strong probability in his favour in respect of payment of Rs.50,000/- to the husband of complainant on 10.04.2015.

23. At this stage, the argument of Ld. Counsel for the revisionist/accused that the complainant should have examined her husband to deny the claim of the accused on this aspect becomes relevant. This Court is not oblivious of the fact that the onus to prove the part repayment of the loan amount was upon the accused himself. He could discharge the said onus by leading direct evidence or from the case set out by the complainant, that is, the averments in the complaint or in evidence adduced by the complainant during the trial. From the observations already made by this Court and tenor of the deposition of the complainant, it can be made out that major part of the impugned

transaction had occurred between the accused and husband of the complainant and not between the accused and the complainant. In these circumstances, the accused, in the absence of husband of the complainant appearing in the witness box, had become handicapped in proving his defence beyond reasonable doubt. On this aspect, the precedent laid down the Hon'ble Apex Court in M/s. Kumar Exports v. M/s. Sharma Carpets, AIR 2009 SC 1518, becomes important, wherein the Court has held that:

> 'Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant.'

24. The accused has claimed having made payment of Rs.50,000/- on 16.05.2015 to the husband of the complainant. However, there is some inconsistency regarding this transaction in his statement under Section 313 Cr.P.C. and his deposition as DW-1. In his cross-examination conducted on 05.01.2018, the accused stated that the payment was made in the presence of some friend of Gaurav Sharma to whom he did not know. Further, DW-2 Ramesh Nagpal stated that the said payment was made by the accused to the husband of complainant in his presence. He had given Rs.50,000/- to the accused on his asking. The Court is in agreement with the observation of Ld. Trial Court that the testimony of DW-2 is not reliable on this aspect as DW-1 had not deposed about the presence of DW-2 at the time of payment of Rs.50,000/- to the husband of complainant on 16.05.2015. In these circumstances, the accused could not establish even on the basis of preponderance of probability that he made payment on 16.05.2015.

25. The accused has further claimed that he had made payment of third installment of Rs.50,000/- to husband of the complainant on 18.06.2015. He has stated in his application under Section 145(2) NI Act that in the month of May and June, 2015, husband of complainant took Rs.50,000/- each from the accused before the witness namely Mr. Rajiv Mehra and neighbour Ramesh Nagpal. Thus, he has at the very first instance claimed the presence of Ramesh Nagpal at the time of payment made in the month of June, 2015. He has put the said defence to the complainant during her cross-examination.

26. Further, in his deposition as DW-1, the accused stated that on 18.06.2015, husband of the complainant came at his house in the evening without informing him. He and his father both were not present at the house. Husband of the complainant started abusing his family members and neighbours collected at the spot. His father returned back at about 8.15 p.m. and gave Rs.50,000/- by taking the same from his neighbour Ramesh Nagpal and handed over to the husband of the complainant. During his cross- examination, the complainant could not shake his version on this aspect. It is reiterated that no suggestion was put to the accused/DW-1 that husband of the complainant did not visit to the house of accused on 18.06.2015. DW-2 as well as DW-3 corroborated the testimony of DW-1 on this aspect.

27. Ld. Trial Court has observed that taking loan of Rs.50,000/- from Ramesh Nagpal for paying the same to husband of the complainant, had not been mentioned in the application moved under

Section 145(2) NI Act. Moreover, the testimony of DW-2 is otherwise unreliable. At this stage, this Court is reminded of the observations of the Hon'ble Supreme Court made in the case of Appabhai v. State of Gujarat, AIR 1988 SC 696, regarding appreciation of testimony of a witness, wherein the Court held that:

> 13. [T]he witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the Court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy. Jaganmohan Reddy, J. speaking for this court in Sohrab v. State of Madhya Pradesh 1972 Cri LJ 1302 at 1305 observed :
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> This Court has held that falsus in uno falsus in omnibus is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered."
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> The Hon'ble Punjab & Haryana High Court in Tehal Singh v. State of Punjab, 2003 (3) RCR (Criminal) 202, has held that:
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> 14. It is no rule of evidence that statement of a witness must be relied upon or rejected by the Court below. It is quite possible that part of the statement of the witness may be true in regard to a particular fact and is fully corroborated by other evidence on record while some part of her statement with regard to another fact may not be fully reliable particularly when such two portions are severable and can be looked into and appreciated by the Court in conjunction with the other evidence on record fully and finally. Such principle of severability is not any way an ingnuinity in the field of criminal jurisprudence.

The maxim falsus in uno falsus in omnibus is a well accepted maixm for appreciation of evidence even in administration of criminal justice.

28. Applying the abovesaid precedents, this Court is of the view that merely because DW-2 had deposed about his presence during the transaction dated 16.05.2015 too, while DW-1 had not stated about his presence on the said date; the testimony of DW-2 about the transaction dated 18.06.2015 cannot be brushed aside. It is worth noting that DW-2 had also identified the husband of complainant, who was present during his examination-in-chief recorded on 16.10.2018. Had DW-2 not been present in any of the transactions between accused and husband of the complainant, then how DW-2 could have identified the husband of complainant in the court. Furthermore, no objection has been brought on record by the complainant that DW-2 had been tutored in the Court in respect of identification of husband of the complainant. Moreover, DW-3, too, remained firm and

unmoved during his cross-examination in respect of transaction dated 18.06.2015. It is worth noting that there is consistency among the testimonies of DW-1, DW-2 and DW-3 in respect of transaction dated 18.06.2015. Thus, the accused has established on the basis of preponderance of probability that he made payment of Rs.50,000/- to the husband of complainant on 18.06.2015.

29. Now, the Court proceeds to examine the entire chain of circumstances discussed hereinabove. It is true that a presumption exists in favour of the complainant that she received the cheque in question for the discharge, in whole or in part, of any debt or other liability. But this presumption is rebuttable. The Hon'ble Supreme Court in Rohitbhai J Patel v. The State of Gujarat, in Crl. Appeal No. 508/2019 decided on 15.03.2019, has held that:

16. On the aspects relating to preponderance of probabilities, the accused has to bring on record such facts and such circumstances which may lead the Court to conclude either that the consideration did not exist or that its non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that the consideration did not exist. This Court has, time and again, emphasized that though there may not be sufficient negative evidence which could be brought on record by the accused to discharge his burden, yet mere denial would not fulfil the requirements of rebuttal as envisaged under Section 118 and 139 of the NI Act. This court stated the principles in the case of Kumar Exports (supra) as follows:

> "20. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non- existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non- existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused 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. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the

presumptions arising under Sections 118 and 139.

30. The question arises whether the accused has been able to prove his defence on the basis of preponderance of probability. There is no dispute between the parties in respect of grant of loan of Rs.1,60,000/- to the accused. However, the Court has already observed that there is strong evidence that husband of the complainant forged the signatures of the complainant and issued four cheques amounting to Rs.1,40,000/- in furtherance of the abovesaid loan transaction. At the time of the said transaction, the space for date of issuance of the impugned cheque was kept blank in the MOU and the same was filled up later on. The complainant has not provided any plausible explanation as to when the loan was to be repaid within four months of its disbursal, then why the complainant or her husband granted five and half months more (i.e. after due date of repayment that is 04.06.2015) to the accused for repayment. Moreover, when at the time of disbursal of loan, the complainant had got an MOU executed, then why nothing was reduced into writing in respect of extending the time limit for repayment of the loan.

31. Even otherwise, the Court has already observed that the accused has established on the basis of preponderance of probability about repayment of Rs.50,000/- each on 10.04.2015 and 18.06.2015. This court is of the view that the Trial Court has erred in appreciation of evidence available on record. In this manner, it can be said that on the date mentioned in the impugned cheque in respect of its issuance, i.e. 26.11.2015, the accused was liable to make payment of Rs.60,000/- only to the complainant/payee of the cheque. At this stage, the Court is in agreement with the observations made by Ld. Trial Court that the drawer of the cheque cannot be allowed to take plea that since the cheque had only been signed at the time of issuance and other particulars were filled later on and the cheque was issued as a security, thus, the said cheque cannot be held to have been issued in discharge of any debt or other liability. However, considering the abovesaid observation that the accused was liable to make payment of Rs.60,000/- on 26.11.2015, it cannot be said that the impugned cheque is issued, in whole or in part, of any debt or other liability. The Hon'ble Madras High Court in Angu Parameshwari Textiles v. Sri Rajam and Co., 2001 ISJ (Banking) 486, has held that:

4. Section 138 of the Negotiable Instruments Act reads that where any cheque was drawn for payment of any amount of money for the discharge in whole or any part of any debt or other liability and the same is dishonoured by the bank, the person who drew the cheque shall be punishable. Therefore, the cheque drawn should be towards the discharge of either the whole debt or part of the debt. If the cheque is more than the amount of the debt due, I am afraid, Section 138 cannot be attracted. This is a case where the cheque amount was more than the amount due on the date when the cheque was presented. The presentation of the cheque and subsequent dishonour alone raised a cause of action. When the cheque cannot be said to be drawn towards the discharge of either the whole or part of any debt or liability, Section 138 is not

attracted. On this sole ground, the complaint is liable to be quashed and is accordingly quashed.

32. The Hon'ble Delhi High Court in Alliance Infrastructure Project Pvt. Ltd.

and Ors. v. Vinay Mittal, in Crl. M.C. No. 2224/2009 decided on 18.01.2010, has held that:

8. The question which comes up for consideration is as to what the expression "amount of money" means in a case where the admitted liability of the drawer of the cheque gets reduced, on account of part payment made by him, after issuing but before presentation of cheque in question. No doubt, the expression "amount of money" would mean the amount of the cheque alone in case the amount payable by the drawer, on the date of presentation of the cheque, is more than the amount of the cheque. But, can it be said the expression "amount of money" would always mean the amount of the cheque, even if the actual liability of the drawer of the cheque has got reduced on account of some payment made by him towards discharge of the debt or liability in consideration of which cheque in question was issued. If it is held that the expression "amount of money" would necessarily mean the amount of cheque in every case, the drawer of the cheque would be required to make arrangement for more than the admitted amount payable by him to the payee of the cheque. In case he is not able to make arrangement for the whole of the amount of the cheque, he would be guilty of the offence punishable under Section 138 of Negotiable Instruments Act. Obviously this could not have been the intention of the legislature to make a person liable to punishment even if he has made arrangements necessary for payment of the amount which is actually payable by him. If the drawer of the cheque is made to pay more than the amount actually payable by him, the inevitable result would be that he will have to chase the payee of the cheque to recover the excess amount paid by him. Therefore, I find it difficult to take the view that even if the admitted liability of the drawer of the cheque has got reduced, on account of certain payments made after issue of cheque, the payee would nevertheless be entitled to present the cheque for the whole of the amount, to the banker of the drawer, for encashment and in case such a cheque is dishonoured for wants of funds, he will be guilty of offence punishable under Section 138 of Negotiable Instrument Act.

33. The above said precedents have been relied upon by the Hon'ble Delhi High Court in Lyca Finance Ltd. v. State & Anr., decided in Crl. L.P. 251/2013 on 15.07.2016.

34. Applying the precedents in the present facts and circumstances of the case, the Court is of the view that the cheque amount was more than the amount due on the date when the impugned cheque was presented. When the cheque cannot be said to be drawn towards the discharge of either the whole or part of any debt or liability, Section 138 is not attracted.

35. Accordingly, the appeal is allowed. The judgment dated 29.07.2019 and the order on sentence dated 29.08.2019 passed by Ld. Trial Court are set aside. The appellant/accused is hereby acquitted.

36. Appeal is disposed off accordingly. Appeal file be consigned to Record Room.

Trial Court Record be sent back to the Ld. Trial Court alongwith a copy of this order. Original order has been retained by the undersigned, which shall be placed on record after resumption of regular functioning of the Courts.

Announced through CISCO Webex
video conferencing in the presence of
Sh. Arunav Tewari, Ld. Counsel for

appellant, Ld. APP for the State and
Respondent no. 2 alongwith her
husband on 13th day of August, 2020

NAVEEN GUPTA
Addl. Sessions Judge - 05

Shahdara District,

Karkardooma Courts, Delhi