



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

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*Reserved on: 29th April, 2025
Pronounced on: 28th June, 2025*

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CRL.A.597/2025

MOHD. SABIR

S/O Late Sh. Fazlu Khan
R/o House No.901,
1st Floor, Kamra Bangash,
Tiraha Bairam Khan,
Darya Ganj,
New Delhi-110002.

.....Appellant

Through:

versus

SH. AAMIL KHAN

S/o Sh. Mohid Khan
R/o House No.C-49,
Vijay Vihar, Phase-I,
Sector-7, Rohini, Delhi.

.....Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. An Appeal has been filed on behalf of the Appellant/Complainant - Mohd. Sabir to challenge the Judgment dated 23.06.2018, whereby his Complaint under Section 138 Negotiable Instruments Act (*hereinafter*



referred to as “N.I. Act”) was dismissed and the Respondent/Accused - Aamil Khan was acquitted.

2. The Appellant/Complainant, Mohd. Sabir filed a **Complaint Case No.1440/2014** under Section 138 N.I. Act, wherein it was stated that the Respondent, Aamil Khan who was a close relative, issued two cheques in the sum of Rs.2,00,000/- and Rs.50,000/- respectively dated 26.08.2014 drawn on Bombay Mercantile Co-op. Bank Limited, Darya Ganj, New Delhi, which on presentation, got dishonoured *vide* Bank Memo dated 26.08.2014 with the remarks “*funds insufficient*”.

3. The Complainant served a Legal Notice dated 01.09.2014 despite which the Respondent failed to make the payment. Consequently, the Complaint under Section 138 N.I. Act in respect of the two cheques, was filed.

4. Notice under Section 251 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as “Cr.P.C.”*) was given on 18.02.2015 to which the Respondent pleaded *not guilty*.

5. The Complainant examined himself as CW1 and proved the two impugned cheques as Ex.CW1/1 and Ex.CW1/2 respectively. The Bank Return Memo is Ex.CW1/3 and the Legal Notice is Ex.CW1/4.

6. The **Respondent, Aamil Khan in his testimony as DW1** deposed that he had given these two blank cheques to the Complainant at the time of opening of his Account for the purpose of issuance of an ATM Card against his Bank Account. He denied that he had taken any loan from the Complainant.



7. The *learned M.M. in the impugned Judgment*, observed that the Complainant had failed to give any date or month on which the loan of Rs.2,50,000/- had been given by him to the Respondent. It is only in his cross-examination he had tried to fill up the lacunae by claiming that the loan was given on the occasion of marriage of the daughter of the Respondent.

8. *It was held* that though admittedly the two cheques had the signatures of the Respondent, but he had led a probably defence that these blank cheques were given to the Complainant on his asking, for getting the ATM Cards issued against the Account which the Respondent had got opened. *It was thus, concluded that the Complainant has not been able to prove any legally enforceable liability or existing debt and consequently dismissed the Complaint.*

9. *Aggrieved by the said dismissal of the Complaint and Acquittal of the Respondent, the present Appeal has been filed by the Complainant/Appellant.*

10. The **grounds of challenge** are that it has not been appreciated that as per the general practice, no Bank takes cheques for issuing ATM Cards, as claimed by the Respondent as his defence. The story to explain the issue of cheques is therefore, a fictional story cooked up by the Respondent which has been erroneously accepted by the learned M.M., even though there was no evidence led in support thereof. This defence taken by the Respondent was recorded for the first time in his Complaint dated 05.12.2014 made to the Police Station after three months of receiving the Legal Notice. It is clearly an afterthought and a counter-blast to the Legal Notice that was duly served upon the Respondent.



11. The presumption under Section 118 and Section 139 N.I. Act has not been appreciated in the correct perspective. A cheque which admittedly has the signatures of the Respondent, has a presumption that it has been issued in discharge of an existing liability or a debt.

12. It is, therefore, submitted that the impugned Judgment be set aside.

13. The *learned Counsel on behalf of the Respondent* contended that a Civil Suit for Recovery was filed by the Appellant/Complainant, which has also been dismissed.

14. It is asserted that the Complainant does not give any date and occasion on which loan of Rs.2,50,000/- was taken by the Respondent. It is further submitted that the two cheques had been given on account of the close relationship between him and the Complainant. The fiduciary relationship between them has been manipulated and misused in so much as the two blank cheques given by him to the Complainant for the purpose of getting an ATM Card issued, had been misused.

15. It is submitted that there is no merit in the present Appeal, which is liable to be dismissed.

16. **Submissions heard and record perused.**

17. The *facts of the present case* is that the that the Respondent/Accused, who was a close relative, admittedly handed over two cheques totalling to Rs.2,50,000/- dated 26.08.2014 under his signatures, which were dishonoured due to 'insufficient funds'. The Respondent however, took the defence that the Cheques were blank cheques given to the Complainant for issuance of ATM card rather than in discharge of any *legally enforceable debt*.



18. The *Respondent, Aamil Khan as DW-1* explained that he was an illiterate person and the Complainant had assisted him in opening a Bank Account for the first time in the year 2014; a fact which has been admitted by the Complainant in his cross-examination. The Respondent further deposed that because he is an illiterate person and was not aware of the procedures, on the asking of the Complainant that two blank cheques would be required for issuance of the ATM Cards against the Bank Account in the name of Respondent, he had handed over the two cheques under his signatures, but were blank.

19. This plausible defence to explain the handing of the cheques to the Complainant shifted the onus on the Complainant to prove that the cheques in fact had been issued in discharge of a legally enforceable liability.

20. In the Complaint, no mention of legal debt in discharge of which the Cheques were issued, is made. The Legal Notice under Section 138 N.I. Act, Ex. CW-1/4 stated that the Respondent issued two Cheques dated 26.08.2014 against the *amount due towards him* and the said Cheques were dishonoured with remarks "*funds insufficient*". However, the Notice *neither specified any loan amount nor disclosed the underlying reason or transaction for which the said Cheques were issued by the Respondent.*

21. In his cross-examination, the Complainant tried to cover up this lacunae by asserting that the Respondent had taken the loan on the occasion of the marriage of the daughter.

22. On the contrary, the Respondent in his cross-examination explained that his daughter got married on 14.02.2014. The marriage having taken place much prior to the date of issuance of the Cheques, the explanation given



by the Complainant that it was on the occasion of the marriage of the Respondent that the loan was taken, falls flat. Since the marriage had already taken place in February, 2014, there was no occasion for the Respondent to issue the Cheques in August, 2014. This assumes significance as the date on which and the manner in which the Loan was allegedly given, has not been explained.

23. This omission to explain the existence of legally enforceable debt and discrepancy in the testimony of the Complainant, corroborates the defence taken by the Respondent that he had not taken any loan from the complainant, but had given the Two blank cheques to the Complainant in good faith for getting the ATM cards issued against the Bank Account that was admittedly opened sometime in July-August, 2014.

24. This defence/ explanation get established as the Complainant had admitted that he had accompanied and assisted the Respondent in the opening of his Account in the Bank. The two cheques are dated 26.08.2014 which correspond to the date of the opening of the Bank Account.

25. It cannot be overlooked that Respondent is an illiterate person and the Cheques Ex.CW1/1 and Ex.CW1/2 merely had his signatures in Hindi. The contents and the date of the Cheques had been filled subsequently in English. This again corroborates his defence that the two cheques were blank and had only his signatures.

26. The *second aspect* is the *financial capacity of the Complainant* to establish that he had the money to give as loan to the respondent. It has been rightly pointed out on behalf of the Respondent that in the entire Complaint, there is not a whisper about the date on which this alleged loan of



Rs.2.50,000/- was given by the Complainant to the Respondent. The Complainant has also not produced any document to corroborate his claim. Pertinently, no Bank Account or any other document has been produced to establish the financial capacity of the Complainant to give the loan.

27. It cannot also be overlooked that no terms of grant of loan have been stated and it did not even say as to when was the loan returnable. If the case of the Complainant was to be accepted that loan was given on the occasion of marriage of his daughter on 14.02.2014, the issuance of alleged cheques after six months of marriage, again creates a doubt about the explanation given by the Complainant about the loan ever been given to the Respondent.

28. Had the Cheques been issued in discharge of the alleged loan, there is no explanation as to why two cheques of the same date i.e., 26.08.2014 rather than a single cheque, were given to the Complainant. The defence of the Respondent that the two blank cheques had been taken on the assurance that the Complainant would get the ATM card issued against his Account thus, seems plausible.

29. It is a case where the Appellant who is a close relative of the Respondent has taken advantage of the illiteracy of the Respondent in procuring two blank cheques and later misusing the same by filling in the amounts.

30. It is also pertinent to note that on the similar facts, the Civil Suit for Recovery that was filed by the Complainant has also been dismissed.

Conclusion:

31. The learned M.M., thus, had rightly observed that there is no legally enforceable liability or debt proved in the present case and has rightly



dismissed the Petition under Section 138 N.I Act. There is no merit in the present Appeal which is hereby, dismissed.

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

**(NEENA BANSAL KRISHNA)
JUDGE**

JUNE 28, 2025

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