Delhi District Court

High Court In Ilakkia Raja vs T. Umamaheswaran (Crlp. No. on 5 December, 2022

IN THE COURT OF SH. PRANAV JOSHI,
METROPOLITAN MAGISTRATE - 03,
NORTH DISTRICT, ROHINI COURTS, DELHI.

JUDGMENT

Sh. Vivek Aggarwal, S/O Sh. K.D Aggarwal R/O B-1/104, Varun Apartments, Sector -9, Rohini, Delhi-110085.

.....Complainant Versus Smt. Rajinder Kaur, W/O Late Sardar Harvinder Singh R/O A-339, Derawal Nagar, Delhi-110009 .....Accused PS - Model Town Under Section 138 of N.

I. ACT, 1881

a)	Case No.	: CT No. 4758/2016
b)	Date of institution of the Case	: 26.09.2014
c)	Offence complained of	: Under Section 138 of N.I. Act, 1881
d)	Plea of accused	: Pleaded not guilty
e)	Final order	: Convicted
f)	Date on which judgment was reserved	: 14.11.2022
e)	Date of judgment	: 05.12.2022

BRIEF STATEMENT OF THE REASONS FOR DECISION : -

1. Vide this judgment, this Court shall dispose of the complaint for offence punishable under Section 138 of The Negotiable Instruments Act, 1881 filed by the complainant Vivek Aggarwal. The necessary facts for disposal of present case as reflected in the complaint is that the complainant and son of accused were close friends since college days. That in the month of January, 2013 the accused along with her son approached the complainant for a friendly loan of Rs. 15 lacs for a period of three months since son of accused was passing through financial hardship in business and required the said loan for expansion of his business. That the complainant in view of friendly relationship with the accused and her son, after taking loan from family and friends, advanced loan of Rs. 15 lacs in cash to the son of accused in the presence of accused. That in view of good friendly relations with the accused and her son, no receipt of the loan was executed. That son of accused in discharge of his liability in the presence of accused, issued three cheques bearing No. 016635, 016636 and 016637 for a sum of Rs. 5,00,000/- each drawn on Bank of Baroda, Model Town, Delhi. That the accused along with her son had assured and promised to the complainant that the aforesaid cheques will be honoured on presentation and son of the accused had agreed to return the loan amount in the month April, 2013 after due consultation with the accused. That after the expiry of the said period of three months i.e. April, 2013, the complainant continuously requested her son and the accused to

clear the payment and kept on asking when the said cheques can be presented by the complainant but the accused kept on lingering the matter. That thereafter, since the accused and her son were passing through great financial difficulties, so the accused in discharge of liability of her son had given a sum of Rs. 2 lacs in cash and the accused for and on behalf of her son had admitted and acknowledged the liability of Rs. 15 lacs under the memorandum of understanding-cum-agreement dated 01.09.2013 in which the accused out of her free will had admitted and acknowledged the liability of Rs. 15 lacs for and behalf of her son. That the accused in discharge of remaining loan liability of her son, had issued the cheque (Ex.CW1/B) bearing No. 321121 dated 30.04.2014 for sum of Rs. 13 lacs drawn on Punjab & Sindh Bank, Gujarnwala Town, Delhi in favour of the complainant and the accused assured to the complainant that the cheque would be honoured on presentation. That as per the said agreement, the payment was to be made on or before 30.04.2014 but the accused failed to pay said amount and kept on seeking some time and then later on, bluntly refused to make the payment and then the complainant had no option except to present the said cheque for encashment in his bank i.e. Oriental Bank of Commerce, Branch, N.K. Bagrodia Public School, Ahinsa Marg, sector 9, Rohini, Delhi but the same was returned with remarks " Insufficient Funds" vide return memo dated 24.07.2014. That immediately after the receipt of the intimation of dishonour of the cheque, the complainant sent statutory notice of demand dated 21.08.2014 calling upon the accused to make the payment within 15 days but despite the service of notice, the accused did not make the payment. Thereafter, complainant has filed the present written complaint case u/s 138 of the Negotiable Instruments Act, 1881 PRE-SUMMONING EVIDENCE & NOTICE

2. The complainant examined himself as CW1 in pre-summoning evidence and tendered his affidavit Ex.Cw1/1and relied upon the following documents:

a. Memorandum of Understanding dated 01.09.2013 Ex.Cw1/A.

b. Cheque bearing No. 321121 of Rs. 13,00,000/- dated 30.04.2014 , drawn on Punjab & Sindh Bank Ex.Cw1/B.

c. Returning memo dated 24.07.2014 Ex.Cw1/C.

d. Legal demand notice dated 21.08.2014 Ex.Cw1/D.

e. Original Postal receipt Ex.Cw1/E.

f. Original Courier receipt Ex.Cw1/F.

g. Tracking report Ex.Cw1/G.

After hearing complainant side, accused was summoned for offence punishable under Section 138 of The Negotiable Instruments Act, 1881. Cognizance of offence under section 138 NI Act was taken and summons were issued to the accused. After appearance of accused, it was ensured that copy of complaint has been supplied. Notice of accusation u/s 251 Cr.PC was framed upon the accused on 29.01.2016 and plea of defence of the accused was recorded to which he had pleaded not guilty and

claimed trial. It is stated by accused that the complainant was her earlier counsel appearing for her daughter and well as for her cases and few blank cheques were lying with the complainant in good faith which were misused by him and to blackmail her, the present case was filed and that she had no liability.

It is also pertinent to mention that on 08.03.2016, on the request of both the parties, matter was referred to mediation by the Ld. Predecessor of this Court. On 19.03.2016 matter was settled between the parties and settlement was recorded by the mediator. It was agreed between the parties that the accused would pay the cheque amount i.e Rs. 13,00,000/- to the complainant on or before 15.01.2017. It was further agreed that in case, the accused failed to make the payment on or before 15.01.2017, the accused would pay interest at the rate 9% per annum till realization. The complainant had agreed to withdraw the complaint after receiving the payment. Therefore, when the mediation settlement was placed before this Court on 19.03.2016, the case was listed on 15.01.2017 for compliance. On 16.01.2017, matter was taken up as 15.01.2017 was Sunday. On 16.01.2017, accused was absent and notice was issued to her for 06.02.2017. Thereafter, case was listed on several dates but accused did not pay the settlement amount as agreed. On 09.05.2017, the accused submitted before the Court that she did not have means to pay the amount. On 05.02.2017, the accused submitted before the Court that she did not arrive at the settlement out of her free will. On 04.02.2019, this Court while deciding the application filed by the complainant for recording of the statement of accused in regard to the mediation settlement, was of the view that since, the accused did not want to record her statement, she could not be pressurized and the case was proceeded on merits. POST SUMMONING EVIDENCE

3. In post summoning evidence Complainant (CW-1) has been examined as sole complainant witness for proving his version of the case. He adopted his pre-summoning evidence including the documents relied during the said evidence. CW-1 was duly cross examined by Ld. Counsel for the accused.

STATEMENT OF ACCUSED AND DEFENCE EVIDENCE

4. The statement of accused was recorded under Section 313 of The Code of Criminal Procedure, 1973 read with Section 281 of The Code of Criminal Procedure, 1973 separately. Incriminating evidence was put to her. Accused denied all the allegations and claimed her innocence. It is stated by her that the complainant was her counsel in divorce case of her daughter and blank signed cheque in question was given for legal fees of that divorce case. She further stated that she had already paid all the legal fees to the complainant and nothing was due. It was stated by her that the cheque in question was misused by the complainant. Accused opted to lead evidence in her defence, thereafter, matter was fixed for defence evidence.

5. The accused, examined herself as DW1, Sh. Savneet Singh as DW2 and Ms. Reema Singh as DW3.

6. Final arguments heard from both the parties on 20.10.2022 and 14.11.2022. Case file perused. ESSENTIAL INGREDIENTS OF THE SECTION 138, NEGOTIABLE INSTRUMENTS ACT,1881

7. To bring home conviction for offence punishable under Section 138 of The Negotiable Instruments Act, 1881, the complainant is obliged to prove : -

(a) The cheque(s) was/were drawn/issued by the accused person(s) to the complainant on an account maintained by him/her/them/it with the bank for discharge, in whole or in part, of any debt or liability.

(b) The cheque(s) was/were presented to the bank within a period of six months or within period of its/their validity.

(c) The cheque(s) so presented for encashment was/were dishonored.

(d) The payee/complainant of the cheque(s) issued a Legal Demand Notice within 30 days from the receipt of information from the bank regarding dishonourment of the cheque(s).

(e) The drawer of the cheque(s) failed to make the payment within 15 days of receipt of afore-said Legal Demand Notice.

(f) The complaint was presented within 30 days after the expiry of above 15 days.

UNDISPUTED FACTS

8. At the outset, it is pertinent to mention herein that it is not in dispute that cheque in question belong to the accused, it bears her signatures, it was drawn on an account maintained by the accused with a bank, cheque in question was dishonored as alleged, and accused failed to make the payment of cheque in question till date. So, there is no need of discussion qua said ingredients and same can be regarded as being duly proved on record and being non-controverted. CONTENTIONS OF THE PARTIES

9. Complainant had argued his case in person. Complainant has also filed written arguments. It is argued by the complainant that the accused has admitted the friendly relations between the parties. It is further argued by him that he had represented the case of the daughter of the accused i.e. DW3 but it was before the loan was taken by the accused. It was also argued that accused did not bring any material to show that the complainant was her counsel.

10. On the other hand, it is contended by Ld counsel for the accused Sh. Arun Sharma, assisted by Sh. Surjeet Singh, that the complainant being an advocate who appeared for the accused, could not have entered into such loan transaction with the accused. He relied upon Chapter II, Part VI of the Bar Council of India Rules. Ld. Counsel for the accused has relied upon judgment of Hon'ble Madras High Court in Ilakkia Raja Vs T. Umamaheswaran (Crlp. No. 1157/2020, dated 29.07.2020). It is further argued by Ld. Counsel for the accused that the complainant has failed to prove the execution of the MOU Ex.CW1/A. It is submitted by him that the accused has denied her signatures on Ex.CW1/A and the complainant did not examine the person who stood as witness to the said document. It is further submitted by him that neither Ex.CW1/A is attested nor stamped as per law.

It is submitted that complainant has obtained signatures of the accused at the time when she was not well and was bedridden. It is submitted that Ex.CW1/A is executed under coercion. It is submitted by him that the complainant has failed to explain how so much money was advanced without any business transaction. It is further submitted that the complainant has failed to disclose the source of money alleged to have advanced to the accused. It is submitted by him that as per the complainant, he arranged the money after taking loan from family and friends, however, the same has not been proved by the complainant by leading evidence. It is further submitted by him that the complainant has failed to show that he has shown the amount of the loan in question in ITR. It is further submitted by him that the complainant despite the specific question put to him in this regard, failed to disclose his ITR for the relevant period. Ld. counsel for the accused has relied upon the following authorities:

1) (2008) 1 SCC 258, K. Prakashan Vs. P.K Surenderan.

2) 223(2015) DLT 419, Devender Kumar Vs. Khem Chand.

3) 204(2013) DLT 289, Satish Kumar Vs. State NCT of Delhi & Anr.

4) 2014(2) CCC 372 (Delhi), S.K Jain Vs. Vijay Kalra.

5) (2015) 1 SCC 99, K. Subramani Vs. K. Damodara Naidu.

6) CrL.L.P 461/2011(Delhi), Vipul Kumar Gupta Vs. Vipin Gupta.

7) CRL.L.P 305/2018(Delhi), Ram Yudhisthir Yadav Vs. Jair Prakash Garg.

8) Criminal application No. 4694 of 2008 (Bombay), Sanjay Mishra Vs. Ms. Kanishka Kapoor @ Nikki & Anr.

9) CRL. O.P No. 1157 of 2020 and Crl.M.P Nos. 728 & 738 of 2020(Madras), Ilakkia Raja Vs. T. Umamaheswaran.

11. The complainant, in rebuttal, has argued that the judgment in Ilakkia Raja (supra) is not applicable to the facts of the present case as in that case the complaint was filed prematurely after seven days of dispatching the legal demand notice and that the case was filed at a forum which did not have territorial jurisdiction to try the case as per Dasrath Rupsingh Rathod Vs. State of Maharashtra (2014 9 SCC

129). It is also argued by him that the judgment Ilakkia Raja (supra) was passed after referring to ratio of the judgment in B. Sunitha Vs State of Telangana where it has been observed that situation may arise where the advocate may file the complaint against the accused and mere issuance of cheque by the client may not debar him from contesting the liability. He further argued that in the present case, there was no relationship of advocate-client between the complainant and the accused. He further submitted that the complainant was the counsel for the daughter of the accused and that

too before the money was lent. The complainant also relied upon the definition of 'Client' from the Complete Rules of Professional Conduct, Law Society of Ontario, where the client has been defined as a person who, (a) consults a lawyer and on whose behalf the lawyer renders or agrees to render legal services; For greater clarity, a client does not include a near-client, such as an affiliated entity, director, shareholder, employee or family member, unless there is objective evidence to demonstrate that such an individual had a reasonable expectation that a lawyer-client relationship would be established.

It is further argued by the complainant that the bar imposed on the advocates is not to lend money to the client and does not bar lending money to friends. He further submitted that a person does not become a money lender by reason of occasional loans to relations, friends or acquaintances, whether interest is charged or not. The complainant has relied upon Litchfield Vs Dreyfus (1905 I KB 584), Edgelow Vs. Mac Ei-wee (1918 1 KB 205), Bhario Dutt Bhandari, In re (AIR 1940 All 1), In re Tika Ram, Vakil (1919 6 AIR 1113) and Laxmi Builders Vs. Devender Lakra. It is further submitted by the complainant that the issue of lawyer-client relationship was raised at the stage of arguments and not during the trial.

12. Submissions of both side considered.

POINTS FOR DETERMINATION : -

13. The following questions are framed which are necessary to be determined:-

a) Whether the cheque in question was given by the accused in discharge of a legal liability?

b) Whether the complainant was the counsel for the accused? If so, whether he could not have entered into a transaction of loan with the accused?

c) Whether the memorandum of understanding Ex.CW1/A was executed by fraud?

d) Whether the complainant has been able to establish ingredients of offence punishable under Section 138 of The Negotiable Instruments Act, 1881 beyond shadow of reasonable doubt against the accused or not?

APPRECIATION OF EVIDENCE AND FINDINGS

14. Section 118 (a) of The Negotiable Instruments Act, 1881 provides as under : -

> "Section 118. Presumption as to negotiable instruments.- Until the contrary is proved, the following presumption shall be made:-
>
> (a) of consideration- that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, was indorsed, negotiated or transferred for

consideration;....."

Section 139 of The Negotiable Instruments Act, 1881 provides as under :-

"Section 139 Presumption in favour of holder.- It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

In matter of "Krishna Janardhan Bhat Vs. Dattatraya G. Hegde" (2008) 4 SCC 54, Hon'ble Supreme Court of India has observed : -

"32. An accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. An accused has a constitutional right to maintain silence. Standard of proof on the part of the accused and that of the prosecution in a criminal case is different."

"34. Furthermore, whereas prosecution must prove the guilty of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of the accused is 'preponderance of probabilities'. 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 he relies."

In matter of "Mallavarapu Kasivisweswara Rao Vs. Thadikonda Ramulu Firm" (2008) 7 SCC 655, Hon'ble Supreme Court of India (though it was a civil matter related to promissory note, but is relevant to refer herein) has held : -

"17. Under Section 118 (a) of the Negotiable Instruments Act, the court is obliged to presume, until the contrary is proved, that the promissory note was made for consideration. It is also a settled position that the initial burden in this regard lies on the defendant to prove the non- existence of consideration by brining on record such facts and circumstances which would lead the court to believe the non-existence of the consideration either by direct evidence or by preponderance of probabilities showing that the existence of consideration was improbable, doubtful or illegal."

In matter of "Bharat Barrel & Drum Mfg. Co. V. Amin Chand Payrelal" (1999) 3 SCC 35, Hon'ble Supreme Court of India (though it was also a civil matter related to promissory note, but is relevant to refer herein) has held : -

"12. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118 (a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the

non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under the law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118 (a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist."

In matter of "Rangappa Vs. Sri Mohan" (2010) 11 SCC 441 which is a Full Bench Decision, Hon'ble Supreme Court of India while discussing above said provisions, judgments and other case law on the point has held : -

"26. In light of these extracts, we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To the extent, the impugned observations in Krishna Janardhan Bhat may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant".

"27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation.

However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof."

"28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."

15. So, precisely there is initial presumption of legally enforceable debt or liability against the accused side, but same is rebuttable. The standard of proof for rebuttal is preponderance of probabilities. Accused side can lead evidence in defence, even can rely on materials submitted by complainant and can rely upon circumstances also to show non-existence of consideration or it being improbable and need not adduce evidence of his own for the same.

16. In present case, the accused has admitted the cheque Ex.CW1/B and her signatures on it. The accused has denied having any liability towards the complainant. The version of accused is that the complainant has obtained blank cheques as security from the accused. Accused has denied having signed the MOU Ex.CW1/B and stated that the complainant had obtained signatures on blank papers. Once the accused admits the issuance of cheque to the complainant, the accused is required to rebut the statutory presumption in favour of the complainant u/s 139 N.I Act, 1881 either by leading evidence or by showing that the material on record raise a doubt to the fact that the cheque in question was issued towards any existing legal liability. It is sufficient for the accused to show preponderance of probability in his favor. It is vehemently argued on behalf of the accused that the accused was successful in raising a probable defence sufficient to discharge his onus to rebut the statutory presumption u/s 139 N.I Act.

17. This Court, after having considered the evidence on record, is of the opinion that the accused has failed to rebut the statutory presumption raised under section 139 of NI in favor of the complainant. It is pertinent to note that at the time of framing of notice u/s 251 Cr.P.C, the accused stated that the complainant was her as well as her daughter's earlier counsel and he had few blank cheques lying with the complainant which he misused. At that time, the accused did not state anything about the MOU Ex.CW1/A. As per the accused, the case was filed by the complainant just to blackmail her; however, later the accused improved her stance saying that the complainant took her signatures on blank papers. It is also relevant to note that during the cross-examination of the complainant, the accused herself has given a suggestion about the loan being taken by the son of the accused. It is relevant to reproduce the cross-examination of the complainant:

"It is correct that I had filed the present case after executing the Memorandum of Understanding (MOU) dated 01.09.2013. It is correct that the accused had asked for a financial loan alongwith his son from me. It is correct that the son of the ac- cused had given 3 cheques at the time of advancing the loan to the accused. It is wrong to suggest that I had given the loan to her son. (Vol. The accused and her son were together present when they approached me for the loan and the accused assured me that it is her responsibility and then, later also when they were unable to make the payment, the accused entered into an MOU dated 01.09.2013 and issued a cheque-in- question and later also, entered into an agreement in Mediation in Rohini Courts.) It is correct that the said 3 cheques never presented in bank for encashment.

I put it to you that the 3 cheques which were given by the son of the accused had beer given to you for the repayment of loan for which the present case had been filed?

A. It is correct.

It is wrong to suggest that I had not presented the said cheque for encashment in my bank because the said amount has been paid by the son of the accused. It is wrong to suggest that the MOU dated 01.09.2013 was executed on the papers which were signed by the accused and her son at the time of the case of her daughter. It is correct that except the MOU dated 01.09.2013, documents i.e. Promissory notes, receipt, were executed. At the present time, I do not remember the exact amount but I had given an amount of Rs. 2-3 lakhs on my own and the rest of the amount i.c. Rs. 12 lakhs after collected from my family. I filed my ITR regularly but I do not remember whether I had mentioned the same in my ITR or not. I cannot produce the said ITR as it is 10 years old. It is wrong to suggest that I do not show the ITR of that time as I do not show any amount in the ITR and not given the said amount to the accused. It is wrong to suggest that I had not given any loan to the accused. It is wrong to suggest that no liability of payment of loan which made on the accused. It is wrong to suggest that the son of the accused has never asked you not to present the 3 cheques in your bank for encashment given to you at the time of advancing the loan. It is wrong to suggest that I am deposing falsely".

The accused during her cross examination has stated that whatever transaction happened for the sum of Rs. 15 lacs had happened between with the complainant and her son DW2. The accused also admitted that the complainant was a close friend of her son DW2 and that they had known him before the divorce case of her daughter.

Similarly, DW2 i.e. the son of the accused had admitted that the complainant was his close friend since his college days and that there were financial transactions between him and the complainant. He had also admitted about the issuance of cheque bearing Nos. 016635, 016636 and 016637 to the complainant. When asked about his signatures on Ex.CW1/A, he stated that he did not remember. The testimony of DW2 is reproduced as under:

"The complainant was junior in my college. He was good and very close friend of mine. We used to accompany each other in the parties. As a good friend, I had given the divorce case of my sister to the complainant. The complainant had started the case but did not do the same till the end. We used

to have financial transactions with each other upto the tune of Rs. 2 lakhs to Rs. 3 lakhs. I had given my cheques on trust to the complainant and the same have not been returned till date. I do not remember whether I had given filled cheques or blank cheques. I came to know that complainant had also filed case against my mother. The complainant had got signed blak papers from me and my mother on the pretext that same will be used in the divorce case of my sister.

XXXXX By Sh. Vivek Aggarwal, complainant I do not remember whether the three cheques bearing No. 016635, 016636 and 016637 were filled by me to the tune of Rs. 5 lakhs or not. I had issued these three cheques, to the complainant since there were financial transactions between us. I do not have any case upon me. I do not remember whether I had signed any memorandum of understanding/agreement with the complainant on 01/09/2013. It is wrong to suggest that there was any settlement that took place between me and the complainant during the trial of the present case. I can not say till today how much amount has been transacted between us. There has been no mediation agreement between us. It is wrong to suggest that I owe any amount to the complainant. It is wrong to suggest that I & my mother took a loan of Rs. 15 lakhs from the complainant. It is wrong to suggest that me and my mother settled the matter and my mother issued a cheque of Rs. 13 lakhs in my presence. It is wrong to suggest that I & my mother settled the matter again in 2016 before the Mediation Cell, Rohini Courts, Delhi. It is wrong to suggest that I am deposing falsely"

DW3 in her testimony has stated that her mother had given security cheques to the complainant for the fees of her case. She also stated that her mother had signed three blank papers. However, no specific details were disclosed by DW3. She had admitted that her brother DW2 and the complainant were friends since college days. All the DWs i.e. the accused, DW2 and DW3 have given vague answers when specifically asked about the MOU Ex.CW1/A. The accused, during her cross examination, stated that she had signed two blank papers. However, DW2 stated that he did not remember whether he signed MOU Ex.CW1/A. Whereas, DW3 had stated her mother had signed three blank papers. Apart from taking vague plea that she signed on blank papers, nothing substantial was brought on record during the evidence by the accused which could have raised doubt on the case of the complainant. On the other hand, it has been established during the evidence that son of the accused i.e. DW2 had taken loan of Rs. 15 lacs and to repay the loan, he had given three cheques to the complainant which corroborates the case of the complainant.

18. It is stance of the accused that complainant was her daughter's counsel and that she had given blank cheques as security to him. The accused failed to disclose when the complainant assigned the case of her daughter. No records of the case were produced by the accused to show at the time when the cheque was given to the complainant, he was a counsel of her daughter. It is stated by the accused that she has signed blank papers. It is pertinent to mention that the accused, as per her own admission, did not take any legal action against the complainant. Had the accused signed blank papers and the complainant misused her cheque, on receiving the summons of the case, she ought to have complained against the complainant before police or had taken some legal action. However, nothing was done by her. The accused has taken vague defence which remained unsubstantiated during the trail.

19. In the opinion of this Court, there is one more ground to reject the testimonies of the accused as well as of DW2. Both have denied the factum of mediation settlement dated 19.03.2016 between the parties. The accused has stated that on 19.03.2016, she was bedridden and did not sign any document. DW2 has categorically stated that there was no mediation settlement between the parties during the trial. However, mediation settlement dated 19.03.2016 records the presence of both the accused and DW2. The said settlement bears the signatures of the accused. It is already observed above that on 08.03.2016, on joint request of the parties, the case was referred to mediation. Thereafter, on the receipt of the mediation settlement, this Court has adjourned the matter for compliance of the settlement as the accused has prayed for extension of time till 2017 for making payment to the complainant. However, when this Court again seized of the matter in the year 2017, the accused first stated that she did not have any means to pay and later when the complainant filed an application praying recording of the statement of the accused, the accused changed her stance again and submitted before the Court that she did not enter into settlement voluntarily and that she was put under pressure by the complainant. The accused raised no objections and kept quite for about one year until 2018 when she questioned the mediation settlement. It can be clearly seen that as and when suited to her, the accused changed her stance at will. She has not even hesitated to put question mark on the mediation process presided over by an independent and impartial officer. Even though, these observations taken together with the mediation settlement cannot be seen as an evidence in regard to the disputed facts in the present case, however, it clearly depicts the conduct of the accused and DW2. The conduct of the parties to the proceedings in reference to such proceeding is relevant under section 8 of Indian Evidence Act and having regard to their conduct, the testimonies of accused and DW2 cannot be accepted as true and genuine.

20. It is the contention of Ld. Counsel for the accused that the complainant being the counsel of the accused was barred from entering into a loan transaction with the accused. However, it has been admitted by all the DWs that complainant was having friendly relations with them and the accused did not lead any evidence to show that the cheque in question was given when the complainant was the counsel for DW3 i.e. daughter of accused. Thus, the complainant, on the faith of friendly relations with the accused and DW2, was competent in the eyes of law to advance loan. The reliance of ld counsel for the accused on Ilakkia Raja is misconceived. It is the further contention of ld counsel for accused that the MOU Ex. CW1/A is not stamped as per law. As per Section 36, Indian Stamp Act 1899, once document is admitted in evidence, the same can not be called in question at any subsequent stage on the ground that the document has not been duly stamped. It is the further contention of Ld. Counsel for the accused that the complainant has failed to examine the attesting witness to Ex. CW1/A. As discussed above, it is proved from the testimonies of the complainant and the DWs that complainant advanced loan to DW2 and that DW2 had issued three cheques to the complainant, and the accused has failed to prove that her signatures on Ex.CW1/A were obtained by fraud, therefore, execution of MOU Ex.CW1/A cannot be doubted merely because the complainant did not examine the attesting witness to Ex.CW1/A.

21. It is contended by Ld. Counsel for the accused that the complainant failed to prove the source of money allegedly advanced to the accused. In this regard, it is suffice to say that the accused has failed to rebut the presumption u/s 139 NI Act by raising preponderance of probabilities in her favour. Once the signatures on the cheque are admitted, the statutory presumption u/s 139 N. I. Act

is required to be drawn in favour of the complainant that the cheque was issued for consideration until and unless, proved otherwise by the accused. Hence, without the accused rebutting the statutory presumption u/s 139 NI Act, any suspicion on the case of the complainant cannot be raised for want of evidence for the source of funds for advancing the loan. In this regard, reliance can be placed on the judgment of Hon'ble Supreme Court in Rohitbhai Jivanlal Patel Vs. State of Gujarat (2019 18 SCC 106). In Rohit Bhai, the Trial Court found that the accused had admitted his signature on the cheques and, with reference to the decision in the case of Rangappa v. Sri Mohan (2010) 11 SCC 441, drew the presumption envisaged by Section 139 of NI Act. However, the trial Court found that the complainant failed to lead any evidence in regard to his financial capacity to advance loan. The Hon'ble High Court reversed the decision of acquittal and observed that the presumption under Sections 118 and 139 of the NI Act was required to be drawn that the cheques were issued for consideration and until contrary was proved, such presumption would hold good. The Hon'ble Supreme Court confirmed the decision of Hon'ble High Court and sustained the conviction of the accused. It is relevant to reproduce the para 17 and 18 in this regard :

> " 17. In the case at hand, even after purportedly drawing the presumption under Section 139 of the NI Act, the Trial Court proceeded to question the want of evidence on the part of the complainant as regards the source of funds for advancing loan to the accused and want of examination of relevant witnesses who allegedly extended him money for advancing it to the accused. This approach of the Trial Court had been at variance with the principles of presumption in law. After such presumption, the onus shifted to the accused and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the accused-appellant. The aspect relevant for consideration had been as to whether the accused-appellant has brought on record such facts/material/circumstances which could be of a reasonably probable defence.
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> 18. In order to discharge his burden, the accused put forward the defence that in fact, he had had the monetary transaction with the said Shri Jagdishbhai and not with the complainant. In view of such a plea of the accused-appellant, the question for consideration is as to whether the accused-appellant has shown a reasonable probability of existence of any transaction with Shri Jagdishbhai? In this regard, significant it is to notice that apart from making certain suggestions in the cross-examination, the accused- appellant has not adduced any documentary evidence to satisfy even primarily that there had been some monetary transaction of himself with Shri Jagdishbhai. Of course, one of the allegations of the appellant is that the said stamp paper was given to Shri Jagdishbhai and another factor relied upon is that Shri Jagdishbhai had signed on the stamp paper in question and not the complainant."

Thus, in view of Rohit Bhai the authorities namely K.

Prakshan, Devender Kumar, Satish Kumar, S.K Jain, K. Subramani, Vipul Kumar Gupta, Ram Yudhisthir Yadav, Sanjay Mishra relied upon by the accused are not applicable to the facts of the case.

CONCLUSION

22. It stands established on record from the evidence recorded and documents exhibited that complainant has advanced a friendly loan to the son of the accused and the accused having entered into the settlement Ex.CW1/A, issued cheque in question Ex. CW1/B to the complainant for discharge of legal liability. The accused failed to proved that the complainant was her earlier counsel and thus, legally barred from entering into loan transaction with her. The accused further failed to prove that memorandum of settlement Ex.CW1/A was executed by fraud. It has been established that the cheque Ex.CW1/B issued by the accused in discharge of her legal liability got dishonored on presentment, complainant served legal demand notice upon accused demanding the cheque amount in question, however, accused failed to make the said payment within statutory period despite service. So, all the ingredients of offence punishable under Section 138 of The Negotiable Instruments Act, 1881 stands established on record. The defence raised by accused side is not tenable as per above discussions. The questions framed (extracted in para 13) are thus answered.

FINAL ORDER

23. In view of the aforementioned facts and circumstances, this Court is of the opinion that complainant has duly proved its case against the accused for offence punishable under Section 138 of The Negotiable Instruments Act, 1881 beyond shadow of any reasonable doubt qua accused. Accordingly accused namely Smt. Rajinder Kaur stands convicted for offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

Digitally signed Announced in the open Court PRANAV by PRANAV JOSHI on 05.12.2022. JOSHI Date: 2022.12.05 15:57:16 +0530 (PRANAV JOSHI) M.M.-03/North District, Rohini/Delhi 05.12.2022.