



2025:DHC:5877



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 21.07.2025*+ **CRL.REV.P. 310/2024 & CRL.M.(BAIL) 396/2024**

SATISH CHAND SHARMA .....Petitioner

Through: Mr. Manish Gupta, Advocate

versus

MUKESH KUMAR .....Respondent

Through: Mr. M.A. Chaudhary, Mr.  
Vivek Dixit, Mr. Shehzad  
Khan and Mr. Salimuddin,  
Advocates**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of the present petition, the petitioner seeks setting aside of the judgment dated 22.01.2024 passed by learned Additional Sessions Judge, Patiala House Courts, Delhi whereby appeal preferred by the petitioner against the judgment of conviction dated 01.07.2023 and order on sentence dated 03.07.2023 passed by learned Metropolitan Magistrate (NI Act), Rouse Avenue Courts, Delhi, was dismissed.

2. Briefly stated, the facts of the present case are that the complainant had filed a complaint under Section 138 of the NI Act,



alleging therein that he had been acquainted with the respondent and had shared a friendly relationship with him. The accused had approached the complainant and had taken a friendly loan of ₹4,00,000. Thereafter, the accused had become irregular in repaying the loan amount and, after repeated requests, had issued two cheques of ₹1,00,000 each towards the discharge of his liability. However, upon presentation, both cheques had been returned dishonoured vide return memo dated 30.12.2017 with the remarks "funds insufficient." Subsequently, a legal notice had been served upon the accused on 17.01.2018, demanding payment of the cheque amount. Despite service of the said notice, the accused had failed to make the payment. On the basis of the complaint and the pre-summoning evidence led by the complainant, the learned Trial Court had taken cognizance of the offence under Section 138 of the NI Act.

3. The learned counsel for the petitioner submits that the complainant failed to mention the date, time, and mode of the alleged loan transaction, rendering the existence of the loan itself doubtful. He points out that although only the complainant and bank officials were listed as witnesses, CW-2 was introduced during cross-examination but did not support the complainant's case. The learned counsel further submits that, at his very first appearance before the learned Trial Court and during framing of notice under Section 251 Cr.P.C., the accused had clearly stated that the cheque amount had already been repaid. During cross-examination, the complainant admitted to having received ₹2,00,000 from the accused and



acknowledged the receipts issued in this regard. Although a notice was served for ₹4,00,000, the complaint was filed only for ₹2,00,000, without explanation regarding the partial claim or mode of payment. He further argues that the cheques in question were security cheques and not meant to be encashed. Once the complainant admitted receipt of the cheque amount, the statutory presumption stood rebutted. The learned counsel also submits that the complainant failed to specify the date, time, place, or acknowledgment of the loan transaction. With regard to an alleged inconsistency in the application under Section 145(2) of the NI Act, the learned counsel submits that it was due to the oversight of previous counsel and should be ignored in view of the accused's statement under Section 313 Cr.P.C. and the defence evidence, wherein he clearly stated that he had taken a friendly loan of ₹2,00,000, repaid it in full through two payments of ₹1,97,000 and ₹3,000 in February 2016, and that receipts were duly issued. However, the security cheques were never returned. He argues that the complainant concealed this repayment in the complaint but admitted it during cross-examination, indicating dishonesty. The learned counsel lastly contends that the learned Trial Court erred in holding that the accused had failed to rebut the presumption under Sections 118 and 139 of the NI Act, despite having led direct evidence, including the receipts issued by the complainant. Hence, no legally enforceable debt or liability remained.

4. The learned counsel for the respondent, on the other hand,



argues that the judgment passed by the learned Trial Court is based on sound judicial precedent and settled principles of law. He submits that the learned Trial Court has rightly held that the combined effect of Sections 118 and 139 of the Negotiable Instruments Act places the burden of proof on the accused to rebut the statutory presumption, while the presumption favours the holder of the cheque, indicating that the cheque was issued in discharge, either in whole or in part, of a legally enforceable debt or liability. He further submits that the accused has taken inconsistent stands at different stages of the proceedings. In the application filed under Section 145(2) of the NI Act and in his statement recorded under Section 139 of the NI Act, the accused had stated that he had never taken any loan from the complainant. However, in his statement under Section 313 Cr.P.C., he claimed to have obtained a friendly loan of ₹2,00,000 from the complainant, and during cross-examination, he admitted to having paid ₹2,00,000 to the complainant towards the cheque amount. The learned counsel also points out that the accused's claim that the defence taken under Section 145(2) of the NI Act was a typographical error has been raised for the first time in the present writ petition. He further argues that the learned Trial Court has rightly noted that the petitioner neither filed any criminal complaint alleging misuse of the security cheques nor sent any reply to the legal notice issued by the complainant. It is, therefore, submitted that the petitioner has failed to rebut the presumption as required under law, and as such, the judgment of the learned Trial Court suffers from no



legal infirmity. Accordingly, he prays that the present petition be dismissed.

5. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.

6. Before advertng to the facts of the present case, it is considered necessary to reproduce Section 118 of the NI Act, which reads as under:

**“....118. Presumptions as to negotiable instruments.—**

Until the contrary is proved, the following presumptions shall be made:—

(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....”

7. Further, Section 139 of NI Act is set out below:

**“....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, of any debt or other liability...”

8. After hearing the arguments and going through the case file, this Court is of the opinion that the learned Trial Court has rightly held that, in order to rebut the presumption against him, the burden was to be discharged by the petitioner herein. The record as well as the judgment reveals that the petitioner/accused had taken the defence that he had taken a loan of ₹2 lakhs from the complainant, which had already been repaid, and that the complainant had misused the cheque for the purpose of filing the present complaint. However, the application filed under Section 145(2) of the NI Act and the statement recorded under Section 313 of Cr.P.C. reveal that the accused had taken different stands. At the time of filing the application under Section 145(2) of the NI Act, he had denied having taken any loan from the complainant, whereas in his statement recorded under Section 313 Cr.P.C., he admitted to having taken a loan of ₹2 lakhs from the complainant.

9. Furthermore, during his cross-examination, as rightly noted by the learned Trial Court, the accused deposed that, since he had to pay some amount to the complainant, he had paid ₹2 lakhs by way of



cheque. However, during final arguments before the learned Trial Court, it was argued that the accused had already repaid the loan amount of ₹2 lakhs. Therefore, the learned Trial Court has rightly held that the accused had taken three different and mutually contradictory defences: *first*, in the application under Section 145(2) of the NI Act; *second*, in his statement recorded under Section 313 Cr.P.C.; and *third*, during the final arguments.

10. It has also been rightly held by the learned Trial Court that the accused had not placed on record any evidence to show that he had ever requested the complainant to return the security cheques. No complaint was filed by him in this regard either.

11. The record also reveals that the complainant had duly proved, by leading evidence, that he had extended a friendly loan of ₹4 lakhs to the accused. This Court also notes that, in the present case, the accused has admitted his signatures on the cheques in question. He has also admitted the receipt of the legal demand notice, as reflected in his statement recorded under Section 313 of Cr.P.C. In view of these admitted facts, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act, 1881, squarely operate against the accused.

12. It is a settled position of law that once the execution of the cheque and the receipt of legal notice are admitted, a presumption arises in favour of the holder of the cheque that it was issued in discharge, either in whole or in part, of a legally enforceable debt or



liability. The burden then shifts on the accused to rebut this presumption by raising a probable defence either by leading direct evidence or by pointing out serious contradictions or improbabilities in the complainant's case.

13. This Court notes that, although at one stage the accused had taken the stand that no loan was ever taken by him from the complainant – a stand reiterated even before this Court and in his written submissions on the ground that no time, date, or place of the alleged loan had been mentioned – he, in the same breath, admitted to having taken a loan of ₹2 lakhs from the complainant, which he claims to have repaid, and that the cheques were given only as security. Therefore, the accused has failed to rebut the statutory presumptions under Sections 118 and 139 of the NI Act. On the contrary, his shifting defence and admissions made during the course of proceedings lend further credence to the complainant's case.

14. Further, the learned Trial Court correctly observed that the signature on the cheques in question was admitted by the accused. Accordingly, the presumption under Section 118 of NI Act regarding consideration and under Section 139 of NI Act regarding legal liability was to be rebutted by the accused. However, he failed to do so, either by leading cogent evidence or by producing anything on record to substantiate his claim that the cheques were issued merely as security.

15. Therefore, this Court finds no infirmity in the conclusion





2025:DHC:5877



reached by the learned Trial Court that the statutory presumption in favour of the complainant remained unrebutted. The accused, by now admitting that he had indeed taken a loan from the complainant – albeit claiming it to be ₹2 lakhs instead of ₹4 lakhs – has contradicted his own earlier stand of complete denial. Furthermore, since he has failed to bring on record any evidence to support his claim that the cheques (which admittedly bear his signatures) were issued merely as security, the presumption under Sections 118 and 139 of the NI Act stands unrebutted. On the contrary, his shifting stand fortifies the complainant's case that a loan was in fact extended, and the complainant, accordingly, filed a complaint under Section 138 of the NI Act for recovery of ₹2 lakhs – being the unpaid portion of the total loan of ₹4 lakhs.

16. In view of the above, this Court finds no reasons to interfere with the orders passed by the Courts below. The conviction of the petitioner is upheld. The present petition is accordingly dismissed. Pending application, if any, also stands disposed of.

17. The judgment be uploaded on the website forthwith.

**DR. SWARANA KANTA SHARMA, J**

**JULY 21, 2025/zp**

*T.S.*