



2025:DHC:5727



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 08th May, 2025
Pronounced on: 14th July, 2025

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CRL.A.688/2025

MOHD. IRSHAD

S/o Mohd. Rahimuddin
R/o House No.2603, First Floor,
Gali Mandir Wali, Shankar Gali,
Sita Ram Bazar, Delhi-110006

.....Appellant

Through: Mr. F.K. Jha & Mr.Gaurav Jha,
Advocates

Versus

PARTAP SINGH

Prop, of M/s Fridge Aircon System
S-86, Santhalka Shopping Complex,
Phase-III, RIICO Industrial Area,
Bhiwadi, Alwar, Rajasthan

.....Respondent

Through: Mr. Rahul Ahlawat, Advocate

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Criminal Appeal under Section 378(4) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) read with Section 482 Cr.P.C. has been filed by the Appellant/Complainant, Mohd. Irshad to challenge the Order dated 31.01.2019 of the Ld. M.M. *vide* which the Respondent/Accused, Partap Singh has been acquitted for the offence under



Section 138 of the Negotiable Instruments Act, 1881 (*hereinafter referred to as "N.I. Act"*).

2. **Briefly stated**, the Complaint Case No.513649/2016 under Section 138 N.I. Act was filed by the Appellant/Complainant on 07.05.2013. The Respondent/Accused was engaged in the business of Sales, Services, AMC and Spare Parts of Air Washer, AHU, Refrigerator, Display Cabinet, FCU, Chiller, Condensers, Central A.C. Plant, Oil Chiller, Insulation, Ducting, Cooling Tower etc. The Appellant/Complainant on the other hand, was engaged in the business of purchase of old goods/used items of the above mentioned goods and after removing the defects and repairing them, he used to sell them in the market.

3. During the business tenure, the Appellant/Complainant orally gave an Order for the supply of goods worth Rs.8,00,000/- to the Respondent/Accused, for which he made the part payment of Rs.4,20,000/-. The remaining Rs.3,80,000/- was to be paid at the time of delivery of items. Despite part Payment made by the Appellant/Complainant, the Respondent/Accused failed and neglected to supply the ordered goods leading to a huge business loss to the Appellant/Complainant .

4. After much persuasions by the Appellant/Complainant, the Respondent/Accused agreed to return the said amount and issued four Cheques for a total sum of Rs.4,20,000/-. The Appellant/Complainant presented the Cheque bearing no. 085157 dated 11.03.2013 for the sum of Rs.2,10,000/- drawn on Axis Bank Ltd., Bhiwadi, Rajasthan to his Bank, but the Cheque was returned with the endorsement '*Payment Stopped By Drawer*' vide Return Memo dated 26.03.2013.



5. The Appellant/Complainant then approached the Respondent/Accused who denied to make payment against the Cheque. Legal Notice dated 11.04.2013 was served upon the Respondent/Accused at his correct address despite which neither any payment was made nor any Reply was given.

6. The Complaint under Section 138 of N.I. Act got consequently filed. Notice under Section 251 Cr.P.C. was given to the Respondent/Accused on 21.04.2014, wherein he stated that he was the proprietor of M/s. Fridge-Aircon System. A Complaint dated 26.12.2011 was lodged by him with PS Bhiwadi, Alwar, Rajasthan about the loss of his seven cheques, out of which one was the Cheque in question. He submitted that he had been implicated falsely in this case. Though the Cheque in question has his signatures, but other details in the Cheque have not been filled by him. He denied receiving Legal Notice of Demand.

7. The Appellant/Complainant in support of his case appeared as CW1. He also examined CW2, Kamaluddin who deposed that he was working with Mohd. Irshad Appellant/Complainant for 15 years. In January, 2013, Mohd. Irshad gave Rs.2,00,000/- to the Respondent/Accused for purchase of old A.C. Chilling Plant. The money was not returned and in lieu thereof the Respondent/Accused had issued a cheque of Rs.2,10,000/- on 11.03.2013 in discharge of his liability.

8. The statement of the Respondent/Accused was recorded under Section 313 Cr.P.C. wherein he reiterated the defence taken in response to the Notice under Section 251 Cr.P.C. In support of the defence, he appeared as DW1 and reiterated that the Cheque in question was one of the seven cheques that were misplaced by him.



9. The *Ld. M.M. in his detailed judgment dated 31.01.2019* observed that the Appellant/Complainant had admitted in his cross-examination that he was working for and on behalf of *Ambition Engineers*, a sole proprietorship of one Mahinderpal Singh and that at times he placed the Orders on behalf of this proprietorship Firm and at times in his own name. The Ld. MM observed that there was no proper authorization from the Firm in favour of the Appellant/Complainant to file the Complaint. It was held that the Complaint was liable to be rejected, on this ground itself.

10. It was further observed that the Complainant admitted in his cross-examination that the amounts were paid various instalments, but there is no evidence of these amounts received by the Respondent. He was an Income Tax Assessee, but the ITR record has not been placed showing the business dealings. It was difficult to accept that the Complainant would have parted with Rs.4,20,000/-, which is not a small amount, without it being reflected in the ITR. ***It was therefore, held that the defence of the Respondent that he had not given the Cheque stood probablized and thereby the Ld. M.M. acquitted the Respondent.***

11. *Aggrieved by the said judgment of acquittal, the present Appeal has been preferred by the Appellant.*

12. The ***grounds of appeal*** are that the Respondent/Accused has admitted his signatures on the cheque in the sum of Rs.2,10,000/-, which had been issued in discharge of part liability. The Respondent/Accused has not examined any Police official to prove his alleged Complaint in regard to the Cheques having been misplaced.



13. The Bank officials have deposed that there was only Rs.842.70 in the account of the Respondent/Accused, which was much less than the cheque amount. The '*Stop Payment*' therefore had no meaning for acquittal.

14. Another significant aspect was that no Reply to the Legal Notice was given by the Respondent/Accused, which reflects his *mala fide* and that he has not come to the Court with clean hands.

15. *Section 139 of N.I. Act* raises a presumption in favour of the holder of the cheque and unless contrary is presumed, the cheque is presumed to have been issued in discharge whole or part of the liability. The Respondent has admitted his signatures on the Cheque despite with Section 139 of N.I. Act has been misconstrued by the Ld. M.M.

16. It is further claimed that in the Statement under Section 313 Cr.P.C., the Respondent had admitted having received a Legal Notice of Demand to which no Reply has been given by the Respondent, which raises an adverse inference. He has failed to give a Reply and thereby the presumption under Section 139 of N.I. Act, has not been rebutted. Section 118 of N.I. Act also provides that unless contrary is proved, it shall be presumed that a holder of a negotiable instrument is a holder in due course.

17. *It is, thus, submitted that the impugned judgment is liable to be set aside.*

18. The ***Respondent in his Reply*** has taken the *preliminary objection* that the Petition is *mala fide* intended to thwart the course of justice. The Petitioner has made deliberate mis-statements and prevarications reflecting that he has come to the Court with vexatious and nebulous allegations which are liable to be dismissed forthwith.



19. The respondent has reiterated that he is running a business under the name of M/s. Fridge-Aircon System. He, on 26.12.2011, has lost his multiple cheques including the Cheque in question. He, on the same day, requested the Bank to stop the payment in regard to the lost Cheque. He also made the Complaint on the next day i.e. 27.12.2011, in the Police Station.

20. It is submitted that the Cheque was only signed by him, but its contents have not been filled by him. The Petitioner has misused the Cheque by writing his name, amount and date without the consent and knowledge of the Respondent. He has thereafter filed this frivolous Complaint under Section 138 of N.I. Act.

21. It is submitted that the Appellant has failed to produce any document on record to prove *the debt or legally enforceable liability of the Respondent*. The Appellant/Complainant in his cross-examination had admitted that he has no Firm in his name and sometimes does business in the Firm i.e. *Ambition Engineers*, proprietorship concern of his friend, Mahinderpal Singh. Further, the Appellant claimed that he had placed the order verbally under the firm of Mahinderpal Singh, for which no document has been filed. He claims to have given an amount of Rs.4,20,000/-, but it was not from the account of the aforesaid Firm. Neither any ITR nor any books of accounts have been placed on record, in support of his assertions.

22. The defence of the Respondent was fully established by DW1, Rajesh Kumar, Axis Bank, Bhiwadi who produced a record of the Bank which consisted of seven system generated report of '*Stop Payment*' of the Cheques which got lost on 26.12.2011.

23. The Ld. Trial Court has thus, rightly acquitted the Respondent *vide* a well-reasoned detailed judgment.



24. *There is no merit in the present Appeal which is liable to be dismissed.*

25. **Submissions heard and record perused.**

26. *The case of the Appellant/Complainant* is that he was engaged in the business of purchase of old goods used items and had placed an oral Order with the Respondent/Accused for supply of goods worth Rs.8,00,000/- against which he made the part payment of Rs.4,20,000/-.

27. The ***first aspect*** which has emerged from his cross-examination is that he had placed the Order with the Respondent/Accused under the name of the Firm *M/s. Ambition Engineers*, of which Mahinderpal Singh is the proprietor. It clearly reflects that aside from Mahinderpal Singh being his friend, there was no business connection between them. Neither he was authorized nor did he produce evidence to show that he had been authorized by Mahinderpal Singh on behalf of his proprietorship Firm, to place the Order with the Respondent/Accused.

28. The Ld. M.M. has rightly observed that the Appellant/Complainant had no proper authorization for filing the Complaint on behalf of the proprietor of *M/s Ambition Engineers* on whose behalf allegedly the Appellant/Complainant had placed the Order. If so was the situation, the Appellant/Complainant could not have filed the Petition in his own individual name but should have been in the name of the proprietorship Firm. If the order was placed in the name of the Firm, the aggrieved Party was the Firm and not the Petitioner who had no authorization to file the Complaint. It has been correctly observed by the Ld. M.M. that the Complaint has not been filed in the name of the right person and that the Appellant/Complainant, Mohd. Irshad had no right or authorization to file



the Complaint in the name of *M/s Ambition Engineers*. On this ground itself the Petition has been rightly held to be not maintainable.

29. The *second aspect* which emerges from the testimony of the Complainant/CW1 is that *firstly*, the Order for supply of goods worth Rs.8,00,00/- had been placed orally. There is no evidence whatsoever to prove that any such order was placed to the Respondent/Accused. *Secondly*, it is asserted by him that he has made part payment of Rs.4,20,000/- in advance and the balance amount of Rs.3,80,000/- was to be given at the time of delivery of the goods. Pertinently, Rs.4,20,000/- is not a small amount and the Appellant/Complainant is absolutely silent about when, how and in what manner this amount was given to the Respondent/Accused. There is no proof whatsoever either of supply of goods worth Rs.8,00,000/- or of the part payment of Rs.4,20,000/- to the Respondent/Accused.

30. Other interesting aspect which emerges from the cross-examination of the Appellant/Complainant is that the Appellant/Complainant has explained that this amount of Rs.4,20,000/- was paid by him from his own pocket and not from the account of the Firm. It was paid in instalments and the *first instalment was of Rs.10,000/-*. He, however, admits that he could not get the date, month or year in which this instalment was paid. He admittedly had no receipt as he had not taken any receipt while making the payment. He further deposed that he had paid an amount of *Rs.1,00,000/-* on one occasion for which again he was unable to tell the date, month and year. The *third payment was made of Rs.40,000/-* for which again no date, month or year could be disclosed. He claimed that *Rs.49,000/-* was deposited in the account of the Respondent/Accused in Axis Bank, CP, Delhi though again he was unable to produce the deposit Receipt to corroborate his oral



assertions. According to him, he made the payment of *last instalment of Rs.2,00,000/-*, for which again he had no Receipt.

31. Interestingly, although an Order was placed for goods worth Rs.8,00,000/-, there is no explanation as to why the payment was made in multiple instalments of varying amounts. Moreover, no evidence has been provided to substantiate these alleged payments. Even the alleged Bank deposit of Rs.49,000/- has not been proved by the Bank receipt, his Bank statement or any other evidence. Also, if the Goods were not being supplied by the Respondent, it does not appeal to reason that despite this, Petitioner would continue to pay in instalments.

32. The Appellant/Complainant has miserably failed to prove that he ever placed the Order or had given Rs.4,20,000/- to the Respondent/Accused as claimed by him. Once he has not been able to prove the transactions itself, it cannot be said that there was any existing debt or liability against the Respondent/Accused.

33. The *third aspect* of significance is that according to the Appellant/Complainant, four cheques were issued by the Respondent/Accused - out of which two were for Rs.80,000/- each, while one cheque was for Rs.50,000/- and the fourth cheque was for Rs.2,10,000/- (the Cheque in question). Pertinently, he admittedly did not present those two cheques of Rs.80,000/- each for encashment. The cheque of Rs.50,000/- was presented, but was returned with the remarks of '*Stop Payment*'. The fourth cheque, which is in question here has also been returned with the endorsement '*Stop Payment*'.

34. The Appellant/Complainant had examined CW2/Kamaluddin, his friend, who had deposed that he was working with the



Appellant/Complainant for 15 years. He states that in January, 2013, the Complainant/Mohd. Irshad gave Rs.2,00,000/- to Respondent/Pratap Singh at the shop for purchase of old A.C. Chilling Plant, but the same was never delivered to him nor the money was returned. A Cheque of Rs.2,10,000/- dated 11.03.2013 was issued by the Respondent/Accused in discharge of his liability.

35. Interestingly, while CW2 has given the date of January, 2013 when the Complainant had allegedly given Rs.2,00,000/-to the Respondent, no such date has been given by the Appellant/Complainant either in his Complaint, his Legal Notice or in his testimony. Rather his case was that he had placed the Order for delivery of goods of worth Rs.8,00,000/-, the date of which is intriguingly not disclosed. According to the Complainant, he had given a sum of Rs.2,00,000/- but failed to disclose any date. Notably, this alleged order was placed at some point of time and the amounts were given on different dates. As already observed, it is difficult to comprehend when the goods were being delivered and why would the Appellant/Complainant continue to make payment of different amounts in instalments. The testimony of CW-2 does not help the Complainant in any way.

36. Clearly, bases on the above observations, the claim of the Appellant/Complainant that he had given a sum of Rs.4,20,000/- to the Respondent/Accused, is not borne out of his own evidence or that of his witness, CW2.

37. It is trite law that the Complainant must first establish the existence of a debt for which the impugned cheques are issued in order to be successful in a Complaint under Section 138 of N.I. Act. If the existence of debt in respect of large part of the amount is not proved, then the presumption



cannot be drawn and the Complaint under Section 138 of N.I. Act is liable to be dismissed.

38. *In this backdrop, it is relevant to consider the defence of the Respondent/Accused, who claims that seven of his cheques were misplaced on 26.12.2011 while he was travelling from RIICO Chowk to Ganpati Plaza. He stated that he attempted to locate said cheques but was unable to find them. He further states that the cheque numbers mentioned in the Complaint dated 27.12.2011 correspond to those lost cheques.*

39. The Legal Notice by the Appellant/Complainant was filed on 11.04.2013. The fact that the Complaint by the respondent of lost Cheques was filed in December, 2012 assumes significance, in the absence of any averment by the Appellant/Complainant as to the date on which the four cheques were issued. Significantly, according to CW2, an amount of Rs.2,00,000/- was given in January, 2013 which is subsequent to the Respondent/Accused reporting them as missing.

40. Another significant aspect worth mentioning is that according to the Complainant himself, a cheque for Rs. 50,000/-, issued by the Respondent/Accused, was dishonoured with the remark '*Stop Payment*'. Additionally, the Complainant admitted that he did not present two other cheques of Rs. 80,000/- each for encashment, although he did not provide any reason or explanation for their non-presentation. The fourth cheque, which is the cheque in question, was also dishonoured for the same reason.

41. This sequence of events aligns with the Complaint dated 27.12.2011 filed by the Respondent/Accused, wherein he reported that his cheques had gone missing. The said Complaint was lodged prior to the issuance of the Legal Notice dated 11.04.2013 and the filing of the present Complaint on



01.05.2013. This circumstance of dishonour on the ground of “**Stop Payment**” lends credence to the Respondent’s assertion that the cheques were not voluntarily issued in discharge of any debt, but were misplaced and reported as lost *vide* Police Complaint dated 27.12.2011.

42. From the aforesaid discussion, it may be concluded that the Appellant/Complainant lacked any authority to file the Complaint. He has not been able to prove the placement of an Order for goods worth Rs.8,00,000/- or the advance payment of Rs.4,20,000/-, from time to time to the Respondent/Accused, towards delivery of goods. ***There is no evidence to show that the Cheque in question was issued by the Respondent/Accused in discharge of any existing debt or liability.***

43. Thus, the Complaint under Section 138 of N.I. Act has been rightly dismissed by the Ld. M.M.

44. There is no merit in the present Appeal, which is hereby dismissed.

45. The pending Application(s), if any, are disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

JULY14, 2025

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