



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

% ***Pronounced on: 28<sup>th</sup> June, 2025***

+ **CRL.APPEAL 490/2025**

**M/s CELEBRATIONS**

Through its Proprietor Sh. Sumit Batra  
R/o Shop no. 2, Mini Central Market  
DDA Flats, Kalkaji  
New Delhi – 110019

.....Petitioner

Through: Mr. Ruchir Batra and Mr. Uttam  
Verma, Advocates.

versus

**MILI SINGH**

D/o Sh. Inder Neel Singh  
R/o B-18, First Floor  
DDA Flats, Kalkaji  
New Delhi - 110019

.....Respondent

Through: Mr. Hem C. Vashisht, Advocate.

**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(4) read with Section 482 Cr.P.C. has been filed by the Appellant challenging the impugned Judgment dated 29.07.2020 *vide* which the learned MM, N.I. Act has acquitted the Respondent for an offence under Section 138 NI Act.

2. ***Briefly stated***, the Petitioner/*M/s Celebrations* through its proprietor Mr. Sumit Batra filed a Complaint under Sections 138/142 NI Act. It is submitted that Mr. Sumit Batra was running its business from Shop No.2,



Mini Central Market, DDA Flats, Kalkaji, New Delhi. The Respondent/Accused informed the Complainant that she was running *Portfolio Management Scheme* for which she collects money from small investors and after conducting thorough research, invests the money in shares of Blue Chip Companies through Stock Market. She assured minimum return of 10% per month on sum invested. He, induced and deceived by such representations of the Respondent, gave Rs.7,50,000/- from 22.08.2017 till 04.09.2017 to the Respondent for investing in stock market under Portfolio Management Scheme. On 21.09.2017, Respondent credited a sum of Rs.75,000/- in his account for the month of September, 2017, but thereafter, she failed to give any return/profit to him.

3. On his repeated demand to return the money, the Respondent issued a cheque No.820783 dated 25.06.2018 for Rs.7,50,000/- drawn on IDBI Bank, CR Park, New Delhi. However, on presentation the said cheque was dishonoured with the remarks 'Funds Insufficient' *vide* Cheque Return Memo dated 27.06.2018. The Complainant gave Legal Notice dated 11.07.2018 to the Respondent at her correct residential address, but she manoeuvred to get it returned with remarks '*house found locked and left*'. The Appellant then filed the Complaint under Section 138 NI Act.

4. The Respondent appeared before the Court on receiving the summons. *Notice under Section 251 Cr.P.C. was framed* in response to which she admitted her signatures on the cheque, but took the defence that she had taken a loan of Rs. 1,44,500/- from the Complainant and had given five blank cheques as security, one of the cheque being the impugned cheque which has been misused by the Complainant. She further asserted



that she has already paid much more than the Loan amount and there is no outstanding liability.

5. The complainant in support of his assertions, appeared as CW-1 and asserted that that he had given the loan of Rs.7,50,000/- to the Respondent out of which Rs.4,44,500/- had been given by cheque, while the remaining amount had been given in cash.

6. He also examined *CW-2 Malavika Sharma*, Senior Manager, Federal Bank Ltd. G. K. II, New Delhi, who proved the Statement of Account of the Complainant for the period 20.08.2017 to 10.09.2017, which was Ex. CW-2/1 and Ex. CW-2/2 respectively.

7. The statement of the Respondent was recorded under *Section 281 read with Section 313 Cr.P.C.*, wherein she reiterated that she had taken Loan of Rs.1,44,500/-, which has been returned by her to the Complainant. She appeared as *DW-1* and reiterated her defence. She also exhibited her Statement of Accounts as Ex. DW-1/A to corroborate that she had repaid the entire loan amount to the Complainant. She also deposed that a cheque of Rs.3,00,000/- was deposited by the Complainant in her account for the Tax saving purpose, but had been withdrawn by him. She has made the Complaint Ex.DW-1/B to the Police against the Complainant.

8. Learned M.M. considered the evidence as led by both the parties and concluded that the Respondent had fairly discharged her onus of establishing from evidence that there was no existing legal liability or debt and consequently dismissed the Complaint under Section 138 NI Act.

9. *Aggrieved by the said dismissal of the Complaint*, present ***Appeal has been filed.*** The ***grounds of challenge*** are that the learned Trial Court has not appreciated the facts in correct perspective. It has not been considered that



no loan was given by the Complainant to the Respondent, but on account of deception committed by the Respondent, Complainant had invested Rs.7,50,000/- in stock market under Portfolio Management Scheme run by the Respondent. It is explained that the Respondent was having her office near the shop of the Complainant and he was deceived by the inducement and assurance of high return. He, in good faith without any documentation, paid Rs.1,44,500/- to the Respondent on 22.08.2017 and gave Rs.55,500/- in cash. He further gave Rs.2,50,000/- in cash on 02.09.2017 and lastly, on 04.09.2017 deposited Rs.3,00,000/- in the bank account of the Respondent. A total sum of Rs.4,44,500/- was thus, paid to the Respondent through bank transactions, while Rs.3,05,500/- was given in cash. The Respondent has admitted in her cross-examination that she had received the payment of Rs.1,44,500/- from 22.08.2017 and of Rs.3,00,000/- on 04.09.2017 from the Appellant. The bank payment of Rs.4,44,500/- and admission made by the Respondent in her cross-examination, belied her defence that she had received only Rs.1,44,500/-.

10. It is further asserted that learned M.M. has not appreciated that the Complainant is having a Gift shop and catering business, which are retail in nature. The Complainant had explained in his cross-examination that the cash amount was from the sales collection from his shop.

11. The learned MM has failed to consider the conduct of the Respondent, who has been lying throughout and has never taken a consistent defence. In the Notice under Section 251 Cr.P.C., she had admitted that she had taken a loan of Rs.2,00,000/- from the Complainant. But in her evidence, she asserted that loan of Rs.1,50,000/- only was given to her by the Complainant. Her claim that she had given five Security blank signed



cheques from serial No.820781 to 820785 to the Complainant, whereas the bank statement of the Respondent Ex. DW-1/A reflects that cheque No.820781 was used by the Respondent herself to withdraw Rs.3,00,000/- on 04.09.2017 and Cheque No.820785 was used by herself to withdraw Rs.45,000,- on 22.08.2017. The Respondent has also lied that on 04.09.2017, she made a cash deposit of Rs.200/-, whereas, as per her statement of account Ex. DW-1/A there was only one cash deposit of Rs.20,000/- on 04.09.2017.

12. The bank statement of the Respondent also reflects that the bank account was opened on 23.03.2017 and was used for collections purpose as immediately after receiving credit of any payment, it was withdrawn on the same day or in the next one or two days. She either withdrew the entire amount or transferred it to her other Bank accounts in HDFC Bank and IndusInd Bank. The defence taken by the Respondent is completely false. She has made allegations against the Complainant in order to coerce the Complainant to withdraw his case.

13. It is further contended that learned MM has not appreciated that the Respondent has not denied her signatures on the cheque or the fact of issuing the cheques in favour of the Appellant. Difference of handwriting is of no consequence, as no credible evidence has been led by the Respondent to rebut the statutory presumption against her or to prove her defence. Rather, Bank Statement of the Respondent Ex. DW-1/A is totally against her defence.

14. It has not been considered that Legal Notice dated 11.07.2018 was duly served upon the Respondent wherein all the material facts were



mentioned to which no rebuttal by way of Reply was given by the Respondent, thereby leading to an adverse inference against her.

15. It is therefore, submitted that the impugned judgement is liable to be set aside.

16. ***Reply was filed by the Respondent***, who asserted that the Complaint filed before the learned MM was nothing but an abuse of process of law and an after-thought by the Complainant to blackmail her. It is submitted that she is a widow lady and taking advantage of her loneliness, the Complainant took ***security cheques*** which merely had her signatures, which is not sufficient for maintaining the Complaint under Section 138 NI Act.

17. The Complainant has failed to show that he had *the financial capacity to finance* such huge amount and to produce any documentary evidence in regard to the investment of money in shares or debentures. There is no privity of contract to show that alleged money was invested by the Appellant in Portfolio Management Business.

18. Furthermore, there is no document whatsoever to even *prima facie* show that the Respondent was in such business where there was cash generation, since it can be done only by way of cheque or transfer of money through bank transactions.

19. The Respondent has denied that she was in the business of Portfolio Management Scheme and claimed that the Complainant has failed to show that Rs.7,50,000/- had been paid by him. Even though there is an entry of Rs.3,00,000/- transfer in her account, but there is no further evidence to corroborate the payment of Rs.4,50,000/-, which is sufficient to discharge the Respondent.



20. There is no document to support the alleged investment nor is there any document / income tax record to prove the making of investments by the complainant in the business of shares / debentures allegedly run by the Respondent. It has been asserted that she has no experience of shares / debentures business and has never thought of taking such huge amounts from the Complainant and the entire story has been cooked up by him.

21. It is further asserted that the alleged cheque in question bearing No.820783 was given in August, 2017, on which the complainant has put the date of 25.06.2018. However, the Statement of Account shows that cheque Nos.820780-820793 had been used between 01.07.2017 and 21.11.2017 and there was no question of issuing the cheque in question on 25.06.2018 in the sum of Rs.7,50,000/-. The loan of Rs.1,44,500/- only was taken by the Respondent which has been duly paid.

22. The Respondent has further stated that she is dealing in *sale of dry fruits* to retailer shops. Sumit Batra, the Appellant and she were neighbours due to which they starting interacting with each other. The Complainant many a times purchased dry fruits from her and visited her house, which resulted in good friendship and relationship of trust and faith between them. The Complainant was aware that the Respondent is a widow and is financially weak. He was doing the business of money lending and on account of financial crunch, the Respondent took a friendly loan of Rs.2,00,000/- from him, but he gave only Rs.1,50,000/-, for which he took five blank signed cheques as security, as per his business policy. It is submitted that two of these blank cheques have been misused by him.



23. It is asserted the learned MM has rightly appreciated the facts to conclude that the complainant had failed to prove the legally enforceable liability and has rightly dismissed the complaint.

24. The Complainant addressed the arguments essentially on the lines of the grounds taken in the appeal. It is further submitted that he has filed a Suit under Order 37 CPC for recovery of Rs.7,50,000/- along with interest *pendente lite* and future interest @ 18 % per annum which has been decreed by the learned ADJ, vide judgment dated 01.03.2021. It is submitted that the judgment of acquittal is therefore, liable to be set aside.

25. Learned counsel for the Respondent had reiterated his arguments as given in the Reply.

26. **Submissions heard and record perused.**

27. The **CT No.7277/2018** was filed by the Complainant /Appellant under Section 138 NI Act in respect of dishonour of the cheque No.820783 dated 25.06.2018 of Rs.7,50,000/- drawn in favour of the Complainant, on account of insufficiency of funds.

28. The respondent has admitted her signatures on the cheque but has taken the defence that blank cheques were given as Security Cheques to secure the Loan of Rs. 1,50, 000/- taken by her, which has had been misused by the Complainant and that *there was no existing liability*.

29. In Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal, (1999) 3 SCC 35 interpreting Section 118(a) of the Act, this Court opined:

*“12. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is*



*rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt.”*

30. Further, in K. Prakashan vs. P.K. Surenderan, (2008) 1 SCC 258, the Apex Court opined that the Act raise two presumptions and held as under:

*“...**firstly**, in regard to the passing of consideration as contained in Section 118(a) therein and, **secondly**, a presumption that the holder of cheque receiving the same of the nature referred to in Section 139 discharged in whole or in part any debt or other liability. Presumptions both under Sections 118(a) and 139 are rebuttable in nature. Having regard to the definition of terms “proved” and “disproved” as contained in Section 3 of the Evidence Act as also the nature of the said burden upon the prosecution vis-à-vis an accused it is not necessary that the accused*



*must step into the witness box to discharge the burden of proof in terms of the aforementioned provision.”*

31. Similar observations were made in the case of M.S. Narayana Menon vs. State of Kerala (2006) 6 SCC 39 that once the accused discharges his initial burden, it shifts to the Complainant.

32. In Basalingappa vs. Mudibasappa, (2019) 5 SCC 418 the Court said that to rebut the presumption and prove to the contrary, it is open to the accused to raise a probable defence, wherein the existence of a legally enforceable debt or liability can be contested. The words ‘*until the contrary is proved*’ in Section 139 NI Act, do not mean that accused must necessarily prove the negative that the instrument is not issued in discharge of any debt/liability, but the accused has two options. The **first option** is to prove that the debt/liability does not exist- and conclusively establish with certainty that the cheque was not issued in discharge of a debt/liability. The **second option** is to prove the non-existence of debt/liability by a preponderance of probabilities by referring to the circumstances of the case.

33. This position has been endorsed by the Apex Court in a catena of judgments in Rajesh Jain vs. Ajay Singh, 2023 SCC OnLine SC 1275 and most recently reiterated in Ashok Singh vs. State of Uttar Pradesh & Anr., 2025 LiveLaw (SC) 383.

34. The Respondent has sought to discharge this onus by setting up a defence that she did not take a Loan of Rs. 7,50,000/- but only of Rs. 1,50,000/- which stands repaid for which she has relied on the evidence available on record.



35. The Respondent had deposed that she was a widow single lady, who was having a shop for supplying the dry fruits in retail. She became friendly with the Complainant, who was having a shop near hers and used to frequently visit her shop for purchasing dry fruits. Having become friendly, she had sought a loan of Rs.2,00,000/- on account of financial constraints, but he gave only Rs.1,50,000/- and took five signed blank cheques as security and also got her signatures on two blank signed papers. The loan of Rs.1,50,000/- was given in August, 2017, which is reflected in her bank statement Ex. DW-1/A.

36. She further deposed that from September, 2017 to February, 2018, she paid Rs.21,000/- every month @ 5 % per month in cash to the complainant towards repayment of loan. She also credited Rs.75,000/- to his account. Thereafter, the complainant asked her to do certain wrong things, which she refused. She claimed that she has already paid more than Rs.2,00,000/- to him, but he has been threatening to misuse her blank signed papers and cheques and the present complaint has been filed.

37. The Complainant on the other hand, asserted that on the inducement and deception by the Respondent, who represented that she was in Portfolio Management Business, he gave Rs.7,50,000/- in the Respondent between 22.08.2017 till 04.09.2017. The Bank Account Statement of the Complainant is Ex. CW-1/1 and CW-1/2, but there is no reflection that Rs.7,50,000/- had been deposited between aforesaid dates in the account of the Respondent.

38. Pertinently, as per the Complainant, the money had been given to the Respondent for investment in Blue Chip Companies through Stock Market to ensure return of about 10% per month. However, the Complainant failed



to produce even one single purchase of share / debentures made by him. It is difficult to accept that had this money been given to the Respondent for investment in Blue Chip Companies through Stock Market, he would not have questioned or ensured the purchase of shares as has been claimed by him. His claim that the money was invested from time to time, is not reflected in his bank statement and also is not corroborated by any purchase of shares of Blue Chip Companies as was claimed by him.

39. To explain the investment of Rs.7,50,000/- with the Respondent, the complainant had relied on the deposit of Rs. 3,00,000/- made in the account of the Respondent on 04.09.2017, as is reflected in her bank statement Ex. DW-1/A. Pertinently, the Bank Statement also reflects that this amount had been withdrawn on the same date vide cheque No.820781 which was one of the five cheques which she had claimed to be given as security cheques to secure the loan of Rs.1,50,000/-.

40. Also, as per the Complainant, he had allegedly given Rs. 3,05,500/- in cash but there are no details forthcoming in regard to this alleged cash payment of part Loan. No Shares Account in which allegedly invest

41. .ents were made by the Respondent, has been proved. The Appellant has miserably failed to prove the investment of Rs.7,50,000/- with the Respondent.

42. The Respondent on the other hand, has taken a defence that Rs.1,50,000/- had been taken by her as loan, which is corroborated by the entries in her bank statements Ex.DW-1/A, which shows that Rs.1,44,000 and Rs.500/- were deposited in her bank account on 22.08.2017 by the Appellant M/s Celebrations.



43. To prove that the Loan amount was returned, it is not denied that Rs.75,000/- had been transferred to the account of the Complainant on 21.09.2017 which she has asserted was towards return of the Loan amount. She also has claimed that she was paying Rs.21,000/- per month from September, 2017 to February, 2018, which come to Rs.1,26,000/-. This amount is added to Rs. 75,000/- it comes to Rs.2,01,000/-, which according to her is the total loan amount along with the interest @ 5 % per month. While it may be a weak defence, but it has been successfully established that the Complainant had not given the advance of Rs.7,50,000/- to the Respondent.

44. Learned MM has rightly referred in detail to the Bank entries, to conclude that the Respondent had been able to show that no amount of Rs.7,50,000/- was ever given by the Complainant to the Respondent for investment in Shares/Debentures. The existence of ***legally enforceable debt or liability had not been proved by the Complainant.***

45. Learned counsel for the Complainant has placed heavy reliance on the Order dated 28.11.2020 under Order 37 Rule 3CPC of the learned ADJ, whereby the Leave to Defend was granted subject to the deposit of 50% of the principal amount (Rs.7,50,000/-) by way of FDR in the Court. The Respondent, however, was unable to abide by this pre-condition, leading to decree of suit under Order 37 CPC.

46. The Appellant has contended that once the Civil Suit has been decreed, it is a proof of legal liability of Rs.7,50,000/- of the Respondent. In this regard, it may be observed that while granting Leave to Defend, the defence of the Respondent was considered in detail, which was found to have some merit and the *Leave to Defend was allowed.* Merely, because the



Suit has been decreed on account of non-fulfilling the condition for grant of leave, it cannot be held as conclusive finding on the outstanding liability of Rs.7,50,000/-.

47. In the light of the aforesaid discussion, it is held that the learned MM has rightly concluded that the complainant had not been able to prove the outstanding liability of Rs.7,50,000/- of which the alleged cheque in question was claimed to have been issued.

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

49. Pending Application, if any, also stand disposed of.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**JUNE 28, 2025/R**