



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

% *Pronounced on: 24th February, 2025*

+ **CRL.L.P. 6/2021, CRL.M.A. 575/2021 (delay)**

TARUN

S/o Sh. Kishan Sharma
R/o H.N. V-479, Gali No. 16,
Vijay Park, Maujpur, Delhi-53.

.....Petitioner

Through: Mr. Ashutosh Yadav, Advocate.

versus

MOHD SAJID

S/o Late Umardeen
R/o H.No. 382, Gali No. 27,
Vijay Park, Maujpur, Delhi-53.

.....Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Leave to Appeal under Section 378(3) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.PC'*) has been filed on behalf of the Petitioner/Tarun to challenge the Order dated 25.09.2019, of the learned Metropolitan Magistrate, Delhi, *vide* which the Complaint under Section 138 read with Section 142 of the Negotiable Instrument Act, 1881



(hereinafter referred to as 'N.I. Act') filed by the Petitioner/Complainant, against the Respondent/Mohd. Sajid, **has been dismissed**.

2. **Briefly stated**, Complainant/Tarun (*Petitioner herein*) had filed a Complaint Case bearing CC No. 723/2015 under Section 138 read with Section 142 of the N.I. Act, on account of dishonour of cheque bearing No. 696838 dated 08.04.2014 for Rs.4,10,000/-, drawn on Indian Bank, Krishna Nagar, Delhi, issued by the Respondent in discharge of a friendly loan of Rs.4,10,000/-taken by him in the month of January, 2014 from the Petitioner. The Cheque got dishonoured on account of "*Funds Insufficient*" *vide* return memo dated 12.04.2014. Thereafter the Petitioner, on the assurance of Respondent, presented the cheque for the second time on 28.04.2014, but was again dishonoured for "*Insufficient Fund*" *vide* return memo dated 30.04.2014. Thereafter, the Respondent misbehaved with the Complainant and refused to pay the cheque amount.

3. A legal Notice dated 10.05.2014, through Registered A.D. and Speed Post, was served upon the Respondent but he failed to give any Reply. Consequently, the Complaint under Section 138 of the N.I. Act and Section 420 of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*), was filed against the Respondent.

4. The Statement of the Respondent under Section 281 of CrPC read with Section 313 of CrPC, was recorded on 23.01.2019. He also examined himself in his defence as DW-1.

5. Learned Metropolitan Magistrate dismissed the Complaint and acquitted the Respondent *vide* Judgment and Order dated 25.09.2019 by



observing that the Petitioner had not shown the loan amount in his Income-Tax Returns.

6. *Aggrieved by the said Order of Acquittal, the present Leave to Appeal has been preferred.*

7. The **main grounds** agitated *herein* are that there is a presumption of legally enforceable debt in favour of *the holder in due course* of the Negotiable Instrument within the ambit of Section 118 and 139 of the N.I. Act. The contradictory statements made by the Respondent, have not been appreciated by the learned Metropolitan Magistrate. The Judgment of *Lekhraj Sharma vs. Yashpal Gupta*, 2015 (4) CLJ 518 DEL, of this Court has also not been considered. Hence, the prayer is made that the Order of Acquittal be set-aside.

8. The Respondent was duly served and he appeared on 03.09.2024, but subsequently none appeared on behalf of the Respondent.

9. **Submissions heard and the record perused.**

10. The **Respondent/Mohd. Sajid** in his Statement as **DW-1**, has admitted the signatures on the cheque, but has claimed that two cheques including the present one, had been handed over by him to a Property Dealer as he intended to purchase a plot of land near 25 foota road, Shri Ram Colony, Khajuri, but was not aware that the Suit Property belonged to the Complainant/Tarun.

11. He further deposed that he knew the Complainant for about 20 years as Sh. Krishan Sharma, father of the Complainant, was a close friend of the father of the Respondent. But he further deposed that he never had any money transaction with the Complainant in his life.



12. The Respondent though admitted his signatures, but denied having taken any loan or there being any legally enforceable liability underlying the cheque. According to him, it was intended for purchase of plot of land but his transaction could not go through as he got involved in some other criminal case.

13. The defence as put forth by the Respondent, has to be appreciated in the light of testimony of the *Complainant/Tarun*, who appeared as *CW-1*. He, in his cross-examination, admitted that he was a student and unemployed and that *the Respondent had never requested for a friendly loan nor had he disclosed about it in his ITRs*.

14. He further admitted that in his Complaint, *he has not mentioned the date of advancement of loan or of the source from which he got the money, which he allegedly gave as a loan to the Respondent. He accepted that being a student, he had no source of income and no such loan was given to the Respondent*.

15. He further explained that *the Respondent was working with his father and the cheque in question was given to him. He also admitted that there was an overwriting in the date on cheque, which was changed from 03.04.2014 to 08.04.2014*.

16. From these admissions made by the Complainant/Petitioner, it is evident that he was a young student, who had no source of income to give the loan as was alleged in his Complaint. He admittedly did not give any loan to the Respondent. Admittedly, he has not disclosed the source from where he got the money or *the date on which the loan was given. Pertinently, he has denied having given any loan to the Respondent*. The



admissions of the Petitioner himself failed to prove that the cheque in question had been given in discharge of any legally enforceable liability.

17. Furthermore, *CW-2, Krishan Sharma*, father of the Complainant, in his testimony, had admitted that he was not aware of the contents of the Affidavit and also was not aware of the date on which the loan was given. Thus, considering the testimony of the Petitioner as well as his father, Sh. Krishan Sharma, it is established that they have not been able to prove that any loan of Rs.4,10,000/- was given to the Respondent or that the cheque had been issued in discharge of a legally enforceable liability.

18. In the case of *Kumar Exports vs. Sharma Carpets*, (2009) 2 SCC 513, the Apex Court had while discussing the burden of proof in the cases under Section 138 of the N.I. Act, had noted that the accused in a trial under Section 138 of the N.I. Act, had two options: (i) to either show that the consideration and the debt did not exist or (ii) that under the particular circumstances of the case, the non-existence of consideration was so probable that a prudent man ought to suppose that no consideration and debt existed. It was further observed that something which is probable has to be brought on record for getting the burden of proof shifted to the Complainant. Similar observations have been made in the case of *M.S. Narayana Menon vs. State of Kerala*, (2006) 6 SCC 39.

19. *In the present case*, even though the Respondent admitted his signatures on the cheque but from the admissions made by the Complainant and his father in their respective testimony, neither is it proven that any loan was ever given to the Respondent nor that there was no legally enforceable debt in discharge of which the cheque in question got issued.



20. Therefore, the learned Metropolitan Magistrate has rightly dismissed the Complaint under Section 138 of the N.I. Act. There is no ground for grant of Leave to Appeal against the Order of acquittal of the Respondent under Section 138 of NI Act, *which is hereby dismissed.*

21. The Leave Petition is disposed of accordingly. The pending Application(s), if any, also stand disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

FEBRUARY 24, 2025/RS