



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

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Reserved on: 24th February, 2025

Pronounced on: 26th May, 2025

+ **CRL.L.P. 8/2021**

GEETA

W/o Sh. Bhupinder Singh Fauji

R/o H. No. 298, Geeta Bhawan,

VPO, Prahladpur, Delhi.

.....Petitioner

Through: Mr. Karan Sachdeva, Advocate.

versus

1. **ANITA**

W/o Rakesh, R/o H. No. 111,

Bank Wali Gali, Balmiki Mohalla,

VPO Preladpur Bangar, Delhi.

2. **The State (NCT of Delhi)**

.....Respondents

Through: Mr. Shoaib Haider, APP for the State.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

CRL.M.A. 884/2021

1. An Application under Section 5 of the Limitation Act, 1963 read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) has been filed on behalf of the Appellant/Geeta for condonation of delay of 83 days in filing the Appeal.



2. It is submitted that due to some miscommunication between the Complainant and the counsel the delay of 83 days happened in filing the Leave to Appeal.

3. For the reasons stated in the Application, the delay of 83 days in filing the Leave to Appeal is condoned and the Application is allowed.

4. Application stands disposed of.

CRL.L.P. 8/2021:

5. Leave to Appeal under Section 378 Cr.P.C. has been filed by the Petitioner/Geeta against the Order of Acquittal dated 26.07.2020 in CC No.10930/2016, whereby, Respondent No.1/Anita has been ***acquitted under Section 138 of the Negotiable Instruments Act, 1881*** (hereinafter referred to as 'N.I. Act').

6. The Complainant/Geeta asserted in her in a Complainant under Section 138 N.I. Act, that Respondent No.1 is her friend, to whom she had given a friendly loan Rs.8,50,000/- in the month of September, 2012, which the Respondent No.1 had assured to repay by April, 2013. She, however, failed to repay the loan and when she persistently followed with her, she gave two cheques dated 20.04.2013 of Rs.1,00,000/- each and one cheque dated 30.04.2013 of Rs.6,50,000/-. However, on presentation, first two Cheques dated 20.04.2013 were dishonoured for '*insufficiency of funds*', while the third Cheque dated 30.04.2013 got dishonoured on account of '*drawer's signatures different*'.

7. Legal Notice dated 18.06.2013 under Section 138 N.I. Act was duly served upon Respondent No.1 through courier despite which no payment



was made. Consequently, the Complaint under Section 138 N.I. Act was filed.

8. Respondent No.1 was summoned *vide* Order dated 19.09.2016. ***Notice under Section 251 Cr.P.C.*** was framed on 21.12.2016, wherein Respondent No.1 pleaded not guilty. She gave a defence that the Complainant had approached her for giving three Blank Cheques under her signatures, which she required for another litigation having been undertaken by her against another person, who incidentally had the same name as *Anita*. She gave three cheques, but denied having taken any loan from the Complainant.

9. The Petitioner filed her Affidavit of Evidence but despite numerable opportunities, Respondent No.1 failed to examine the Complainant. She also did not come forth to lead any evidence in defence.

10. Learned M.M. in the impugned Order dated 26.07.2020, while taking cognizance of the signatures on the cheque being admitted by Respondent No.1, noted that there is no specific date given on which the loan of Rs.8,50,000/- was given to Respondent No.1 by the Complainant. Pertinently, the Bank Account Statements that were filed by the Complainant of herself and of her husband along with the written submissions, did not reflect the financial capacity of the Complainant to be able to give the loan of Rs.8,50,000/-. Therefore, by observing that the Complainant in the first instance had failed to discharge the initial burden of proving that she gave a loan of Rs.8,50,000/- to the Respondent, dismissed



the Complaint under Section 138 N.I. Act and acquitted Respondent No.1/Anita.

11. The *impugned Judgment dated 26.07.2020, is assailed on the ground* that the testimony of the Complainant remained un-rebutted as Respondent No.1 failed to question the testimony by way of cross-examination. She also did not put forth any defence by examining herself or any witness in support thereof to rebut the presumption under Sections 139 and 118(a) N.I. Act.

12. The judgment suffers from patent illegality and is therefore, liable to be dismissed.


13. Respondent No.1 was served with the Appeal, despite which she failed to appear and contest the Leave to Appeal.

14. **Submissions heard and record perused.**

15. It is not in dispute that Respondent No.1/Anita had issued three cheques under her signatures, but her defence was that she had done so on the request of the Complainant in order to help her in another litigation she had undertaken with another person who incidentally had the same name as Anita. Though, this defence had been sought up only under Section 251 Cr.P.C., but it was neither put to the Complainant by way of cross-examination nor was positively asserted by her by way of leading evidence.

16. The question, which thus arises, is *whether in the light of admission of three cheques being given under her signatures, the presumption under Section 139 N.I. Act makes it imperative for the Court to necessarily decide the Complaint in favour of the Complainant.*



17. ABBOTT, C.J., R.  vs. Burdett, 4 B. & Ald, observed that word ‘presumption’ inherently imports an act of reasoning for coming to the conclusion of the judgment; and it is applied to denote such facts or moral phenomena, as from experience we known to be invariably, or commonly, connected with some other related facts. *A presumption is a probable inference which common sense draws from circumstances usually occurring in such cases.* The slightest presumption is of the nature of probability, and there are almost infinite shades from slight probability to the highest moral certainty. *A presumption, strictly speaking, results from a previously known and ascertained connection between the presumed fact and the fact from which the inference is made.*

18. Thus, which needs to be emphasized is that presumptions filed under Sections 118 and 139 N.I. Act, are rebuttable in the nature. In the case of Union of India vs. Pramod Gupta (D) By Lrs. & Ors., (2005) 12 SCC 1, it was observed that the expression ‘*may presume*’ and ‘*shall presume*’ as explained in Section 4 of the Indian Evidence Act, 1872, makes it evident that whenever it is directed that the Court *shall presume* a fact, it shall regard such fact as proved unless disproved. In terms of the said provision, expression ‘*shall presume*’ cannot be held to be synonymous with ‘*conclusive proof*’.

19. The scope of presumption under Section 118(a) N.I. Act was considered by the Hon’ble Division Bench in Bharat Barrel And Drum Manufacturing Company vs. Amin Chand Payrelal, (1999) 3 SCC 35, wherein it was observed that where Defendant is able to discharge the initial



onus of proof showing that the existence of consideration was improbable or doubtful, the onus would shift on the Plaintiff to prove it as a matter of fact and his failure would disentitle him to any relief on the basis of Negotiable Instrument. Such proof of existence or non-existence of consideration, may be established either by direct evidence or by bringing on record preponderance of probabilities by reference to the circumstances upon which the complainant relies. Where the Defendant fails to discharge the onus, the Plaintiff would invariably be entitled to the benefit of presumption under Section 118(a) N.I. Act.

20. However, the manner in which such presumptions, as provide under the Indian Evidence Act, 1872, as tools for proving the issues of fact and law, were interpreted by the Hon'ble Apex Court in Kali Ram vs State of Himachal Pradesh, (1973) 2 SCC 808, wherein it was noted that one of the cardinal principles in administration of justice for criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused. In certain cases, statutory presumptions arise regarding the guilt of the accused, but even in those cases, it is upon the prosecution to prove the existence of facts which have to be present before the presumption can be drawn. Once those facts are shown to be existing, can the statutory presumption be drawn and accused asked to rebut the presumption. The



onus even in such cases upon the accused is not as heavy as is normally upon the prosecution to prove the guilt of the accused. If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal.

21. In the case of M. S. Narayana Menon vs . State of Kerala, (2006) 6 SCC 39, the Hon'ble Apex Court, while making a reference to the aforesaid judgments, observed that it is for the Complainant to 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 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 N.I. Act is liable to be dismissed.

22. ***In the present case***, though the Respondent No.1 aside from claiming that the cheques being given by her to the Complainant on her request to help her in another litigation with a third party with the same name, but has neither chosen to cross-examine the Complainant or to lead her defence evidence. Be as it may, in the light of as discussed above, it is still for the Complainant to establish that there was an existence of debt in respect of which the cheques got dishonoured. That unless this foundational basis is established, there is no question of the presumption under Section 118 N.I. Act to be kicked in.

23. The learned M.M. has rightly observed that as per the Complainant she had given the loan in September, 2012. Pertinently, there is no mention



of the date on which the loan was given, either in the Complaint or in the Legal Notice or in the Affidavit of Evidence. Certainly, Rs.8,50,000/- is not a small amount and no prudent person would give a loan securing it by a corresponding document receipt or any such document.

24. In this regard, it is pertinent to note that along with the written submission, the Complainant had placed on record the Bank Account statements of herself and her husband. Learned M.M. has noted that statements of Bank Accounts of the Complainant and her husband do not reflect the financial status or capacity of the Complainant for giving such loan of Rs.8,50,000/- on given dates.

25. In these circumstances, learned M.M. was fully justified in observing that the Complainant was not able to prove the existence of legally recoverable debt and in dismissing the Complaint under Section 138 N.I. Act thereby, acquitting the Respondent.

26. There is no ground for granting Leave to Appeal and the Application is accordingly dismissed along with the pending Applications.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 26, 2025/R