



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

%

*Reserved on: 27th March, 2025
Pronounced on: 27th June, 2025*

CRL.A. 425/2025

OM DUTT SHARMA

S/o Sh. B. R. Sharma,
R/o B-127-128, Swaroop Nagar,
Delhi – 110042

.....Petitioner

Through: Mr. A. K. Tripathi, Advocate.

versus

RAM KUMAR JHA

S/o Sh. Shiv Narayan Jha,
R/o B-125-A, Gali No. 12,
Swaroop Nagar, Delhi – 110042

.....Respondent

Through: Mr. Shashi Kant, Mr. Ashlam Shah,
Mr. Dushyant Bhargava, Mr. Sunil
Kumar and Mr. Mohd. Tarheed,
Advocates.

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 of the Code of Criminal Procedure, 1973 (Cr.P.C.) has been filed on behalf of the Appellant/ Complainant, Om Dutt Sharma seeking Leave to Appeal against the Judgment dated 10.12.2018 vide which the learned M.M., North District,



Rohini Courts, Delhi, has acquitted the Respondent/Accused, Ram Kumar Jha under Section 138 of NI Act, 1881.

2. **Briefly stated**, CC No. 271/2016 titled **Om Dutt Sharma vs. Ram Kumar Jha**, under Section 138 NI Act, PS: Samaypur Badli was filed by the Appellant Om Dutt Sharma as SPA holder of Smt. Savitri Devi (owner of the property No.B-125-A, Gali No. 12, Swaroop Nagar, Delhi – 110042) against the Respondent Ram Kumar Jha, alleging him to be the tenant in the said property.

3. The Appellant claimed that the Respondent/tenant was in arrears of rent for 26 months. On 21.02.2016, the matter was compromised between them and the Respondent had given a cheque of Rs.1,30,000/- dated 22.02.2016 drawn on Vijaya Bank, Samaypur Badli Branch, in discharge of his legal liability. However, on presentation, the said cheque was dishonoured vide Memo dated 23.02.2016 on the ground of 'Account Closed'. Legal Notice dated 29.02.20216 was sent to the Respondent, to which he gave a Reply but avoided the payment of the cheque amount, resulting in filing of the Complaint under Section 138 NI Act.

4. The **Notice under Section 251 Cr.P.C.** for the offence under Section 138 NI Act, was given to the Respondent, in which he pleaded his innocence.

5. The Appellant examined himself as CW-1.

6. The statement of the **Respondent was recorded under 313 Cr.P.C.** wherein he denied all the averment.

7. The Respondent examined **DW-1/Brahm Prakash, Dealing Assistant, Transport Department**, MLO Head Quarters, Rajpur Road, Delhi, to prove



the records from 19.11.2012 to 21.11.20013, EX. DW-1/1 of the vehicle No. DL1LG6811 allegedly purchased by Sh. Ram Kumar Jha for which the Appellant/Om Dutt Sharma had stood as a guarantor. He also examined **DW-2 Vishal Chaturvedi, Assistant Manager Legal** for Sunderam Finance Limited, from whom the vehicle was got financed by him. He however, did not step into the witness box.

8. The **learned MM held** that the Appellant failed to prove that there were any arrears of rent or that the cheque had been issued in discharge of the liability towards the rent, and **the Complaint was dismissed**.

9. Aggrieved by the said Order, the present Appeal has been filed.

10. **The grounds of challenge** are that the cheque admittedly had the signatures of the Respondent and thereby there is a presumption of the cheque having been issued towards the legally recoverable debt. The Respondent failed to rebut this presumption under Section 118 and 139 of NI Act.

11. The Respondent, who was a tenant in the premises owned by Smt. Savitri Devi, was in arrears of rent for 26 months, in discharge of which the impugned cheque in the sum of Rs.1,30,000/- was issued. It has not been considered that the oral tenancy was created in the year 2009 and the Respondent had been paying the rent @ Rs.5,000/- per month regularly in cash till November, 2013. It was contended that the defence set out by the Respondent that the cheque was issued as a security for a loan transaction, was patently false and baseless.

12. It is further contended that the observations that the ownership documents of the property in the name of Smt. Savitri Devi have not been



produced, was irrelevant since the documents of ownership were neither essential nor relevant for the Complaint under Section 138 NI Act.

13. The learned MM also failed to consider that the cheque amount of Rs.1,30,000/- did not match with the amount of loan that had been taken by the Respondent. Moreover, the Respondent failed to step into witness box to prove the defence of the impugned cheque being a security cheque. The impugned Order is therefore, liable to be set aside.

14. The ***Respondent in his Reply*** had taken a preliminary objection that the Appellant claimed to be the SPA holder of Smt. Savitri Devi, but he has failed to prove from any document that Smt. Savitri Devi was the owner of the suit property. Furthermore, the SPA on the basis of which the Complaint under Section 138 NI Act was filed, nowhere authorised him to file the said Complaint.

15. It is further submitted that as per the Appellant, Respondent had been inducted as tenant in the premises in the year 2009 against whom the Suit for Possession, Recovery of arrears of rent and Permanent Injunction, has already been filed. But the SPA issued in his favour is dated 04.01.2011, making it highly improbable that the Appellant had inducted the Respondent as tenant in the premises.

16. The Appellant himself has admitted in his cross-examination that the SPA was issued for the specific purpose of getting the electricity meter installed and for supervision of the property and not for the purpose of filing the present Complaint. The Respondent has asserted that he was never inducted as a tenant and there is no question of arrears of rent existing against him.



17. The Respondent in his *statement under Section 313 Cr.P.C. had explained* that he had given the cheque in question under his signatures to the Appellant, since he had stood as a guarantor for him, when he purchased Tata 407. The said cheque has been misused by the Complainant. He had cleared the loan taken against the vehicle and the account had therefore, been closed in 2013. He denied receiving any Legal Notice or giving any Reply thereof. He further stated that Reply had not been sent to his address and the signatures on the Reply are denied by him. He further denied that the cheque was issued to the Complainant towards rent.

18. To corroborate his defence, he examined *DW-1/Brahm Prakash, Dealing Assistant, Transport Department* and *DW-2/Vishal Chaturvedi, Assistant Manager Legal for Sunderam Finance Limited.*

19. *On merits*, all the averments made in the Appeal are denied. It is further submitted that the Loan Agreement Ex. DW-2/1 and DW-2/2 proved by DW-2/Vishal Chaturvedi, Assistant Manager Legal for Sunderam Finance Limited, corroborated his probable defence that he was never a tenant in the suit premises. The Respondent had raised a probable defence that there did not exist any legally enforceable liability and had rebutted the presumption under Sections 118 and 139 of NI Act.

20. It is submitted that in fact, criminality under Section 138 of NI Act has been sought to be attached to a dispute which is essentially civil in nature. It is therefore, submitted that Complaint under Section 138 of NI Act has been rightly rejected.

21. *Submissions Heard and Record Perused.*



22. The first aspect for succeeding in Complaint under Section 138 of NI Act is that *there was a cheque issued by the Respondent in discharge of his legal liability or debt*. The Cheque Ex. CW-1/1 admittedly bears the signatures of the Respondent.

23. The question, which thus arises, is whether in the light of admission of cheque being given under his signature, the presumption under Section 139 N.I. Act makes it imperative for the Court to necessarily decide the Complaint in favour of the Complainant.

24. 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’.

25. 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.

26. To discharge this presumption, the Respondent had set up a defence that in the year 2013, he had taken a loan for purchase of vehicle Tata 407 and the Appellant Om Dutt Sharma had stood as a guarantor for the said transaction.

27. To prove the Loan, he examined DW-2 Vishal Chaturvedi, Assistant Manager Legal for Sunderam Finance Limited who produced the Loan Agreement dated 05.03.2013 Ex.DW2/2 (Colly) between the Finance Company and Ram Kumar Jha for finance of the vehicle. The Loan Agreement dated 05.03.2013 Ex.DW-2/2 (Colly), clearly reflects that the Appellant/Om Dutt Sharma had stood as a guarantor and KYC Form submitted by Ram Kumar Jha, is Ex.DW2/3 (Colly) and the Statement of Account is Ex.DW2/4 (Colly).

28. The Appellant in his cross-examination admitted that that a Loan of Rs.1,75,000/- excluding interest was taken by the Respondent/Ram Kumar Jha for purchase of the vehicle and six post-dated cheques duly filled for EMI payment were given by the Respondent. He admitted that he stood as a Guarantor but explained and no cheque was for Rs.1,30,000/- and there is no Policy that Guarantor of the Loan amount has to give any cheque. He further explained that cheques are generally returned to borrower once the Loan is paid, but in this case all the cheques were presented and were honoured. He



denied that any blank cheque was given to him by the respondent at the time of taking the loan.

29. From the admissions made by the Appellant, it is evident that the Respondent had given a Blank Cheque to the Appellant when the latter stood as a guarantor in order to secure any liability which may befall on him in case the respondent defaulted in payment of loan amount. This also explains why the cheque so given to the Appellant was blank and undated, but only had his signatures. This is so because the perusal of cheque Ex. CW-1/1 shows that it was only signed by the Respondent, but the date and the amount were filled subsequently in a different ink and hand. Had it been issued in the year 2016 and that too, in the sum of Rs.1,30,000/- allegedly towards arrears of the rent, there was no reason for the date and the amount to have not been filled by the Respondent himself. The manner in which the cheque has been dated and the amount has been filled clearly shows that the details have been filled subsequently. The respondent has been also to put a plausible defence that this cheque, in fact, was given to the Appellant by the Respondent in the year 2013 at the time when he agreed to stand as a guarantor for the loan taken by the Respondent.

30. Once by preponderance of probability the plausible defence has been established by the Respondent / Accused, the onus shifted on the Complainant to prove that the cheque was issued in discharge of an existing debt or liability.

31. The *first aspect* for consideration is that Appellant Om Dutt Sharma has filed the Complaint under Section 138 of NI Act as the SPA holder of



Smt. Savitri Devi, who was allegedly the original owner of the property in question.

32. Pertinently, the perusal of the SPA dated 04.01.2011 Ex.CW1/6 shows that it was specifically issued by Smt. Savitri Devi stating herself to be the owner and in possession of the suit property. The SPA holder, i.e. Appellant was authorised to raise construction, to apply for electricity meter, to sign any document and to take care of the plot and to look after the construction / additions in the name and on behalf of Smt. Savitri Devi. The contents of SPA make it abundantly clear that the Appellant had no authority whatsoever to institute the Complaint under Section 138 of NI Act, on behalf of Smt. Savitri Devi. On this ground itself, the Complaint under Section 138 of NI Act is liable to be dismissed as not having been filed by a competent person.

33. The **second aspect** which has emerged is that the Appellant Om Dutt Sharma while had been claiming himself to be a SPA holder, but in his cross-examination has stated that he had purchased the property from Smt. Savitri Devi in 2003 on the basis of Sale document. However, those sale documents have not found their way to the Court record to corroborate that he had purchased the said property. Rather, what emerges is that a contradictory stand has been taken by the Appellant Om Dutt Sharma; on one hand he claims himself to be the SPA holder of Smt. Savitri Devi and on the other hand he asserts to be the owner of the property. This in itself creates a doubt about his entire case.

34. The **third aspect** which emerges from Complaint and the evidence of Appellant is that alleged the Respondent was inducted by the Appellant as a



tenant in the year 2009. It has been rightly pointed out that the alleged Sale Documents have not been produced. The SPA was granted in his favour by Smt. Savitri Devi, the alleged owner of the Property in 2011 thereby implying that the Appellant had no authority to deal with the property in the year 2009. There is no basis on which it can be concluded that the Appellant inducted the Respondent as a tenant.

35. The **fourth aspect** which emerges is that no date of commencement of tenancy has been mentioned. It is merely stated that the Respondent had to pay arrears of rent for 26 months from 01.12.2013 to 31.01.2016. The Appellant submits that the matter was compromised between them on 21.02.2016 in PS Swaroop Nagar, whereby the Respondent had issued a cheque of Rs.1,30,000/- for arrears of rent. He deposed that he has a copy of Reply obtained through the RTI regarding the compromise, but for the reasons best known to the Appellant, the Reply so obtained has also not been tendered in evidence.

36. Pertinently, there is no proof of this settlement as neither any DD entry or any record whatsoever in this regard has been produced. Only the cheque Ex.CW-1/1 has been produced, but as already noted above, since in defence the Respondent has stated that the cheque in the year 2013, the entire case of the Appellant that the cheque was given in the year 2016 becomes doubtful.

37. In this context, it is pertinent to note that as the Cheque was given pursuant to the Settlement in the Police Station towards the arrears of Rent, there was no reason why the details of amount and date would have been left blank and the Cheque had only the signatures of the Respondent. As



discussed above, the reason for date and amount not being filled was that it was given as a security to the Appellant for any liability that may arise in future on account of Appellant having stood as a guarantor for the Respondent.

38. It may also be noted that the reason for dishonour of cheque is the “*Account Closed*”. The Respondent in his testimony has deposed that after the loan was settled with *M/s Sunderam Finance Limited*, he had closed his bank account. The very fact that the dishonour of the cheque was for the reason “*Account Closed*” further lends credence to the defence of the Respondent that the cheque had been given by him to the Appellant in lieu of the Appellant having stood as Guarantor in his Loan transaction.

Conclusion:

39. The aforesaid discussion thus establishes that the Appellant has not been able to prove that the cheque was issued towards arrears of rent pursuant to a Compromise, while respondent has established that the Cheque was given as Appellant had stood as a Guarantor for him and on due payment of the Loan, the account was closed. The Appellant has miserably failed to prove that Cheque was issued for legally enforceable debt and the Complaint under Section 138 NI Act, has been rightly dismissed by learned MM.

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

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

**(NEENA BANSAL KRISHNA)
JUDGE**

2025:DHC:5071



JUNE 27, 2025/R