

Harcharan Singh vs Prashant Sharma on 3 June, 2025

IN THE COURT OF Ms. SURBHI GUPTA ANAND
JUDICIAL MAGISTRATE FIRST CLASS,
DIGITAL COURT-05, SOUTH WEST,
DWARKA, NEW DELHI
EARLIER : JUDICIAL MAGISTRATE FIRST CLASS, (NI ACT)-07
SOUTH-WEST DISTRICT, DWARKA COURTS, NEW DELHI

Ct. Case No.33800/2019
CNR No. DLSW02-047107-2019

Harcharan SinghComplainant

Through: Mr. Pradeep Kumar, Advocate

Versus

Prashant SharmaAccused

Through: Sh. Ashish Sharma, Advocate

- (1) Name of the complainant Harcharan Singh
S/o Late Sh. Tej Singh
R/o 62/4, Ashok Nagar, New
Delhi-110018.
- (2) Name of the accused Prashant Sharma
S/o Sh. Anil Kumar
R/o C-211, Pocket A, Near Vikas
Sadan, INA Colony, Sarojini
Nagar, New Delhi-110023.
- (3) Offence complained of or Section 138 Negotiable
proved Instruments Act, 1881
- (4) Plea of accused persons Pleded not guilty
- (5)Date of institution of case 09.09.2019

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Date: 2025.06.

(6)Date of conclusion of arguments 26.04.2025

(7) Date of Final Order 03.06.2025

(8) Final Order Conviction

JUDGMENT

1. The complainant Harcharan Singh has instituted this complaint u/s 138 Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act') against accused Prashant Sharma, on 11.08.2015.

2. The factual matrix as can be culled out from the complaint is that the accused was known to the complainant and both the parties shared good relations. In the month of April 2015, the accused approached the complainant for a friendly loan of Rs.4,75,000/- for a period of three months for his urgent requirement at the residence of the complainant at Ashok Nagar. After repeated requests of the accused and making arrangement of funds, the complainant decided to help the accused and on 03.04.2020, the complainant called the accused to his house and gave him Rs.4,75,000/-. In discharge of his liability, accused issued one post-dated cheque bearing no. 582868 dated 05.04.2015 for a sum of Rs.4,75,000/- drawn on State Bank of India, Rangpuri Branch, Delhi, to complainant with assurance of its encashment upon presentation at the time of giving of the loan amount. The complainant accepted the same upon the assurance of the accused and upon bonafide good faith. However, to the complainant's dismay, when the said cheque was presented for encashment on 01.07.2015, it was returned unpaid with remarks "Funds Insufficient" vide return memo dated 02.07.2015 which was communicated to the complainant on SURBHI Digitally signed by SURBHI GUPTA GUPTA 16:20:35 +0530 Date: 2025.06.03 03.07.2015 by the banker of the complainant. Thereupon, the complainant tried to contact the accused, however, the accused ignored the telephone calls of the complainant. The complainant then issued a legal demand notice dated 16.07.2015 calling upon the accused to pay the cheque amount within 15 days from the receipt thereof but the accused failed to make the payment despite notice being duly served upon him, thus constraining the complainant to file this complaint u/s 138 Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act') seeking redress against the dishonor of the cheque in question.

3. With a view to establish a prima facie case in order to enable the court to summon the accused, complainant led pre-summoning evidence by way of affidavit Ex. CW-1/H. The complainant relied upon following documentary evidence:

- (a) Original cheque bearing no.582868 dated 01.07.2015 for a sum of Rs.4,75,000/- drawn on State Bank of India, Rangpuri Branch, Delhi, which is Ex. CW1/A.
- (b) Cheque returning memo dated 02.07.2015, which is Ex.CW1/B
- (c) Office copy of legal demand notice dated 16.07.2015, which is Ex.CW1/C.
- (d) Original postal receipts, which are Ex.CW1/D.

(e) Tracking reports, which are Ex. CW1/E and Ex.CW1/F.

(f) Return envelope, which is Ex.CW1/G. Complainant closed his pre-summoning evidence on 11.08.2015.

4. On the basis of above material and finding a prima facie case made out against the accused, the accused was summoned vide order dated SURBHI Digitally signed by SURBHI GUPTA GUPTA 16:20:28 +0530 Date: 2025.06.03 11.08.2015. Accused entered his first appearance through his counsel on 24.02.2016.

5. Notice u/s 251 Cr.P.C. was framed against accused on 11.07.2016, stating out to him the substance of accusation, to which he pleaded not guilty and claimed trial. His defence was recorded at the stage of framing of notice in compliance of directions passed by Hon'ble High Court of Delhi in Rajesh Aggarwal v. State (2010) 171 DLT 51. The accused took defence that cheque in question bears his signature but he has not filled up the other particulars in the cheque in question. He does not know the complainant and has not issued the cheque in question to him. He had issued the cheque in question alongwith other cheque belonging to his wife as security to one Sh. Sonu as he had taken a loan of Rs.1,00,000/- from him. He had also given copy of his ID card to Sonu alongwith some blank documents bearing his signatures. He has repaid the loan amount to Sonu in part. The complainant has obtained the cheque in question somehow and misused the same. He had not taken any loan from the complainant. He had not received legal demand notice issued by the complainant qua the cheque in question. He does not owe any liability towards the complainant qua the cheque in question.

6. Accused was granted right to cross-examine the complainant on an oral prayer made u/s 145(2) of NI Act on behalf of accused vide order dated 11.07.2016. Despite repeated opportunities, the accused failed to conduct the cross examination of the complainant and therefore vide order dated 20.02.2024, right of the accused to cross examine the complainant was closed. Separate statement of the complainant to this effect was recorded on the same day.

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7. Statement of accused was recorded u/s 313 Cr.P.C. r/w section 281 Cr.P.C. on 20.02.2024 wherein all the incriminating evidence was put to the accused and he was granted an opportunity to explain the circumstances appearing against him at trial. While explaining the circumstances appearing in evidence against him, accused stated without oath that he only borrowed Rs.1,00,000/- from complainant in April 2015, cheque in question bears his signature but he did not fill the remaining particulars, he does not remember receiving legal demand notice but the same bears his correct address. He gave the cheque in issue in a blank signed manner at the time of borrowing the loan of Rs.1,00,000/- from the complainant and he repaid around Rs.60,000/- to Rs.70,000/- to the complainant, but he could not repay the remaining sum due to his ill health. He does not have liability to the extent of the cheque amount. Accused preferred to lead evidence in his defence.

8. At the stage of defence evidence, accused examined himself as DW1 and his wife as DW2. Both the witnesses were duly cross examined and discharged. Vide separate statement of the counsel for the accused, DE was closed on 02.07.2024.

9. At the stage of final arguments, Ld. counsel for complainant submitted that the present case has been filed for an amount of Rs.4,75,000/-. The accused has admitted his signatures upon the cheque in question and has not been given to raise a probable defence in his favour. The accused has taken contradictory and inconsistent stands throughout the course of the present proceedings i.e. in his notice framed u/s 251 Cr.PC, the accused stated that the cheque in question was handed over to one Sonu along with another cheque and some documents, however, he never called Sonu as his witness. The accused again took a contradictory stand at the time of recording of his statement u/s 313 SURBHI Digitally signed by SURBHI GUPTA GUPTA 16:20:30 +0530 Date: 2025.06.03 Cr.PC wherein he admitted taking loan of Rs.1,00,000/- from the complainant and his address on the legal demand notice. He also admitted that he handed over the cheque in question to the complainant as security for the loan taken by him at the time of his examination. However, suprisingly, his wife again went back on the admission made by the accused by deposing that the loan was actually taken by her from the complainant and not by the accused. Ld. counsel submitted that the present case is an unrebutted case as the complainant was never cross examined by the accused and in view of the contradiction in the case of the accused. Further, the conduct of the accused in delaying the case for more than six years also points at the guilt of the accused. The complainant relied on the judgments of the Hon'ble Supreme Court of India in *Oriental Bank Of Commerce vs Prabodh Kumar Tewari*, [2022] 7 SCR 72, *Bir Singh vs . Mukesh Kumar*, (2019) 4 Scc 197, *Kalamani Tex & anr. v. P. Balasubramanian*: 2021 SCC Online SC 75, *K Ramesh vs K. Kothandaraman SLP (Crl.) No.3377 of 2019* and *Rajesh Jain v Ajay Singh* (2023)10 SCC 148 and prayed to convict the accused for the offence u/s 138 NI Act.

Per contra, Ld. counsel for accused prayed to acquit the accused on the ground that the cheque was only signed by accused but accused did not fill the remaining particulars, there is no proof of loan, the loan was only of Rs. 1,00,000/- which was also taken by the wife of the accused and not by accused, the accused had never met the complainant, Sonu was an agent of the complainant, accused gave the cheque to Sonu to be handed over to the complainant who does financing business as his side business, the accused has already paid back the amount of loan and has also paid Rs.70,000/- out of the court which is not been admitted by the complainant, the tracking reports qua the legal demand notice are contradictory to each other as one reflects "Left India" and the other reflects "Delivered", no loan agreement has been executed between the parties and the complainant has not furnished any written documents in support of the loan amount alleged by him, complainant has SURBHI Digitally signed by SURBHI GUPTA GUPTA 16:20:30 +0530 Date: 2025.06.03 misused the cheque that was handed over to Sonu, the cheque in question is of over Rs.4,00,000/- whereas the complainant settled the case for less than Rs.2,00,000/-, which points at the fact that the complainant has overstated the amount in the cheque in question.

In his rebuttal, Ld. counsel for the complainant stated that the complainant was in dire need of money at the time of settlement for the purpose of treatment of his ailing wife and therefore agreed for a lesser amount and the accused has no record of the out of court amount allegedly paid by him

to the complainant.

10. After hearing the arguments advanced on behalf of both the parties and perusing the record carefully, the appreciation of evidence and findings of the court are as below.

11. The legal position serving as base to the offence underlying Section 138 NI Act, as held by Hon'ble Supreme Court in the case titled as Kusum Ingots & Alloys Ltd. v. M/s Pennar Peterson Securities Ltd.: (2000) 2 SCC 745 is :

(i) that a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;

(ii) that the 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;

(iii) that the cheque is returned by the bank unpaid either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(iv) that the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to SURBHI Digitally signed by SURBHI GUPTA GUPTA 16:20:29 +0530 Date: 2025.06.03 the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) that 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;

The above legal requirements are cumulative, meaning thereby that only if all the aforementioned ingredients are satisfied can the person who had drawn the cheque be held liable for offence u/s 138 NI Act.

12. Burden of proof: The claim based under the provisions of Negotiable Instruments Act is an exception to the general rule of law that burden of proof lies on the prosecution. The two specific provisions viz. Section 118 (a) and 139 of NI Act contemplate that a presumption is attached in regard to each and every negotiable instrument that the same was drawn and issued against due discharge of liability and thus, whenever any claim is made on the basis of a negotiable instrument, the presumption has to be drawn in favor of the holder of the cheque (drawee) and the law has put the burden to rebut the presumption on the accused that the cheque was not issued by him against discharge of a debt or a liability. In case, the accused is not able to rebut the presumption and fails to

prove his defence, the presumption becomes absolute and it has to be assumed that the cheque was issued by the accused in discharge of debt or liability and consequently, accused is assumed guilty of the offence.

It was held by Hon'ble Supreme Court in the case of Rangappa v. Mohan: 2010 (11) SCC 441 that presumption of Section 139 of N.I. Act also includes the existence of legally enforceable debt or liability.

Hon'ble Supreme Court, in the case of Hiten P. Dalal v. Bratindranath Banerjee: 2001 (6) SCC 16 held that the presumption mentioned in the section 139 NI Act is a presumption of law and not a presumption of fact SURBHI Digitally signed by SURBHI GUPTA GUPTA 16:20:31 +0530 Date: 2025.06.03 and thus, this presumption has to be drawn in favor of the drawee and the burden to rebut the presumption with the probable defence is on the accused.

This is indeed an instance of the rule of 'reverse onus', where it is incumbent on the accused to lead what can be called 'negative evidence' i.e. to lead evidence to show non-existence of liability. Keeping in view that this is a departure from the cardinal rule of 'presumption of innocence' in favor of the accused and that negative evidence is not easy to be led by its very nature, it is now settled that the accused can displace this presumption on a scale of preponderance of probabilities and the lack of consideration or a legally enforceable debt need not be proved to the hilt or beyond all reasonable doubts. The accused can either prove that the liability did not exist or make the non-existence of liability so probable that a reasonable person, ought under the circumstances of the case, act on the supposition that it does not exist. He can do so either by leading own evidence in his defence or even by punching holes in the case of the complainant in the testing ordeal of cross-examination. This can be deciphered from relevant para no.21 of Hiten P. Dalal (supra):

21. In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the Court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when, "after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists". Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the Court in support of the defence that the Court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the 'prudent man'.

SURBHI Digitally signed by SURBHI GUPTA GUPTA 16:20:36 +0530 Date: 2025.06.03 Further, in Bharat Barrel v. Drum Manufacturing: AIR 1999 SC 1008 Hon'ble Supreme Court held that the accused has to rebut the presumption and mere denial of passing of consideration is no defence.

It is, thus, clear that in cases of Section 138 NI Act, upon proof of foundational facts, law presumes in favor of drawee that the cheque was issued by the accused in discharge, wholly or in part, of

legally enforceable debt or liability and the burden to rebut the same is upon the accused. The burden does not have to be conclusively established but the accused has to prove his defence on preponderance of probability.

13. Now applying the above law to the facts of the present case, it has to be adjudged whether the legal requirements laid down hereinabove have been fulfilled in the instant case.

13.1. The first legal requirement is:

"A person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability."

At the outset, it has to be proved that the accused had issued the cheque in question on his account maintained with a bank for discharge of any debt or other liability.

In the instant case, accused has admitted his signatures on the cheque in question in his statement recorded u/s 313 Cr.P.C. and in notice framed u/s 251 Cr.P.C. The cheque in question has also been drawn on the account maintained by him with State Bank of India, Rangpuri Branch, Delhi. The said fact has not been denied by accused at any stage of proceeding.

SURBHI Digitally signed by SURBHI GUPTA GUPTA 16:20:34 +0530 Date: 2025.06.03 It was held in the case of Kalamani Tex & anr. v. P. Balasubramanian: 2021 SCC Online SC 75 Hon'ble Supreme Court held that:

"14. Adverting to the case in hand, we find on a plain reading of its judgment that the trial court completely overlooked the provisions and failed to appreciate the statutory presumption drawn under Section 118 and Section 139 of NI Act. The statute mandates that once the signature(s) of an accused on the cheque/negotiable instrument are established, then these 'reverse onus' clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him."

The above said principle has also been crystallized by Hon'ble Supreme Court in the case of Basalingappa v. Mudibasappa: (2019) 5 SCC 418, by observing that:

"25. We having noticed the ratio laid down by this Court in above cases on Sections 118(a) and 139, we now summarize the principles enumerated by this Court in following manner:

(i) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

(ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the

presumption is that of preponderance of probabilities.

(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

(v) It is not necessary for the accused to come in the witness box to support his defence."

13.2. In the instant case, the accused having admitted his signature on the cheque in question and the said cheque being drawn on his bank account, a mandatory presumption automatically arises in favor of complainant by virtue of SURBHI Digitally signed by SURBHI GUPTA GUPTA 16:20:31 +0530 Date: 2025.06.03 Section 118(a) r/w 139 NI Act that the cheque in question was issued by him in discharge of, whole or part of, legally enforceable debt or liability.

13.3. Now the burden shifts upon accused to rebut the above presumption by raising a probable defence, by leading evidence or bringing such facts on record in the cross-examination of the complainant that could make the latter's case improbable. If, in such a case, the accused is proved to have discharged the initial onus of proof placed on him by showing that the existence of consideration was improbable or doubtful or illegal, then the onus will again shift back to the complainant who will then be under an obligation to prove it as a matter of fact and failure to do so will disentitle him to any relief on the basis of the negotiable instrument (as held in Satish Sharma v. State NCT of Delhi & anr.: (2013) 204 DLT 289).

13.4. In the present case, the accused was granted an opportunity to cross-examine the complainant vide order dated 11.07.2016, however, the accused did not avail this opportunity despite repeated and sufficient chances given to him over a course of almost 8 years. Thus, the right of the accused to cross-examine the complainant was closed vide order dated 20.02.2024.

13.5. It is settled law that in all cases under section 138 of N.I. Act, once evidence is given by way of affidavit, at the stage of pre-summoning, the same evidence is to be read by the court at post summoning stage and the witness need not be recalled at post summoning stage unless the court, for reasons, considers it necessary. Such evidence is sufficient proof of the offence and is not required to be given again in terms of section 145(1) of N.I. Act, and has to be read during the trial. (Rajesh Aggarwal v. State (2010) 171 DLT 51) 13.6. Thus, in absence of evidence to the contrary and in view of the right of the accused to cross-examine the complainant having been closed, documents such as his affidavit, the cheque in question and its return memo, the legal notice SURBHI Digitally signed by SURBHI GUPTA GUPTA 16:20:36 +0530 Date: 2025.06.03 issued to the accused as well as the postal receipts and tracking report/returning envelopes pertaining to the same, proved by the

complainant in his pre- summoning evidence, shall be considered in his post-summoning evidence as well.

13.7. In the present case, the complainant has set up a claim against accused for borrowing a sum of Rs.4,75,000/- from him as a friendly loan for a period of 3 months in the month of April 2015, and handing over the cheque in question in a fully filled up manner towards repayment of the amount of loan.

The accused has admitted his signatures on the cheque in question. However, he has denied that he owes the amount to the extent mentioned on the cheque to the complainant.

13.8. Accused chose to examine himself in defence as DW-1 and deposed, in brief, that he had borrowed a sum of Rs.1,00,000/- from the complainant, he had already repaid Rs.50-60 thousand, he had issued the cheque in question in blank signed manner to the complainant at time of borrowing the loan, he has no liability to the extent of the cheque amount towards the complainant, he was residing at Sarojini Nagar address at the date mentioned on the legal demand notice, he had been residing at that address since 2007 till 2017/2018, no other person named Prashant Sharma was residing at that address in 2015, he does not remember if he received the legal notice, he did not give any reply to the legal notice, he has not filed any case against the complainant from 2015 till date (i.e. the date of his cross examination), his wife accompanied him at the time of borrowing the loan, he is not taking a false defence to usurp the hard earned money of the complainant, the cheque in question bears his signature and has been drawn on the account maintained by him.

13.9. Accused also examined his wife as DW-2, and DW-2 deposed, in brief, that it was her who had borrowed Rs.1,00,000/- 6-7 years back, she had SURBHI Digitally signed by SURBHI GUPTA GUPTA 16:20:33 +0530 Date: 2025.06.03 regular financial dealings with the complainant as the complainant used to lend money to shopkeepers on a daily basis, her husband gave the cheque in question as security to the complainant on her behalf at the time of borrowing the loan, she had repaid Rs.30-40 thousand to the complainant, she could not pay the remaining amount as fire broke out at her shop, the present case was filed thereafter, she has paid Rs.50,000/- to the complainant after filing of the present case, she does not have any documentary proof of borrowing money from the complainant 6-7 years ago as her shop caught fire, she has not borrowed any money from the complainant after 2015 i.e. filing of the present case, upon being confronted with the fact that 6-7 years back from the date of her examination would have been after 2015 i.e. after the filing of the present case, she stated that she does not remember when she borrowed money from the complainant, her husband did not borrow money from the complainant and it was her who had borrowed the same, legal notice bears her correct address, she and her husband resided on that address at the relevant time, she and her husband did not file any reply to the legal notice as she had already talked to the brother of the complainant that they did not have any money at that time, she and her husband have not filed any case against the complainant regarding alleged misuse of the cheque in question from 2015 till date (i.e. till the date of her examination), the cheque in question bears the signature of her husband, she does not have any documentary proof of repayment but the complainant has it as he used to make daily entry card, it is incorrect that the accused has not paid any amount to the complainant other than Rs.50,000/- which was paid during court proceedings,

she is not making a concocted story to shield her husband, she does not have proof of any previous transactions with the complainant.

13.10. Although no documentary proof of lending a total of Rs.4,75,000/- was adduced by the complainant in the case at hand, but, in view of the legal presumption of issuance of cheque in discharge of liability being in favour of SURBHI Digitally signed by SURBHI GUPTA GUPTA 16:20:32 +0530 Date: 2025.06.03 complainant by virtue of the section 139 NI Act, the burden was in fact upon the accused to rebut such presumption and prove that he did not borrow any such amount. The test being that of a prudent person, it was not necessary for the accused to have led any evidence in his defence and he could have discharged the burden even by making out a probable case in his favour from the cross-examination of complainant witnesses. The burden is said to have been discharged once accused lays out a probable defence that either the consideration did not exist or existence of consideration was so improbable in the facts of the case that any prudent person would believe that it did not exist.

13.11. In the present case, however, several contradictions can be observed in the defence taken by the accused and testimonies of defence witnesses.

At the time of recording of his defence u/s 251 Cr.P.C., the accused stated that he does not know the complainant and had not taken any loan from him, and thus, had not issued the cheque in question to him. In fact, he stated that, he had taken a loan of Rs.1,00,000/- from Sonu and had issued two cheques i.e. the cheque in question and another cheque belonging to his wife in a blank signed manner alongwith some blank signed papers and his ID as security to Sonu. He also stated that he had repaid the loan amount partly to Sonu. To the contrary, he deposed during his examination-in-chief and in his statement recorded u/s 313 Cr.P.C. that he had borrowed Rs.1,00,000/- from the complainant, and had issued the cheque in question to him in blank signed manner as security. He also stated that he had already paid back more than half of the loan amount to the complainant. Yet again, contrary to this deposition, the wife of the accused/DW-2 deposed that she had regular transactions with the complainant and it was her who had taken the loan of Rs.1,00,000/- from the complainant and not the accused, and that she had paid back an amount of Rs.30-40,000/- to the complainant already.

SURBHI Digitally signed by SURBHI GUPTA GUPTA 16:20:35 +0530 Date: 2025.06.03 Thus, the statements made by the accused and testimonies of defence witnesses do not complement, and in fact, they contradict each other in material particulars.

13.12. It is settled law that mere denial of passing of consideration is not sufficient and accused ought to bring on record some factual circumstance to raise a probable defence that cheque was not issued in discharge of legal debt or liability or that the consideration did not exist at all. Accused has taken varying stances in denying his liability towards the the cheque in question, initially in toto, and later to the extent mentioned therein. However, apart from the failure of accused to cross-examine the complainant, despite several opportunities, in order to weaken the case of the complainant, he has also failed to lead any positive evidence in support of his defence. The accused has mentioned the role of Sonu in his defence recorded u/s 251 Cr.P.C. and in his final arguments,

but he never called Sonu as a witness to prove that the cheque was never handed over to the complainant, and in fact, DW2 has herself admitted to the contrary that her husband i.e. the accused himself handed over the cheque in question to the complainant rendering her testimony untrustworthy.

Further, the accused has consistently submitted that he has made payments to the complainant qua the cheque in question before the filing of the present case, and even during the pendency of proceedings, however, except for Rs.50,000/- which has admittedly been paid by him to the complainant, the accused has not adduced any bank statement/receipt/acknowledgment of such payments.

The defence of the accused that the complainant has overstated the amount in the cheque in question is also devoid of any merit in light of his failure to take any action against the complainant for allegedly overstating the amount of loan in the cheque and misusing the same.

SURBHI Digitally signed by SURBHI GUPTA GUPTA 16:20:29 +0530 Date: 2025.06.03 13.13. In the present case, the accused has, throughout the trial, remained inconsistent in his defence as to whether or not he borrowed any money from complainant. And, if at all, he did borrow any money from the complainant, his stand with respect to the loan amount that was actually borrowed by him and the part that actually remains due to paid has also been constantly fluctuating. Defence witnesses have failed to support the case of the accused, and, in fact both the defence witnesses have deposed contrary to each other with respect to the material particulars of the case.

In light of the aforesaid discussion, the defence of the accused can be said to be nothing but one hanging in the air and devoid of any substance.

13.14. Thus, accused has been unable to rebut the presumption of law and discharge the burden of proof by raising a probable defence that the cheque in question was not issued to complainant in discharge of his liability.

The first legal requirement is, thus, proved in favor of accused and against the complainant.

14. The second legal requirement is:

"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."

The cheque in question Ex. CW-1/A is dated 01.07.2015 and returning memo Ex. CW-1/B is dated 02.07.2015, which proves that the cheque in question was presented within the period of its validity. Further, defence has failed to controvert the said fact.

Thus, the second legal requirement is adjudicated in favor of complainant.

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15. The third legal requirement is:

"That cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank."

Section 146 NI Act presumes the fact of dishonour of cheque upon production of bank's slip or memo having the official mark denoting that the cheque in question has been dishonoured. This is also a rebuttable presumption and upon production of such bank memo, the burden shifts upon accused to disprove the same.

In the instant case, a presumption has been raised in favor of complainant by virtue of Section 146 NI Act that the cheque in question was dishonored for the reason stated therein viz. 'Funds Insufficient', which falls within the offence u/s 138 NI Act and therefore, the burden now shifts upon the accused to rebut this presumption by establishing some reasonable justification for the same. But, the accused has admitted his signature on the cheque in question and has failed to controvert the reason for dishonor of the cheque in question.

Thus, the third legal requirement is adjudicated in favor of complainant.

16. The fourth legal requirement is:

"The payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid."

SURBHI Digitally signed by SURBHI GUPTA GUPTA 16:20:36 +0530 Date: 2025.06.03 In the instant case, the cheque in issue was returned dishonoured on 02.07.2015. The complainant sent a legal notice dated 16.07.2015 (Ex. CW-1/C) addressed to the accused. Postal and courier receipts dated 16.07.2015 (Ex. CW- 1/D) are also on record, which proves that the legal notice was sent within the prescribed period.

Accused has denied receiving of legal notice in his notice framed u/s 251 Cr.PC and he has stated that he does not remember receiving legal notice in his statement recorded u/s 313 Cr.P.C., however, he has not disputed the address mentioned on the legal notice at any point during the course of trial.

Thus, it can be said that the legal notice was properly addressed to the correct address of accused and by virtue of presumption u/s 27 General Clauses Act accused is deemed to have received the legal notice, if the notice has been sent to correct address by post.

16.1. Even otherwise, law expects a person pleading non-receipt of any demand notice to prove his bonafide by making the payment of the cheque amount within 15 days of receiving court summons.

This is crystallized by the verdict of Hon'ble Supreme Court in the case titled as C.C. Alavi Haji v. Palapetty Muhammed & anr.: (2007) 6 SCC 555:

"17. It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under section 138, by ignoring statutory presumption to the contrary under Section 27 of SURBHI Digitally signed by SURBHI GUPTA GUPTA 16:20:34 +0530 Date: 2025.06.03 the G.C. Act and section 114 of the Evidence Act."

16.2. In the case at hand, despite issuance of summons and appearance of accused before the court, accused has failed to pay the cheque amount to the complainant and thus is precluded from raising the plea of non-service of demand notice. Thus, it is proved that the legal notice was sent to accused within thirty days of receipt of intimation of dishonor of cheque in issue.

The fourth legal requirement is, thus, adjudicated in favor of complainant.

17. The fifth legal requirement is:

"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."

It is an undisputed fact and also a matter of record that the accused has failed to make the payment till date let alone making payment within 15 days of receipt of notice.

Thus, the fifth legal requirement is adjudicated in favor of complainant.

18. All the legal requirements constituting an offence u/s 138 NI Act have been proved in favor of the complainant and against the accused. Accordingly, accused Prashant Sharma is held guilty for the alleged offence u/s 138 NI Act.

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19. Now to come up for arguments on quantum of sentence. Copy of this judgment be given Dasti to the convict free of cost as per rules.

Announced in the open court on 3rd June, 2025.

SURBHI

by SURBHI

GUPTA

GUPTA

Date: 2025.06.03

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(SURBHI GUPTA ANAND)
JUDICIAL MAGISTRATE FIRST CLASS,
DIGITAL COURT-05,
SOUTH WEST, DWARKA COURTS, NEW DELHI
03.06.2025

Earlier: JUDICIAL MAGISTRATE FIRST CLASS,
(NI ACT)-07 SOUTH-WEST DISTRICT,
DWARKA COURTS, NEW DELHI

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