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

% *Date of decision: 17th February, 2025*

+ **CRL.REV.P. 721/2013**

SHANKAR LAL AGGARWAL

S/o Late Shri R.M. Aggarwal

R/o C-17C, First Floor,

Gali No.2, Mandawali Unchepur

Delhi-110092.

.....Revisionist

Through: Mr.Amit Sinha, Mr.K.A.Nitin and
Mr.S.P.M.Tripathi, Advs.

versus

BHAIRON GHOSH

S/o Sh. Jeewan Ghosh

R/o A-260, Gali No.10,

West Vinod Nagar,

Delhi-110092.

.....Respondent

Through: Mr. Ashwin Vaish, Mr. Vinod Pandey,
Mr.Rajat Pahwa, Mr.Himanshu
Pandey and Mr.Rohan Nair, Advs.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. A Revision Petition under Section 397/401 of the *Code of Criminal Procedure, 1973* ('Cr.P.C.' hereinafter) has been filed against the Judgement dated 10.09.2013 whereby the Order on Conviction and Sentence in Complaint Case under Section 138 of the *Negotiable Instruments Act, 1881* ('N.I. Act' hereinafter) of learned M.M dated 02.01.2013 has been set aside by Learned Additional Sessions Judge, New Delhi in Criminal Appeal No.07/13 titled '*Bhairon Ghosh vs. S.L. Aggarwal*' and the Respondent has been acquitted.



2. The *facts in brief* as stated by the Revisionist/Complainant in his Complaint under Section 138 NI Act, was that Cheque bearing No.403621 dated 05.09.2007 drawn on South Indian Bank, Delhi in discharge of his liability towards a friendly loan of Rs.2 lakhs on 20.08.2007 taken by him from the Complainant/ Revisionist but was dishonoured on presentation for the reasons “*funds insufficient*” vide Bank Memo dated 13.09.2017.
3. A Legal Notice of Demand dated 26.09.2007 through registered cover which was returned with the remarks “*Unclaimed*”, while the Notice sent through UPC was never returned back.
4. Complaint under Section 138 NI Act was filed against the Respondent. Notice under *Section 251 NI Act* was given to the Respondent who admitted that the cheque dated 05.09.2007 bears his signatures, but denied that the contents of the Cheque were filled by him. He further disclosed the defence that he had given a blank cheque to Smt. Gurmeet Kaur for discharge of his liability of loan of Rs.30,000/- which he had taken from her, but because the Cheque got misplaced, he made the repayment in cash on 05.09.2007. Smt. Gurmeet Kaur lodged a Complaint on the same day vide DD No.30-A in regard to loss of the Cheque. He denied that he had taken any amount of Rs.2 lakhs from the Complainant.
5. The Revisionist Shri Shankar Lal Aggarwal examined himself as CW1 and reiterated his assertions as made in the Complaint. The Respondent-Bhairon Ghosh reiterated his defence in his Statement recorded under Section 313 Cr.P.C.
6. He also examined *DW2-Const.Hans Raj* who proved the DD No.30-A.



7. *DW3-Smt. Gurmeet Kaur* reiterated the defence of the Respondent.
8. The learned M.M considered the evidence and convicted the Respondent *vide* Judgement dated 21.12.2012 and sentenced the Respondent to nine months Rigorous Imprisonment and fine of Rs.3 lakhs.
9. The impugned Judgment dated 21.12.2013 was challenged in the Criminal Revision Petition before the learned ASJ, who on appreciation of the evidence of both the parties, concluded that the Complainant was unable to prove that *there existed any legally enforceable debt* in respect of the impugned cheque. **The Order of Conviction was thereby set aside and the Respondent was acquitted.**
10. Aggrieved by the said acquittal, the Revision Petition has been filed, wherein the impugned Order *has been challenged on the ground* that the story of having taken a loan from Gurmeet Kaur was introduced for the first time in his testimony as DW1 which is contradictory to his stand taken earlier. The document Ex.DW3/A purportedly which recorded the repayment of loan to Gurmeet Kaur and the cheque given by him to Gurmeet Kaur being misplaced, on which the Respondent/accused had heavily relied would show that it was an intimation by Gurmeet Kaur to the Police about the cheque being misplaced and not a formal Complaint.
11. Pertinently, this document was never put to DW2 in order to prove its genuineness. It is not been appreciated that the Respondent/accused had never given any suggestion that the Complainant/Revisionist had no means to advance the loan and the capacity of the Revisionist to advance the loan was never questioned and has not been proved on behalf of the Respondent. The Petitioner had offered to produce his bank accounts of the relevant



period in his cross-examination, but the Respondent never insisted on their production.

12. It has been wrongly held by the learned ASJ that the capacity of the Petitioner to advance loan, has not been proved. The learned ASJ has also failed to appreciate that the Complainant had deposed that he had given a loan because he had trust on the Respondent who had assured that he would return the same within two weeks. No question had been asked from the Complainant about not having taken any security for the advancement of loan. In the absence of any evidence to this effect, no adverse inference could have been drawn against the Complainant.

13. It is further contended that it has not been appreciated that DW3-Smt. Gurmeet Kaur in her cross-examination had failed to disclose the date, month or year on which she had allegedly given the loan to the Respondent. Moreover, she has admitted that on the document Ex.DW3/A the endorsement at point B has not been made in her handwriting. She also admitted that she was never called by the Police to make an enquiry in regard to the document Ex.DW3/A. She further admitted that the writing at point C on DW3/A was not her's. She in her cross-examination stated that she had received the loan amount in the Police Station, but immediately thereafter she asserted that Ex.DW3/A was written while she was standing on the road on her way to her house and the accused/Respondent at the same time had handed over the money to her. There are material contradictions in the testimony of DW3 which is not reliable.

14. It is further contended that had the cheque been actually handed over by Respondent to DW3, she would have reported to the Police after coming



to know about the dishonour of the Cheque on 13.09.2007.

15. It is asserted that non-action on the part of the Respondent creates a doubt about the defence set up by him. Moreover, the testimony of the witnesses has not been appreciated in the right earnest and the impugned judgment of acquittal of learned ASJ is liable to be set aside.

16. **Submissions heard and record perused.**

17. A Complaint under Section 138 NI Act had been filed by the Revisionist in respect of dishonour of cheque No.403621 dated 05.09.2007 in the sum of Rs.2 lakhs allegedly given to him by the Respondent for the loan of Rs.2 lakhs given by the Complainant to him.

18. The *first pertinent aspect* which comes up for consideration is whether the loan in fact was given to the Respondent and that the Cheque was issued by him in favour of the Complainant *in repayment of the loan allegedly taken by him, i.e. was it issued in discharge of a Legally enforceable debt.*

19. The Petitioner in his testimony as CW-1, had asserted that the Respondent was known to him as he used to supply the Taxis to their office, but he also submitted that he had met the Respondent only once. Pertinently, he has claimed that he gave the loan on 20.08.2007 in the sum of Rs.2 lakhs, but it is difficult to comprehend that he could have given this cheque to a person who was barely known to him and whom he had met only one time.

20. Further, it is significant to observe that the loan which was given allegedly on 20.08.2007 was intended to be returned within 15 days on or before 05.09.2007. The circumstances in which the alleged loan had been



taken for 15 days, needed to be explained but the Complainant has failed to completely do so. There is, therefore, a peculiar situation of loan of Rs.2 lakhs being given to the Respondent though claimed to be friendly, but practically unknown to the Complainant for 15 days. Interestingly, at the time of granting this loan, no document was executed in proof thereof which raises a suspicion considering that Complainant had met the Respondent only once as per his testimony. Pertinently, he asserts that a Cheque had been given to him of Rs.2 lakhs on 05.09.2007, which was the date on which alleged loan amount was alleged to be returned. It does not appear to reason that the Cheque was issued after 15 days, which is claimed to be the date of repayment and not on the date of giving the alleged loan on 20.08.2007.

21. In this context, it is relevant to consider the defence of Respondent-Bhairon Ghosh who has explained in detail in his testimony as DW1 that he knew Gurmeet Kaur with whom he had friendly relations, who was also employed with the Complainant. He was admittedly supplying Taxis to the office where Complainant and Smt. Gurmeet Kaur were employed. He further explained that he had got the vehicle of Smt. Gurmeet Kaur put on duty with the office where the Complainant was working. His testimony establishes that he had long acquaintance with DW3-Smt. Gurmeet Kaur.

22. He further deposed that he had taken a friendly loan of Rs.30,000/- from Smt. Gurmeet Kaur for which he had given a blank, undated but a signed cheque to her.

23. According to his testimony which is fully corroborated by DW3-Smt. Gurmeet Kaur, he repaid the amount in cash to Smt. Gurmeet Kaur on 05.09.2007 but was unable to return the cheque because it had got



misplaced. The acknowledgment of repayment of loan was recorded in the document Ex.DW1/3 in which it was also mentioned that the Cheque has been misplaced. Smt. Gurmeet Kaur had also given an intimation to the Police Station recorded *vide* DD No.30A dated 05.09.2007.

24. The entire events as deposed by the Respondent which is fully corroborated by the testimony of DW3-Smt. Gurmeet Kaur, establishes that the missing of the cheque got reported on 05.09.2007. The cheque has been admittedly presented for encashment thereafter, and has been dishonoured on 13.09.2007. It is difficult to believe that this entire event of missing of the cheque and repayment to Smt. Gurmeet Kaur could have been pre-planned by Respondent in connivance with DW3-Smt. Gurmeet Kaur, only to disprove the claim of the Revisionist of having given loan of Rs.2 lakhs to the Respondent.

25. It is also pertinent to note that *Smt. Gurmeet Kaur was an employee with the Complainant*, which does not rule out the possibility of he having found the blank signed cheque of Respondent. Therefore, the cheque which got misplaced from Smt. Gurmeet Kaur may have landed in the possession of the Complainant as they both were working in the same office, a defence which cannot be completely discarded.

26. The learned ASJ has thus, rightly concluded that there is no evidence to establish the legally enforceable liability for which the impugned cheque could have been issued by the Respondent.

Conclusion:

27. In the light of aforesaid discussion, it is held that there is no infirmity in the Order of learned ASJ. The present Revision Petition is without merit



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and is hereby, dismissed.

28. The Revision Petition stands disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 17, 2025

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