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

% *Judgment delivered on: 12.08.2025*

\+ **CRL.REV.P. 477/2024**

SIMMI ANAND .....Petitioner

Through: Mr. Ashok Kumar Garg, Mr. Sanjeev Kumar and Ms. Pooja, Advocates.

versus

STATE & ANR. .....Respondents

Through: Mr. Rajkumar, APP for the State.
Mr. Kshitij Goel, Mr. Rishav Sharma, Mr. Vishal Choubey, Advocates for R-2.

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. The present revision petition impugns the judgment dated 28.03.2024, passed by the learned Additional Sessions Judge-04, West District, Tis Hazari Courts, Delhi in case titled '*Simmi Anand v. The State and Anr*', whereby the judgment dated 26.06.2023 and order on sentence dated 10.07.2023, passed by the learned Metropolitan Magistrate, West District, Tis Hazari Courts, Delhi in Ct. Case No.1730/2017 was upheld.

2. The petitioner was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 [hereafter '*NI Act*'] and was sentenced to undergo Simple Imprisonment for a period of three months and was directed to pay compensation of ₹4,44,000/- to the complainant, i.e. respondent no. 2 herein.

3. Briefly stated, the facts of the case are that a complaint had been filed before the learned Magistrate by the complainant, alleging therein that, since the complainant had friendly relations with the accused, in the first week of August 2014, the accused had requested a friendly loan of ₹3,00,000/- for a period of 24 months. Being a friend, the complainant had advanced a sum of ₹3,00,000/- to her. The accused, in discharge of her legally enforceable liability, had issued a cheque dated 10.02.2017 for the sum of ₹3,00,000/-, drawn on Union Bank of India, in favour of the complainant. However, when the complainant had deposited the said cheque on 16.02.2017, it had been returned unpaid with the remarks "funds insufficient". A legal notice had been sent on 27.02.2017 to the accused. Despite receipt of the said notice, the accused had failed to comply with its requirements within the stipulated period of 15 days from the date of service. It was alleged that the accused had issued the cheque in discharge of a credit liability knowing fully well that she had insufficient funds in her bank account, and that she had issued the cheque with a malafide intention to cheat the complainant, thereby committing the offence under Section 138 of the NI Act. Cognizance of the offence had been taken, and after the conclusion of the trial, the accused had been convicted as

aforesaid.

4. The learned counsel appearing for the petitioner argues that the accused had clearly rebutted the statutory presumption available in favour of the complainant under Section 139 read with Section 118 of the NI Act. It is submitted that during trial, the accused had taken the defence that she had borrowed only ₹50,000/- from the complainant in the year 2013-2014 at an interest rate of 10% per month and had handed over the cheque in question as a blank signed security cheque. The said loan amount, it is contended, had been repaid in cash in the year 2016, and the complainant had taken the signatures of the accused on a plain paper acknowledging receipt of the said amount. It is further argued that the complainant did not have the financial capacity to advance the alleged loan of ₹3,00,000/- and that the security cheque had been misused. The learned counsel contends that the learned Trial Court had failed to appreciate that the complainant did not discharge the onus of proving that the cheque was issued in respect of a legally enforceable debt or liability, and that no evidence was led to prove the source of arrangement of such a large amount of cash. It is also pointed out that the complaint under Section 138 of NI Act is dated 20.03.2017, whereas the supporting affidavit and pre-summoning evidence are dated 18.03.2017, thereby creating doubt about the genuineness of the proceedings. Moreover, neither in the complaint nor in the legal notice is the specific date or time of extending the alleged loan mentioned, and the complainant has not reflected the said transaction in her Income Tax Returns. In these

circumstances, it is submitted that there was no legal basis for convicting the accused in the present case.

5. The learned counsel for the complainant, on the other hand, argues that the cheque in question was duly issued by the accused in discharge of a legally recoverable debt, within the period of limitation, and was accompanied by an assurance from the accused that the same would be honoured upon presentation. It is contended that the complainant had complied with all the statutory requirements under the NI Act, including timely presentation of the cheque, issuance of legal notice, and filing of the complaint within the prescribed period. The learned counsel submits that both the Trial Court and the Appellate Court have passed well-reasoned orders after appreciating the evidence on record, and no illegality, irregularity, or infirmity can be pointed out in the concurrent findings of fact recorded by the Courts below. It is further argued that the defences raised by the accused are afterthoughts and have been rightly rejected. Accordingly, it is prayed that the present revision petition be dismissed.

6. This Court has **heard** arguments addressed on behalf of either side, and has perused the material placed on record and has also gone through the judgments of both the Courts below.

7. After hearing the arguments advanced by both sides and perusing the record, this Court is of the considered view that the principal contention raised by the learned counsel for the petitioner is that the cheque in question had not been issued in discharge, either

wholly or in part, of any legally enforceable debt or liability as envisaged under Section 139 of the NI Act, but had been issued merely as a security cheque. It has further been contended that the complainant lacked the financial capacity to advance the alleged loan and that such financial capability was never proved on record.

8. In this regard, it is pertinent to note that Section 138 of the NI Act stipulates that, in order to constitute an offence, the complainant must establish that the drawer of the cheque had issued it in discharge, wholly or in part, of a legally enforceable debt or other liability, that such cheque was returned unpaid by the bank on account of insufficiency of funds or because it exceeded the amount arranged to be paid by an agreement with the bank, and that the drawer failed to make payment of the cheque amount within fifteen days of receipt of the statutory notice. It is further significant to observe that under Sections 139 and 118 of the NI Act, a presumption operates in favour of the payee or holder in due course. These provisions, which are relevant for the present case, read as under:

> " **118. Presumptions as to negotiable instruments.—**Until the contrary is proved, the following presumptions shall be made:–
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> (a) of consideration–that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;
>
> (b) as to date–that every negotiable instrument bearing a date was made or drawn on such date;
>
> (c) as to time of acceptance–that every accepted bill of exchange was accepted within a reasonable time after its date

> and before its maturity;
>
> (d) as to time of transfer–that every transfer of a negotiable instrument was made before its maturity;
>
> (e) as to order of indorsements–that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;
>
> (f) as to stamps–that a lost promissory note, bill of exchange or cheque was duly stamped;
>
> (g) that holder is a holder in due course–that the holder of a negotiable instrument is a holder in due course:
>
> Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him....
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> **139**. **Presumption in favour of holder**—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, or any debt or other liability."

9. The presumption, as noted above, is rebuttable in nature. However, as rightly observed by the learned Trial Court, the law on this point is no longer *res integra* – the burden squarely lies upon the accused to rebut the said presumption. In the present case, the cheque bearing the admitted signatures of the accused, drawn on Union Bank of India for an amount of ₹3,00,000/-, was issued in favour of the complainant and was returned unpaid upon presentation for the reason "funds insufficient." It is not in dispute that, despite service of the statutory legal notice, the accused did not make payment of the cheque amount within the stipulated period. Although the learned

counsel for the petitioner has argued that the accused had taken only ₹50,000/- as loan, which had been repaid in cash, and that the cheque in question was misused, the accused has never denied her signatures on the cheque – either in the pleadings or at the stage of her statement under Section 313 of the Cr.P.C.. Therefore, as rightly held by the learned Trial Court and the learned Appellate Court, the accused has failed to discharge the burden of rebutting the statutory presumption in favour of the complainant, namely, that the cheque had been issued in discharge of a legally enforceable debt or liability. On the contrary, the defence evidence led was insufficient to demolish the version put forth by the accused.

10. With respect to the contention that the learned Trial Court erred in its finding on the complainant's financial capacity to advance the loan, this Court finds no merit in the argument. The learned Trial Court had rightly placed reliance on the judgment of the Hon'ble Supreme Court in ***Rohitbhai Jivanlal Patel v. State of Gujarat & Anr.:*** *Crl. Appeal No. 508/2019*, decided on 15.03.2019, wherein it was held that once the statutory presumption under Section 118 read with Section 139(a) of the NI Act arises in favour of the complainant, questions regarding the complainant's source of funds become irrelevant for determining whether the accused has rebutted the presumption. Merely asserting that the complainant failed to prove the source of funds does not amount to rebuttal, particularly when the accused has not led any cogent evidence in defence. In the present case, the complainant has, in fact, placed on record documentary

evidence to substantiate his financial position, including rent agreements executed by him as landlord with various tenants. These rent agreements have remained unchallenged by the accused. Additionally, the complainant has produced his Income Tax Returns for the assessment years 2013–14 and 2014–15 , which reflect rental income of ₹2,16,000/- and ₹3,57,000/- respectively.

11. This Court further observes that the learned Trial Court has correctly noted that the loan transaction in question took place in August 2014, at which time the complainant had sufficient rental income to advance the said sum of ₹3,00,000/-. The unchallenged rent agreements and Income Tax Returns placed on record substantiate this position. On the contrary, the accused has not produced any documentary or oral evidence to support her claim that she had borrowed only ₹50,000/-, which she had allegedly repaid. No receipts, acknowledgements, or corroborative testimony were brought on record to prove repayment of the said sum.

12. It is also pertinent to note that the accused did not lodge any complaint or take any legal steps to recover the blank security cheque which she alleges was misused. Furthermore, the accused has admitted receipt of the statutory legal notice under Section 138 of the NI Act and has also admitted that no payment was made to the complainant within the stipulated period of fifteen days thereafter.

13. In view of these facts, it is evident that the foundational requirements of Section 138 of the NI Act, i.e., issuance of a cheque

towards a legally enforceable debt, dishonour due to insufficiency of funds, service of legal notice, and failure to pay within the prescribed time, stand satisfied. The findings of the learned Trial Court, duly affirmed by the Appellate Court, are based on correct appreciation of the evidence on record as well as the settled position of law regarding the presumptions under Sections 118 and 139 of the NI Act.

14. Accordingly, in light of the foregoing discussion and the settled legal principles governing offences under Section 138 of the NI Act, this Court finds no infirmity, illegality, or perversity in the concurrent judgments of the learned Trial Court and the Appellate Court warranting interference in revision.

15. The petition is, therefore, dismissed, and the conviction and sentence of the petitioner as recorded by the Courts below are hereby upheld.

16. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

AUGUST 12 2025/A
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