



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

Date of decision: 28<sup>th</sup> FEBRUARY, 2022

IN THE MATTER OF:

+ **CRL.M.C. 796/2022 & CRL.M.A. 3316/2022 (Stay)**

SH SATINDERJEET SINGH

..... Petitioner

Through: Mr. Deepak Kohli, Advocate

versus

SAMEER SONDHI

..... Respondent

Through: None

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**SUBRAMONIUM PRASAD, J.**

1. The petitioner seeks to call for record and quash the Complaint Case No.1740/2021 for offence under Section 138 of the Negotiable Instruments Act, 1881 titled as Sameer Sondhi Vs Satinderjeet Singh.
2. The averments made in the complaint are as under:
  - a) In the month of June, 2019, the petitioner approached the complainant/respondent herein and requested for a friendly loan of Rs.9,00,000/-.
  - b) It is stated that considering the financial difficulties and friendly relations with the petitioner, the complainant advanced a loan for a sum of Rs. Rs. 9,00,000/-.
  - c) It is stated that in the month of December, 2019, the



petitioner/accused again approached the complainant and requested for another friendly loan for a sum of Rs.6,00,000/-. It is stated that the complainant advanced another friendly loan for a sum of Rs.6,00,000/-. It is stated that out of Rs.6,00,000/-, a sum of Rs.4,90,000/- was given through RTGS and Rs.1,10,000/- was given in cash.

- d) It is stated that in discharge of his liability towards the complainant, the petitioner issued a cheque bearing No.001650 dated 25.03.2021 for a sum of Rs.15,00,000/- drawn on the Central Bank of India, Badarpur, New Delhi in favour of the complainant/respondent.
- e) It is stated that, subsequently, the said cheque was presented by the complainant for encashment with HDFC Bank Ltd., Meera Bagh, New Delhi. It is stated that the said cheque was returned unpaid with a remark "Exceeds Arrangement" vide cheque returning memo dated 12.04.2021. It is stated that, thereafter, a legal notice was issued to the petitioner on 05.05.2021, calling upon the petitioner to pay the amount of Rs.15,00,000/-, and it was stated that on failing to pay the said amount, legal proceedings will be instituted against the petitioner. The notice was duly served on the petitioner, however, the payment was not made by the petitioner. On 11.06.2021, the Complaint Case bearing No.1740/2021 for offence under Section 138 of the Negotiable Instruments Act, 1881 was registered.
3. The Magistrate vide order dated 29.10.2021, after recording pre-summoning evidence, issued summons to the petitioner herein. On 18.12.2021, the petitioner appeared before Court and was granted bail subject to his furnishing a personal bond for a sum of Rs.1,00,000/- with



one surety of the like amount. The notice under Section 251 Cr.P.C was framed. The petitioner had admittedly given an outline of defence in the Court and was directed to file the physical document before the next date of hearing. On 18.12.2021, the learned counsel for the complainant submitted before the learned Trial Court that he has no objection if the complainant/respondent is cross-examined by the petitioner/accused under Section 145 (2) of the Negotiable Instruments Act, 1881. Accordingly, the complainant/respondent was directed to be present physically in the Court so that the complainant can be cross-examined by the petitioner/accused and the evidence shall be recorded as per the Delhi High Court VC Rules, 2021.

4. The petitioner, thereafter, has preferred the instant petition by stating as under:

- a) It was submitted by the counsel for the petitioner that the complainant/respondent has not placed on record any documentary proof to establish that he has advanced a cash payment for a sum of Rs.1,10,000/- as loan.
- b) It was submitted that the petitioner gave instructions to his nephew Mr. Gurjyot Singh, who deposited a sum of Rs.2,69,000/- through UPI (Unified Payment Interface) on various dates in the bank account of the wife of the complainant/respondent.
- c) It was submitted that the details of the payment made by the nephew of the petitioner in the bank account of the wife of the complainant through UPI (Unified Payment Interface) has been given in the petition which reads as under:



<b>BANK OF THE PETITONE R'S NEPHEW</b>	<b>ACCOUNT NO. OF THE PETITIONER'S NEPHEW</b>	<b>AMOUNT</b> <small>NEUTRAL CITATION NO: 2022/BHC/800775</small>	<b>DATE</b>	<b>IN FAVOUR OF</b>	<b>M</b>
CENTRAL BANK OF INDIA	3063349264	20,000/-	09.06.2020	MEENU SONDHI IN HER ACCOUNT	UPI TRANSFER
CENTRAL BANK OF INDIA	3063349264	20,000/-	19.06.2020	MEENU SONDHI IN HER ACCOUNT	UPI TRANSFER
CENTRAL BANK OF INDIA	3063349264	20,000/-	04.07.2020	MEENU SONDHI IN HER ACCOUNT	UPI TRANSFER
CENTRAL BANK OF INDIA	3063349264	20,000/-	09.07.2020	MEENU SONDHI IN HER ACCOUNT	UPI TRANSFER
CENTRAL BANK OF INDIA	3063349264	20,000/-	27.07.2020	MEENU SONDHI IN HER ACCOUNT	UPI TRANSFER
CENTRAL BANK OF INDIA	3063349264	20,000/-	09.08.2020	MEENU SONDHI IN HER ACCOUNT	UPI TRANSFER
CENTRAL BANK OF INDIA	3063349264	20,000/-	21.09.2020	MEENU SONDHI IN HER ACCOUNT	UPI TRANSFER
CENTRAL BANK OF INDIA	3063349264	20,000/-	15.10.2020	MEENU SONDHI IN HER ACCOUNT	UPI TRANSFER

CRL.M.C. 796/2022

Page 4 of 11



NEUTRAL CITATION NO: 2022/DHC/000775

CENTRAL BANK OF INDIA	3063349264	27,000/-	22.10.2020	MEENU SONDHI IN HER ACCOUN T	UPI TRANSFER
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CENTRAL BANK OF INDIA	3063349264	20,000/-	19.02.2021	MEENU SONDHI IN HER ACCOUN T	UPI TRANSFER
CENTRAL BANK OF INDIA	3063349264	20,000/-	17.02.2021	MEENU SONDHI IN HER ACCOUN T	UPI TRANSFER
CENTRAL BANK OF INDIA	3063349264	20,000/-	04.03.2021	MEENU SONDHI IN HER ACCOUN T	UPI TRANSFER
CENTRAL BANK OF INDIA	3063349264	12,000/-	07.03.2021	MEENU SONDHI IN HER ACCOUN T	UPI TRANSFER
	<b>Total amount revived by the complainant's wife</b>	2,69,000/-			



5. Therefore, the contention of the counsel for the petitioner is that after having received Rs.2,69,000/- from the petitioner through his nephew prior to the presentation of the cheque, the complainant could not have presented the cheque of Rs.15,00,000/- which was much more than the amount due and payable to the complainant and the complaint should be quashed on this ground.

6. It is stated by the learned counsel for the petitioner that Section 56 of the Negotiable Instruments Act, 1881, provides for an endorsement on a negotiable instrument, in case of part-payment and the instrument can thereafter be negotiated for the balance amount. He states that the complainant had not made endorsements on the various amounts to the tune of Rs.2,69,000/- which was received in the bank account of his wife from the nephew of the petitioner and the complainant could not have presented the cheque which was for a larger amount that is due and payable.

7. Heard learned counsel for the petitioner and perused the material on record.

8. The purpose of inserting Chapter XVII in the Negotiable Instrument Act, 1881 was to bring out sanctity in commercial transactions. It is admitted that the petitioner had issued a cheque for a sum of Rs.15,00,000/-. Section 139 of the Negotiable Instrument Act, 1881, creates a presumption that unless contrary is proved, the holder of a cheque has received the cheque for discharge in whole or in part of any debt or other liability.

9. The Supreme Court in Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197, has observed as under:

***“33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular,***



*Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.”*

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*“36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.” (emphasis supplied)*

10. The Supreme Court in Rohitbhai Jivanlal Patel v. State of Gujarat, (2019) 18 SCC 106, has observed as under:

*“15. So far the question of existence of basic ingredients for drawing of presumption under Sections 118 and 139 of the NI Act is concerned, apparent it is that the appellant-accused could not deny his signatures on the cheques in question that had been drawn in favour of the complainant on a bank account maintained by the accused for a sum of Rs 3 lakhs each. The said cheques were presented to the bank concerned within the period of their validity and were returned unpaid for the reason of either the balance being insufficient or the account being closed. All the basic ingredients of Section 138 as also of Sections 118 and 139 are apparent on the face of the record. The trial court had also consciously taken note of these facts and had drawn the requisite presumption. Therefore, it is required to be presumed that the cheques in question were drawn for*



*consideration and the holder of the cheques i.e. the complainant received the same in discharge of an existing debt. The onus, therefore, shifts on the appellant-accused to establish a probable defence so as to rebut such a presumption.”*

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***“17. On the aspects relating to preponderance of probabilities, the accused has to bring on record such facts and such circumstances which may lead the Court to conclude either that the consideration did not exist or that its non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that the consideration did not exist. This Court has, time and again, emphasised that though there may not be sufficient negative evidence which could be brought on record by the accused to discharge his burden, yet mere denial would not fulfil the requirements of rebuttal as envisaged under Sections 118 and 139 of the NI Act. This Court stated the principles in Kumar Exports [Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513 : (2009) 1 SCC (Civ) 629 : (2009) 1 SCC (Cri) 823] as follows : (SCC pp. 520-21, paras 20-21)***

*“20. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by*





*consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act.*

**21.** *The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during*



*the trial. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, therefore, the presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue.”*

(emphasis supplied)

11. The contention of the petitioner is that out of the loan amount, a sum of Rs.2,69,000/- has been paid and, therefore, the cheque, which has been deposited by the complainant, was for an amount greater than the amount due and payable. The bank transfers have been admittedly made by the nephew of the petitioner in the bank account of the wife of the complainant. Whether the amounts given by the nephew of the petitioner was at the behest of the complainant or it was deposited in the bank account of the wife of the complainant in lieu of the debt incurred by the petitioner or not, are pure questions of fact which can be established only by leading evidence by the petitioner. The details of the UPI (Unified Payment Interface), which has been filed by the petitioner, show that the amounts deposited in the bank account of the wife of the complainant by the nephew of the petitioner cannot be taken as evidence which is unimpeachable in nature and sterling in quality so as to demolish the case of the respondent and to substantiate the contention of the petitioner that the proceedings initiated under Section 138 of the Negotiable Instrument Act, 1881 is a complete abuse of the process of law. It is well settled that the Courts should primarily proceed on the averments in the complaint, and the defence of the accused cannot be looked at the stage of issuing summons unless it can be shown on admitted



documents which the Apex Court describe as "unimpeachable in nature and sterling in quality" to substantiate that there was no debt due and payable by the person who has issued the cheque or that the cheque amount is large than the debt due.

12. It is well settled that the inherent powers should be exercised sparingly, with circumspection and in the rarest of rare cases when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of law or if the ends of justice is required that the proceedings ought not to be quashed.

13. As stated above, at this stage, it cannot be accepted that the amounts deposited by the nephew of the petitioner in the bank account of the wife of the complainant was towards the debt incurred by the petitioner.

14. On the basis of available material, this Court finds that, no case of quashing the complaint is made out.

15. Accordingly, the petition is disposed of along with the pending application(s), if any.

**SUBRAMONIUM PRASAD, J**

**FEBRUARY 28, 2022**

*S. Zakir*