



2025:DHC:5143



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

% *Reserved on: 21<sup>st</sup> March, 2025*  
*Pronounced on: 27<sup>th</sup> June, 2025*

+ **CRL.A. 385/2025**

**PARAMJEET SINGH**

S/o Late Shri Jagmohan Singh

R/o 4/34, 1<sup>st</sup> Floor

Geeta Colony, Delhi-110031

...Appellant

Through: Mr. Krishan Kumar, Mr. S.P. Nangia  
and Mr. Shivam Bedi, Advocates.

versus

1. **THE STATE NCT OF DELHI**

Through Standing Counsel (Crl)

437, Lawyers' Chamber Block-I

Delhi High Court, New Delhi-110003

...Respondent No.1

2. **SURJIT SINGH**

S/o Shri Rajinder Singh

R/o 3/3, 195, Arya Nagar

Zaheerabad (Telangana)

District Medah-502220

Mobile: 9515015253, 6300980249

...Respondent No.2

3. **INDER KAUR**

W/o Shri Rajinder Singh

R/o 3/3, 195, Arya Nagar

Zaheerabad (Telangana)

District Medah-502220

Mobile: 9515015253, 6300980249

....Respondent No.3

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.**

1. Criminal Appeal under Section 378 read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.PC'*) has been filed on behalf of the Appellant, Paramjeet Singh against the Impugned Judgment dated 03.11.2020 whereby the learned Metropolitan Magistrate-04, Patiala House Courts, Delhi, has dismissed the Complaint under Section 138 of the Negotiable Instruments Act, 1881, (*hereinafter referred to as 'N.I. Act'*) and has acquitted the Respondent Nos. 2 and 3.
2. ***Briefly stated***, the case of the Complainant/Paramjeet Singh (*Appellant herein*) was that the Accused No. 2/Ms. Inder Kaur (*Respondent No. 3 herein*), was known to him as she was providing Beauty Home Care services, of which his wife, Smt. Satinder Kaur was a regular customer.
3. In the beginning of November, 2014, Respondent No.3 along with the Accused No.1/Mr. Surjit Singh (*Respondent No. 2 herein*), approached the Complainant in November, 2014, for a loan of Rs.12,00,000/- to expand the Parlour business. The Complainant accordingly, gave a cheque dated 07.11.201 in the sum of Rs.12,00,000/- on 07.11.2014 in favour of the Complainant. Additionally, a Pronote dated 07.11.2014 which was also executed in respect of the loan amount.
4. On the instructions of the Respondents, the cheque was presented for encashment but was returned on the ground '*payment stopped by drawer*' *vide* Return Memo dated 24.11.2014. The Legal Notice dated 12.12.2014 was served despite which the payment was not made by the Respondent Nos. 2 and 3. The Complaint, ***CC No. 41706/2016*** under Section 138 N.I. Act, was filed.



5. The Complainant examined himself as CW-1 to corroborate his case. He also examined CW-2, *Mr. Harpreet Singh*, who was the witness to the Pronote.
6. The Statement under Section 313 read with Section 281 Cr.P.C. was recorded of the Respondents, wherein they denied having taken any loan from the Complainant and alleged that they have been falsely implicated in this case.
7. The *learned Metropolitan Magistrate* considered the discrepancies in the date on which the loan was allegedly given and also that there was no cogent evidence of giving the loan. It was held that the alleged Pronote was not proved. It was thus, concluded that the Complainant has not been able to explain his financial capacity to advance the loan. ***The Complaint under Section 138 N.I. Act, was accordingly dismissed.***
8. The *Appellant has challenged said Judgment of Acquittal dated 03.11.2020* on the *grounds* that mere wrong mentioning of date of loan during the cross-examination, is immaterial when other documentary evidences established the loan advancement. It is submitted that the loan was extended in 2014, whereas the Appellant was first examined only on 16.05.2019 i.e. after a lapse of almost five years. Considering that the Appellant herein is a senior citizen aged around 62 years, the possibility of memory lapse, in recalling the exact date of the loan transaction, cannot be ruled out.
9. It is further submitted that the Appellant had clearly explained the source of the loan amount as comprising of his own savings, his wife's savings, and proceeds from the sale of his father's gold, which has not been



considered by the learned MM. The absence of a Sale receipt or the non-disclosure of the loan in the ITR, is immaterial for proceedings under Section 138 of N.I. Act. Reliance is placed on Dilip Chawla vs. Ravinder Kumar & Anr., CrI. Rev. P. No. 607/2016, where this Court held that a cash loan, even if in violation of Section 269SS of the Income Tax Act, is not rendered void. The penalty under Section 271D Income Tax Act does not bar recovery of such a loan. Thus, non-reporting in Tax Returns, does not make the transaction legally irrecoverable.

10. Further, the signatures on the cheque was not disputed by the Respondent, the blank spaces having been filled by the Appellant, does not make any difference. Reliance is placed on the case of Bir Singh vs. Mukesh Kumar, CrI. Appeals No. 230-231 of 2019 decided on 06.02.2019 wherein the Supreme Court held that if a signed blank cheque is voluntarily presented to a payee towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. *The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.*

11. The Respondents filed two Applications under Section 145(2) N.I. Act; firstly on 02.06.2016 wherein for the first time, they contended that the cheque in question was issued as “security”. They again filed another Application under Section 145(2) N.I. Act on 16.02.2017 wherein for the first time they admitted that Respondent No.3 was running a Boutique Parlour, but never stated that the cheque in question was issued for “security” purpose.



12. It is submitted that the possession of a duly executed cheque in the hands of its holder in itself, is suggestive of a liability/ debt of the account holder of the cheque unless the contrary is proved. Thus, the impugned Judgment is liable to be set aside.

13. Reliance has been placed on Kishan Rao vs. Shankargouda, (2018) 8 SCC 165 wherein the Apex Court held that the accused may adduce evidence to rebut the presumption, but mere denial regarding existence of debt, shall not serve any purpose.

14. Reliance is also placed on Kumar Exports vs. Sharma Carpets, (2009) 2 SCC 513 wherein Apex Court observed that the accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. *Hence, to disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist.*

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

16. The issue that arises for determination is *whether, in view of the admitted issuance of the cheques bearing the signatures of Respondent No.3, the statutory presumption under Section 139 N.I. Act, stood attracted in favour of the Appellant.*



### **Nature and Scope of Legal Presumptions under N.I. Act:**

17. In this regard, 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. The Supreme Court in the case of *Basalingappa vs. Mudibasappa*, in Crl.A. No. 636/2019, further held that where the Accused has proved a probable defence, the reverse onus of proof shifts on the Complainant, who is bound to explain his financial capacity and the transaction of loan advanced.

**Factual Analysis:**

21. In the aforesaid backdrop, the factual analysis may be made. In order to understand the entire transaction, the facts need to be put in right perspective.

22. The case of the Appellant/Complainant when considered in conjunction with the documents, reveal that according to the Complainant, the Respondent Nos. 2 and 3 had approached the Complainant for a loan of Rs.12,00,000/- on 07.11.2014. This loan amount was secured by Respondent No. 3, Ms. Inder Kaur though the cheque admittedly given under the signatures of her son/Respondent No. 2, Mr. Surjit Singh, with the assurance that she would replace it with her cheque by 10.11.2014. A Pronote dated



07.11.2014, Ex.CW-1/H, was also claimed to be executed. The Respondents had questioned the authenticity of the loan transaction and claimed that the signatures of Respondent No. 3, Smt. Inder Kaur was fraudulently obtained on the Pronote, Ex.CW-1/H.

23. The testimony of the Complainant, may thus, be considered to examine if he has been able to establish the authenticity of the entire transaction.

24. ***The first aspect for consideration is the date on which this alleged Loan was granted.*** The Complainant in his examination-in-chief had deposed that he had given a loan of Rs.12,00,000/- to the Respondent Nos. 2 and 3, on 07.11.2014. However, in his cross-examination, he stated that the loan was advanced sometime in the month of June or July, 2014. It has been rightly observed by the learned M.M. that when such a huge loan amount was being given, it is highly improbable that the Complainant would not even remember the date of giving the loan.

25. The first document relied by the Appellant to corroborate the giving of loan is the document ***Ex.CW-1/H***, which is termed as a Pronote by the Complainant. The perusal of the document shows that it has the title '*Samjhauta*'. This was a typed Standard Form document in which the blanks had been filled in hand to state that Smt. Inder Kaur had taken the loan of Rs.12,00,000/-. It contained a hand-written endorsement that the Cheque given of her son, which she undertook to replace by her own Cheque, by 10.11.2014. This document had the signatures of Ms. Inder Kaur as the *first party* and that of the Complainant as the *second party*. It was witnessed by Mr. Surjit Singh, the Respondent No. 2 and by CW-2, Mr. Harpreet Singh.



26. *CW-2, Mr. Harpreet Singh* was examined by the Complainant to prove this document, who deposed that he is the brother-in-law of the Complainant. He further stated that the Pronote dated 07.11.2014 in respect of loan of Rs. 12 Lakhs taken by Inder Kaur in presence of his son Surjit Singh, was witnessed by him and bears his signatures. He further stated that the Cheque in question was given by the accused persons to the Complainant in lieu of discharge of their liabilities.

27. However, in his cross-examination, he stated that when he had signed this document, Ex.CW-1/H '*Samjhauta*' (Agreement entered between the parties at the time of alleged loan transaction) it was blank document (typed) and all the contents therein, have been filled by Pen subsequently and that he could not identify the handwriting on the Pronote. He clarified that no contents of the said Pronote was written in his presence. Therefore, from the testimony of Mr. Harpreet Singh, it is evident that he was not a witness to the hand endorsements which were made subsequently. He has not been able to prove the said document.

28. The learned M.M. rightly noted that for a witness to prove a document, he is required to not only the signatures of the parties but also prove the contents, of the said document. CW-2 has merely stated that he had signed the document, but was not able to either disclose about the contents which was filled in pen nor was he able to depose anything about who all had signed the documents or identify their signatures.

29. The testimony of CW-2, therefore, was of no assistance to the Complainant to prove its execution, which in itself is a circumstance which discredits this document.



30. The second aspect is *to establish the financial capacity of the Complainant to provide a loan*, considering that Rs.12,00,000/- is not a small amount.

31. 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.

32. The Complainant has failed to produce any document being in the nature of his Bank Statement, Income-Tax Returns or his Business Accounts to show that he had the finances available for giving it as loan to the Respondents.

33. The Complainant had lamely tried to explain his source of income by claiming that the money was arranged from his own savings and from that of his wife. The Statement of Accounts of the Complainant as well as his wife and the Income Tax Returns or any other document, has not been produced to show that the Complainant had any capacity to give the loan of Rs.12,00,000/-.

34. The Appellant had further asserted that some amount was realized by selling the gold items belonging to his father. However, when questioned as to whom the gold items were sold, he was unable to give the details. There was no receipt of sale of gold nor any other proof of any kind of there in fact



being gold of the father of the Complainant, which was sold by him. **The Complainant miserably failed to explain that he had such source of income.**

35. The *conduct of the parties, needs to be considered from the yardstick of a prudent man.* The Complainant has asserted that the Respondents had sought Rs.12,00,000/- for the purpose of business expansion. It does not appeal to prudence that the money so taken for expansion of business, could be returned within one month.

36. The entire transaction also becomes suspicious from the fact that while according to the Complainant, at the time of giving the loan on 07.11.2014, he got the 'Samjhauta'/Pronote executed on the same day. However, this Pronote is dated 07.11.2014 reflecting that the Loan was given in November 2014 and not in June/July, 2014 as claimed by the Complainant in his testimony. It does not seem reasonable that while the loan is allegedly given in June, July, the document/ 'Samjhauta'/Pronote got prepared on 07.11.2014.

37. This aspect assumes significance from the fact that according to the Complainant, the loan had been granted for a period of one month. If so was the case, the Cheque dated 07.11.2014 could not have been presented on 24.11.2014 i.e. barely after 15 days, which was against the terms of alleged grant of loan. This entire discrepancy, therefore, creates a huge doubt about any loan ever having been given to the Respondents.

38. Another significant fact to be noted is the **inconsistency regarding execution of the Cheque.** The Complainant had asserted in his testimony that the entire details on the cheque was filled by Mr. Surjit Singh,



Respondent No. 2, but he contradicted himself by stating that the payee name and the amount had been filled by him. He, in his cross examination, again denied that he had filled the name and amount details.

39. No person who has taken a loan for a fixed period of one month of Rs.12,00,000/-, would not fill at least the amount and the date while handing over the signed blank cheque. If so was the transaction for one month, there was nothing which would have prevented the Respondent No. 2, to have also filled the date on which the cheque may be presented along with the amount.

40. Pertinently, it was also agreed as per the '*Samjhauta*,' that the interest @2% per month would be payable. If it was a Loan amount given only for one month, then there was no reason for an interest Clause of interest payable @2 % per month, being incorporated in the alleged '*Samjhauta*' document.

41. The entire transaction as alleged by the Complainant, does not stand to reason and does not prove of him having given loan in the sum of Rs.12,00,000/-, for one month to the Respondents, on 07.11.2014.

**Conclusion:**

42. In the aforesaid discussion, it is held that the learned Metropolitan Magistrate has rightly dismissed the Complaint and acquitted the Respondents.

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

44. The Appeal is disposed of accordingly along with pending Application(s), if any.



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**(NEENA BANSAL KRISHNA)  
JUDGE**

**JUNE 27, 2025/RS**