IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 07.01.2025

\+ **CRL.A. 309/2019**

SANJEEV SURI .....Appellant

versus

JYOTI SADANA ..... Respondent

\+ **CRL.L.P. 44/2019 & CRL.M.A. 593/2019**

SANJEEV SURI .....Petitioner

versus

SANDEEP SADANA .....Respondent

Advocates who appeared in this case:

For the Appellant / Petitioner : Mr. Avtar Singh & Mr. Arjun Dhamija, Advs.

For the Respondent :

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

CRL.M.A. 593/2019 in CRL.L.P. 44/2019

1. For the reasons mentioned in the application, the delay of 17

days in filing the appeal stands condoned.

2. The application stands disposed of.

CRL.L.P. 44/2019

3. The leave to file the Criminal Appeal is granted.

4. The petition stands disposed of.

CRL.A. 309/2019 & Criminal Appeal /2024 (to be numbered)

5. The present appeals are filed challenging the separate judgments dated 08.08.2018 (hereafter '**impugned judgments**'), passed by the learned Metropolitan Magistrate, Tis Hazari Courts, Delhi, in CC No. 12285/2016 and CC No. 11789/2016 respectively.

6. By the separate impugned judgments, the learned Trial Court acquitted the respective accused respondents in the complaints filed by the petitioner for the offence under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**').

7. The brief facts of the cases are that the respective respondents, who are husband and wife, had told the petitioner that they are the legal owners of the entire 2nd floor of property bearing Plot No. WZ-77 admeasuring 77 sq. yds. out of Khasra No.88/9 and 88/10 situated in the revenue estate of Village Hastsal, Delhi State, Delhi, area known as Colony Prem Nagar, Uttam Nagar, New Delhi-110059 (hereafter '**the subject property**') *vide* registered General Power of Attorney dated 04.03.2011. It is alleged that the respective accused persons agreed to sell the subject property to the petitioner for a sum of ₹4,50,000/-. The accused Sandeep Sadana executed an agreement to

sell and purchase in favour of the complainant on 10.03.2011. It is alleged that the accused Sandeep also signed a receipt towards total consideration amount and undertook that he would get the permission for the sale of the subject property from the competent authority. It is alleged that despite the entire payment, the accused kept delaying the matter under one pretext or the other and the subject property was not registered in the name of the petitioner. It is alleged that after a lot of persuasion, the accused persons agreed to pay back the consideration amount and they both signed and executed a Promissory Note of ₹4,70,000/- dated 01.05.2012 in favour of the petitioner.

8. It is alleged that *in lieu* of the aforesaid liability, the accused Jyoti issued a cheque for a sum of ₹3,50,000/- that was returned back with the reason– "Funds Insufficient", which became the subject matter of CC No. 12285/2016.

9. It is alleged that accused Sandeep also issued two cheques for a sum of ₹1 lakh and ₹2 lakhs respectively, which were also dishonoured on presentation and returned with the reason–"Funds Insufficient". The dishonour of the said cheques became the subject matter of CC No. 11789/2016.

10. The accused were summoned in the respective matters, whereafter they allegedly showed an interest to settle the matter. The statement of accused Sandeep was recorded before the learned Trial Court on 25.07.2014 where he made a statement on his behalf and that of accused Jyoti as well. He stated that both the matters had been settled finally for a sum of ₹4,35,000/- and he had handed over two

cheques for a sum of ₹10,000/- to the petitioner. He also undertook to pay the amount of ₹1,00,000/- by 31.08.2014 and the balance amount of ₹3,15,000/- by 01.12.2024.

11. It was noted by the learned Trial Court on 24.12.2014 that since the accused persons had only been able to make a payment of ₹23,000/- by then and the payment had not been made as per the terms of the settlement, the petitioner wished to proceed further with the matter.

12. The accused persons had taken identical defences in both the complaints. It was stated that accused Sandeep had taken a mortgage loan of ₹4.5 lakhs from the petitioner in the year 2011. Pursuant to the same, Exhibit CW1/D1 was executed, which was duly signed by the complainant and the accused persons, and stated that the amount of ₹4,50,000/- had been received as loan against the subject property. It was stated that the entire payment had been made through cash and cheques from the account of accused Jyoti. A total of seventeen receipts were also adduced along with statement of account of accused Jyoti which showed that about ₹3,34,820/- had been paid to the petitioner. It was stated that some of the receipts had been misplaced. It was stated that 3-4 blank security cheques had been given to the petitioner which he misused even after receiving the entire amount. It was further stated that when the accused Sandeep questioned the petitioner as to why he had filed the complaints, the petitioner told him that he had made late payments and asked him to pay ₹40,000/- in Court, due to which he made certain payments before the Court. It was

stated that the accused Sandeep had signed the statement *qua* settlement without reading the same. It was also stated that a complaint had been made by the accused to the Police Station Binda Pur regarding the threats received from the petitioner as well as the cheating and criminal breach of trust.

13. The learned Trial Court acquitted the respective respondents *vide* the impugned judgments and noted that the accused persons had been able to rebut the presumption under Section 139 of the NI Act. It was observed that the petitioner had failed to prove that the cheques in question had been issued in discharge of liability. The learned Trial Court also took note of the complaint filed against the petitioner at Police Station Binda Pur and observed that the accused persons had put forth a plausible defence regarding misuse of the cheques.

14. Aggrieved by the impugned judgments, the petitioner has filed the present petitions.

15. The learned counsel for the petitioner submitted that the impugned judgments have been passed without due application of mind on the basis of surmises and conjectures.

16. He submitted that the learned Trial Court failed to appreciate that the Promissory Note dated 10.05.2012 bears the signatures of the respondents and the signatures have not been disputed. He submits that the signatures of the accused Sandeep on the agreement to sale have also not been disputed.

17. He submitted that the learned Trial Court has not duly appreciated that the accused Sandeep had tendered a statement before

the Court about settlement of the dispute. He submits that no application was moved for setting aside the settlement. He submits that once the accused Sandeep had made a statement regarding settlement, he could not have been allowed to resile from the same.

18. He submits that since the accused persons had settled the dispute, there could have been no dispute as to the legitimacy of the legally enforceable debt.

ANALYSIS

19. It is trite law that a Court while considering the challenge to an order of acquittal ought to only interfere if the Court finds that the appreciation of evidence is perverse [Ref. ***Rajaram s/o Sriramlulu Naidu (since deceased) through LRs v. Maruthachalam (since deceased)*** **: Criminal Appeal No. 1978 of 2013**].

20. The present case, however, relates to acquittal of an accused in a complaint under Section 138 of the NI Act. The restriction on the power of Appellate Court in regard to other offence does not apply with same vigour in the offence under NI Act which entails presumption against the accused. The Hon'ble Apex Court in the case of ***Rohitbhai Jivanlal Patel v. State of Gujarat*** **: (2019) 18 SCC 106** had observed as under:

> "***12.*** *According to the learned counsel for the appellant-accused, the impugned judgment is contrary to the principles laid down by this Court in Arulvelu [Arulvelu v. State, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] because the High Court has set aside the judgment of the trial court without pointing out any perversity therein. The said case of Arulvelu [Arulvelu v. State, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] related to the offences under*

Sections 304-B and 498-A IPC. Therein, on the scope of the powers of the appellate court in an appeal against acquittal, this Court observed as follows : (SCC p. 221, para 36)

> *"36. Careful scrutiny of all these judgments leads to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment cannot be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."*

The principles aforesaid are not of much debate. In other words, ordinarily, the appellate court will not be upsetting the judgment of acquittal, if the view taken by the trial court is one of the possible views of matter and unless the appellate court arrives at a clear finding that the judgment of the trial court is perverse i.e. not supported by evidence on record or contrary to what is regarded as normal or reasonable; or is wholly unsustainable in law. Such general restrictions are essentially to remind the appellate court that an accused is presumed to be innocent unless proved guilty beyond reasonable doubt and a judgment of acquittal further strengthens such presumption in favour of the accused. ***However, such restrictions need to be visualised in the context of the particular matter before the appellate court and the nature of inquiry therein. The same rule with same rigour cannot be applied in a matter relating to the offence under Section 138 of the NI Act, particularly where a presumption is drawn that the holder has received the cheque for the discharge, wholly or in part, of any debt or liability. Of course, the accused is entitled to bring on record the relevant material to rebut such presumption and to show that preponderance of probabilities are in favour of his defence but while examining if the accused has brought about a probable defence so as to rebut the presumption, the appellate court is certainly entitled to examine the evidence on record in order to find if preponderance indeed leans in favour of the accused****."*

(emphasis supplied)

21. At the outset, it is relevant to note that the signature of the respective respondents on the cheques in dispute has not been denied.

It is settled law that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the cheque in discharge of a legally enforceable debt or liability are raised against the accused [Ref. ***Rangappa v. Sri Mohan*** **: (2010) 11 SCC 441**].

22. The said presumptions can be controverted by the accused by raising a probable defence against the existence of a legally enforceable debt or liability. It is settled law that it is not necessary for the accused to conclusively establish that there was no debt/liability. In such circumstances, the presumption ceases to act to the benefit of the complainant and disappears. The onus then again shifts on the complainant. The Hon'ble Apex Court in the case of ***Rajesh Jain v. Ajay Singh*** **: 2023 INSC 888** had summarized the law as to how the accused can discharge the burden of the presumptions. The relevant portion of the judgment is reproduced hereunder:

> *"**40.** The standard of proof to discharge this evidential burden is not as heavy as that usually seen in situations where the prosecution is required to prove the guilt of an accused. The accused is not expected to prove the non-existence of the presumed fact beyond reasonable doubt. The accused must meet the standard of 'preponderance of probabilities', similar to a defendant in a civil proceeding.* ***[Rangappa vs. Mohan (AIR 2010 SC 1898)]***
> ***41. In order to rebut the presumption and prove to the contrary, it is open to the accused to raise a probable defence wherein the existence of a legally enforceable debt or liability can be contested.*** *The words 'until the contrary is proved' occurring in Section 139 do not mean that accused must necessarily prove the negative that the instrument is not issued in discharge of any*

debt/liability but the accused has the option to ask the Court to consider the non-existence of debt/liability so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that debt/liability did not exist. ***[Basalingappa Vs. Mudibasappa (AIR 2019 SC 1983) See also Kumar Exports Vs. Sharma Carpets (2009) 2 SCC 513]***

42. *In other words, the accused is left with two options. The first option-of proving that the debt/liability does not exist-is to lead defence evidence and conclusively establish with certainty that the cheque was not issued in discharge of a debt/liability. The second option is to prove the non-existence of debt/liability by a preponderance of probabilities by referring to the particular circumstances of the case.* ***The preponderance of probability in favour of the accused's case may be even fifty one to forty nine and arising out of the entire circumstances of the case, which includes: the complainant's version in the original complaint, the case in the legal/demand notice, complainant's case at the trial, as also the plea of the accused in the reply notice, his 313 statement or at the trial as to the circumstances under which the promissory note/cheque was executed. All of them can raise a preponderance of probabilities justifying a finding that there was 'no debt/liability'. [Kumar Exports and Sharma Carpets, (2009) 2 SCC 513]***

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44. The accused may adduce direct evidence to prove that the instrument was not issued in discharge of a debt/liability and, if he adduces acceptable evidence, the burden again shifts to the complainant. At the same time, the accused may also rely upon circumstantial evidence and, if the circumstances so relied upon are compelling the burden may likewise shift to the complainant. *It is open for him to also rely upon presumptions of fact, for instance those mentioned in Section 114 and other sections of the Evidence Act. The burden of proof may shift by presumptions of law or fact. In Kundanlal's case- (supra) when the creditor had failed to produce his account books, this Court raised a presumption of fact under Section 114, that the evidence, if produced would have shown the non-existence of consideration. Though, in that case, this Court was dealing with the presumptive clause in Section 118 NI Act, since the nature of the presumptive clauses in Section 118 and 139 is the same, the analogy can be extended and applied in the context of Section 139 as well.*

45. Therefore, in fine, it can be said that once the accused adduces evidence to the satisfaction of the Court that on a

> ***preponderance of probabilities there exists no debt/liability in the manner pleaded in the complaint or the demand notice or the affidavit-evidence, the burden shifts to the complainant and the presumption 'disappears' and does not haunt the accused any longer.*** *The onus having now shifted to the complainant, he will be obliged to prove the existence of a debt/liability as a matter of fact and his failure to prove would result in dismissal of his complaint case. Thereafter, the presumption under Section 139 does not again come to the complainant's rescue. Once both parties have adduced evidence, the Court has to consider the same and the burden of proof loses all its importance.* ***[Basalingappa vs. Mudibasappa, AIR 2019 SC 1983; See also, Rangappa vs. Sri Mohan (2010) 11 SCC 441]****"*
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> (emphasis supplied)

23. In the present case, the respondents have sought to prove their case on preponderance of probabilities that the cheque in dispute was not issued in discharge of any legally enforceable debt. The defence case, in essence, is that the subject property had never been sold against any consideration and instead the same had been mortgaged for a loan of ₹4,50,000/-. It was further contended that the said amount had already been repaid to the petitioner. In support of the said contention, the accused persons had also placed seventeen receipts and the statement of the account of the accused Jyoti showing payment of ₹3,34,820/- to the petitioner.

24. In both the cases, the petitioner had admitted that the receipts had been issued by his proprietorship firm but contested that his proprietorship concern had a separate account with the accused and the sale-purchase transaction was a personal transaction between him and accused Sandeep. He also stated during his examination that he had extended 2-3 loans of ₹20,000/- to ₹30,000/- to the accused

Sandeep. He denied having given any loan of ₹4,50,000/- to the accused in the year 2011. He also stated that he could not recall as to why he had given the document–Exhibit CW1/D1 to the accused persons.

25. The learned Trial Court, in the impugned judgments, rightly noted that while the complainant had denied having extended any loan to the accused Sandeep, however, his signatures on Exhibit CW1/D1 had been admitted and the same showed that the loan amount had been received by the accused on 11.03.2011.

26. It was observed that even though the accused Sandeep had agreed to his signatures on the agreement to sale, however, it was disputed that the property had been sold. Also, as noted in the impugned judgments, the petitioner never produced the original agreement to sell. The learned Trial Court rightly observed that the sale price for the subject property by no stretch of imagination could be merely ₹4,50,000/- and the defence of the accused persons that the subject property had been only been mortgaged seemed more reliable in view of Exhibit CW1/D1. The petitioner has not contested the observation regarding price of the property and also not placed any material on record to controvert the said observation.

27. As far as the veracity of the receipts [Exhibit CW1/D2 (colly)] and payments are concerned, although the complainant had sought to explain that he had extended 2-3 loans to the accused Sandeep for a sum of ₹30,000/- to ₹40,000/-, however, as noted by the learned Trial Court, no cogent explanation was furnished as to why he had received

payments from the accused persons for over ₹3 lakhs as seen from the seventeen receipts and bank transactions. The learned Trial Court also noted that it is feasible that some of the receipts had been misplaced by the accused persons as the disputes pertain to the year 2011. It is also relevant to note that the petitioner had made no mention of the prior loans in the complaint.

28. Even if the case of the complainant is taken at the highest, it is also peculiar to note that while a debt of ₹4.5 lakhs has been claimed to be due on part of the accused persons, the total amount of the cheques in dispute comes to ₹6.5 lakhs. No explanation has been given by the complainant as to why the cheques were drawn for an amount higher than the alleged debt of ₹4.5 lakhs.

29. The main thrust of the petitioner is on the fact that the parties had apparently settled the matter at one point and the respondents had failed to make the payments as per the settlement. It is argued that the sheer fact that the parties had settled the matter, shows the legitimacy of the debt. The accused persons had denied the settlement and contended that the statement dated 25.07.2014 was signed by accused Sandeep without reading the same. The accused Jyoti altogether denied any knowledge of the settlement. It was also stated that the petitioner had assured the accused Sandeep that he would withdraw the present complaints on receiving ₹30,000/- to ₹40,000/-.

30. A party may enter into a compromise for a number of reasons, especially, to avoid undergoing through the harassment of trial and mitigate the uncertainty of their odds in litigation. A party may also

enter into a settlement due to the relationship with the other party. Undisputably, once the settlement is arrived at between the parties and made part of the Court record, the same subsumes the original complaint. If the accused party fails to follow through with the settlement, it is open to the complainant to pursue the fresh cause of action that arises from breach of the settlement if the settlement has attained finality or to pursue the original complaint as has been done by the complainant in the present case. In the latter case, however, the complainant has to proceed in accordance with law and prove the foundational facts as alleged in the complaint as per the provisions of NI Act. The complainant however cannot pursue parallel proceedings in relation to the same transaction.

31. It is relevant to note that in the present case, the learned Trial Court kept the matters pending for compliance of the agreed settlement terms. Thereafter, when the accused persons failed to make the requisite payments, the matter was proceeded on merits.

32. On being pointedly asked, the learned counsel for the petitioner submitted that the petitioner has taken no steps to secure compliance of the settlement. There was no adjudication in the present case regarding existence of any debt before the parties entered into the settlement.

33. Insofar as the effect of the settlement on the merits of the present cases are concerned, as noted above, while it was open to the petitioner to pursue his civil and criminal remedies against non-compliance of the settlement, the mere fact that the accused had

entered into a settlement cannot be construed to be an admission of debt and the complainant was still required to establish the foundational facts in the present case.

34. From appreciation of evidence, in the opinion of this Court, the respective respondents have been able to satisfy the test of preponderance of possibilities and rebut the presumptions stipulated in Sections 118 and 139 of the NI Act.

35. In view of the aforesaid discussion, this Court finds no such perversity in the impugned judgments so as to merit an interference in the findings of acquittal.

36. The present appeals are dismissed in the aforesaid terms.

37. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

JANUARY 7, 2025