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

% ***Reserved on: 4th April, 2025***
Pronounced on: 30th June, 2025

\+ **CRL.L.P. 95/2021**

ANMOL RATTAN BAKSHI
S/o Shri Som Raj Bakshi
R/o Brisk Lumbini Apartments,
Flat No.D-073, Sector-109,
Dwarka Expressway, Gurugram-122017
Mob: 9811017835
Email: ratanbakshi@yahoo.com .....Petitioner

Through: Mr. Sanjeev Kumar, Advocate.

versus

SH. SUBHASH CHAND RASTOGI
S/o Late Gouri Shankar Rastogi
R/o House No.23, Street No.1,
Sarpanch Wara, Mandavali,
Delhi-110092
Mob. No.9818112772 .....Respondent

Through: Mr. Sarvesh Kumar, Advocate

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

CRL.L.P. 95/2021

1. The Leave Petition under Section 378 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.PC*) has been filed on behalf

of the Petitioner/Complainant, Mr. Anmol Rattan Bakshi against the Judgment dated 30.01.2021 of the learned Metropolitan Magistrate, South-West Delhi, Dwarka, New Delhi, dismissing the Complaint under S.138 Negotiable Instrument Act, 1881 (*hereinafter referred to as 'N.I. Act'*).

2. For the reasons stated, the Leave Petition is allowed and the same is disposed of accordingly.

CRL. A...../2025 (to be numbered)

3. Criminal Appeal under Section 378 of the Code of Criminal Procedure, 1973, has been filed on behalf of the Appellant/Complainant, Mr. Anmol Rattan Bakshi, against the Judgment dated 30.01.2021 of the learned Metropolitan Magistrate, New Delhi, ***who has dismissed the Complaint bearing CC No. 5109/2017 under Section 138 of the N.I. Act.***

4. The Complainant in his Complaint had averred that he had family relations with the Respondent/Accused, for last 3-4 years. On various occasions and especially on 20.08.2012 and 13.12.2012, the Respondent requested him for an advance of friendly loan in the sum of Rs.20,00,000/- as he was in deep financial crises. He agreed to repay the loan by February-March, 2016. Since the Complainant was having friendly terms, he advanced the friendly loan of Rs.20,00,000/- and to ensure the return of the said amounts, an *Undertaking* was executed by the Respondent, on both the dates.

5. As per the Complainant, a sum of Rs.5,00,000/- was returned by the Respondent in September, 2016 and he promised to return the balance within 2-3 months. To establish his *bona fide*, he also handed over two cheques in the sum of Rs.10,00,000/- and Rs.5,00,000/- respectively, both

dated 20.01.2017, with an assurance that the cheques on presentation, would be honoured.

6. The Complainant presented the two cheques on 27.01.2017 for encashment, but were returned unpaid *vide* Memo dated 02.02.2017 for the reasons 'Funds Insufficient'. The Complainant approached the Respondent but he avoided even to talk to the Complainant and tried to put off the matter on one pretext or the other.

7. The Complainant thus, issued a Legal Demand Notice dated 16.02.2017, through Speed Post to the Respondent at his last known address, which was duly served on 21.02.2017. Despite the service of Legal Notice, the Respondent failed to pay the cheque amount.

8. *Consequently, the Complaint under Section 138 of the N.I. Act, was filed against the Respondent.*

9. Upon service of Summons, the Respondent entered appearance on 30.08.2017. ***Notice under Section 251 Cr.P.C.,*** was framed on 25.09.2017 in which the Respondent pleaded not guilty and claimed trial.

10. In his *statement of defence*, he stated that no loan had been taken by him but the impugned cheques in fact, had been given ***as security cheques*** for the Chit Fund Committee which was commenced by the Complainant in April, 2012 being for 20 months, and was to conclude in November, 2013 in which instalment of Rs.50,000/- per month was payable by every member.

11. When Committee was being allotted to a member at a pre-mature stage, then the Complainant used to take the *cheques for security of the amount of the Committee.* The First Committee of the Applicant, was released in August, 2012 when the Complainant demanded security cheques

for release of amount with an assurance that on completion of Committee, cheques would be returned.

12. On his assurance, he handed over the Cheque bearing No. 229865, drawn on State Bank of Hyderabad, Patparganj, Delhi, for Rs.10,00,000/- without filling the name and the date. After conclusion of the Committee, cheque was not returned by the Complainant, on the pretext that it was misplaced.

13. The Respondent had further stated that another Committee of Rs.5,00,000/- in February, 2014, was commenced by the Complainant of which he became the member. It was for 20 months and the share of each member was Rs.25,000/- per month. The Committee was released in favour of the Respondent, in September, 2014.

14. Again, the Complainant demanded a *security cheque*. On being asked about the previous cheque, he was told that the same is lost. Consequently, he handed over cheque bearing No. 921496, drawn on State Bank of Hyderabad, Patparganj, Delhi, for Rs.5,00,000/- without filling the name and the date. *However, the said cheque also was not returned by the Complainant, on different pretext and excuses*.

15. The Complainant was duly cross-examined by the Respondent. Thereafter, his Statement under Section 313 Cr.P.C. was recorded on 21.11.2019, on which he reiterated his defence as stated above. He further stated that he had made a Complaint with the Police about the cheques not being returned to him by the Complainant despite his request. *He admitted receiving the Legal Notice of Demand*. The Respondent did not lead any evidence and did not examine any witness in support of his defence.

16. The ***learned Metropolitan Magistrate*** considered the evidence on record and concluded that there was no document to corroborate the giving of loan of Rs.20,00,000/- to the Respondent. Moreover, the alleged undertakings executed by the Respondent at the time of taking the loan, were reported by the Complainant, to have been misplaced. There was no record to corroborate the giving of loan to the Respondent, disbelieving the case of the Complainant. ***It was held that though*** the cheques admittedly had the signatures of the Respondent but he had successfully rebutted that there were existing liability and consequently, ***dismissed the Complaint under Section 138 of N.I. Act.***

17. *Aggrieved by the said Judgment, the present Appeal has been filed.*

18. The Appeal has been challenged ***on the ground*** that the learned Metropolitan Magistrate had observed that friendly loan in question was given without interest, which raises an eyebrow as to the genuineness of the transaction. However, the Respondent in his defence evidence had stated that he was in construction business, which he does in cash only and is not an Income-Tax Assessee. It has not been overlooked that the Complainant and the Respondent have closed family ties since 2008-2009 when they admittedly had gone on a foreign vacation trip together. In 2012, the Respondent had requested for friendly loan in cash because of acute financial crisis in his construction business, which had arisen due to slump in the real estate market. Being a well wisher and a friend, Complainant had given the loan of Rs.20,00,000/- in cash.

19. The bare perusal of Statement of HDFC Bank and SBI Bank of Complainant, shows that the Complainant had the financial capacity to give

the loan of Rs.20,00,000/-. The loan was given on two dates; viz. *first loan of Rs.10,00,000/-* was given on 20.08.2012, for which the Complainant had withdrawn cash of Rs.5,00,000/- each on 17.08.2012 and 18.08.2012 from his Saving Account maintained in HDFC Bank, Gurgaon Branch, Sector-14, Haryana. The *second loan of Rs.10,00,000/-* in cash was given to the Accused on 13.12.2012, by withdrawing the cash of Rs.5,00,000/- each on 11.12.2012 and 12.12.2012 from SBI Saving Account maintained by the Complainant at Dwarka, New Delhi Branch.

20. It is further contended that the Respondent in his Statement under Section 313 Cr.P.C., not only admitted his signatures on the cheques but also admitted filling the amounts in the cheques. This aspect has not been appreciated by the learned Metropolitan Magistrate.

21. Reliance is placed on the observations of the Apex Court in the Case of *Vijay vs. Laxman and Anr.* (2013) 3 SCC 86 that where the signatures on the cheque are admitted by the Accused, the offence under Section 138 N.I. Act would clearly be held to have been made out.

22. It is further contended that the learned Metropolitan Magistrate fell in error in accepting the defence of the Respondent, who appeared as DW-1, to reiterate that the two cheques Ex.CW-1/1 and CW-1/2 had been issued as *security cheques* in lieu of the Chit Fund Committee being run by the Complainant. Once, the Respondent had admitted issue of cheques under his signatures, he with a view to defraud the Complainant, took this defence of alleged Chit Fund Committee being run by the Complainant of which there is no proof.

23. The Complainant is a Mechanical Engineer working as a Senior Consultant with the Parker Company. No document has been produced by the Respondent in evidence of the alleged Chit Fund except a bald claim. The Complainant in his evidence had clearly deposed about his profession and had denied running any Committee from 2012 to 2016. The Respondent in his defence evidence, has also not been able to prove that any Committee was being run by the Complainant.

24. The Complainant has further alleged that the observations of the learned Metropolitan Magistrate that the cheques in question were actually issued in the year 2012 and 2014 as per the Respondent, which is corroborated by the Complaint made by the Respondent in the Police Station about the misuse of cheques in question.

25. It is submitted that the Respondent with an ulterior and *mala fide* intention having taken a loan of Rs.20,00,000/- in cash and having no intention to return the same, has taken a false defence of the cheques being issued as a security in the year 2012 and 2014. The Complaint dated 08.03.2017 at Police Station Mandawli, Delhi, had been filed with a *mala fide* intention as an after-thought, after the service of the Legal Notice dated 16.02.2017.

26. The Complainant has further asserted that the Bank Statement of State Bank of Hyderabad had been produced by the Respondent during his defence evidence. From the Bank Statement, it seems that with *mala fide* and ulterior motive, two old cheques have been given by the Respondent to the Complainant, deliberately to defraud him. The Complainant realised

during the trial of this case that since beginning, the Respondent had ill intention and had planned it carefully.

27. The Complainant has further claimed that the observations of the learned Metropolitan Magistrate that the cheques in-question were blank signed cheques, which no person who knew the amount to be repaid, would issue unless it is given as security. In this context, it is stated that the cheques were not blank signed cheques, but the Respondent had filled the amount of Rs.10,00,000/- and Rs.5,00,000/- respectively on them in his own hand writing, which was also admitted by him in his Statement under Section 313 Cr.P.C. Even in his Application under Section 145(2) Cr.P.C, the Respondent had nowhere pleaded that he did not fill the date and name over the cheques, implying that the amounts had been filled by him. *Therefore, the observations of the learned Metropolitan Magistrate in this regard, were incorrect.*

28. It is further contended that the learned Metropolitan Magistrate erred in observing that the Complainant has not reflected this loan in his ITR. However, the Complainant's financial capacity to grant loan of Rs.20,00,000/- is not in doubt inasmuch as it is corroborated by his Statements of HDFC Bank and SBI Bank, which reflect that just one or two days before the grant of loan, the amount had been withdrawn by the Complainant from his Bank Accounts. The non-declaration of loan amount of Rs.20,00,000/- in Income-Tax Return by the Complainant, cannot be a ground to dismiss the Complaint under Section 138 of N.I. Act, as has also been observed by the learned Metropolitan Magistrate. Reference is made to the Case of *Guddo Devi @ Guddi vs. Bhupender Kumar,* Crl. Revision

Petition No. 1246/2019, decided on 11.02.2020 wherein it was held that any person not disclosing the loan in the ITR, may attract imposition of penalties under the Income-Tax Act, but would not render the debt un-enforceable or preclude the lender from its recovery. *The issuance of cheques for the amounts mentioned therein is not in dispute and is admitted by the Respondent.*

29. In the end, it is contended that the Bank Statements produced by the Complainant, have not been appreciated in the right perspective. Furthermore, the bald defence of the Respondent that he had issued the cheques as security for Chit Fund Committee has not been proved by any cogent evidence.

30. The observations of the Supreme Court of India in the case of *Basalingappa vs. Mudibasappa*, (2019) 5 SCC 418, is not applicable to the present case as the defence of the Accused in the said case, was that the cheque amount was given to the Complainant by way of loan. When proceedings under Section 138 of N.I. Act were initiated, the Accused denied liability and raised a defence questioning the financial capacity of the Complainant. The Complainant failed to prove his financial capacity and in this context, it was observed by the Apex Court that the Accused had been able to prove his probable defence while the Complainant had failed to prove the financial capacity.

31. It is submitted that the case of *Basalingappa* (supra) is distinguishable as in the present case, the financial capacity of the Complainant, has not been challenged by the Respondent.

32. It is further contended that despite service of Legal Notice, the Respondent has chosen not to file his Reply, which reveals that the defence and the Complaint dated 08.03.2017, filed by him with Police Station Mandawli, is an after-thought.

33. It is further asserted that the learned Metropolitan Magistrate has failed to appreciate the facts in correct perspectives. The Complainant had disclosed in his Complaint that a friendly loan of Rs.20,00,000/- was given on various dates including 20.08.2012 and 13.12.2012. Thus, the Respondent had been making request for the loan even prior to 20.08.2012 and 13.12.2012 and as well as, on these dates, the amount of Rs.20,00,000/- have been given in two parts; once in the sum of Rs.10,00,000/- in cash on 20.08.2012 and on the second occasion on 13.12.2012, in the sum of Rs.10,00,000/-.

34. It is contended that the Respondent has failed to produce any member of the alleged Committee in support of his defence of Complainant running a Chit Fund/Committee. He has also not filed any proof in support of his claim of payment of monthly sum of Rs.50,000/- (that too for 20 months) in the Committee nor has he filed any receipt of the aforesaid payments to the Committee. *The Claim of the Respondent that the Complainant was running a Committee and the cheques had been given as security, has no merits.*

35. It is, therefore, contended that the impugned Judgment is liable to be set-aside and the Respondent may be convicted under Section 138 of N.I. Act.

36. The ***Respondent had filed his Counter-Affidavit/Reply*** wherein he asserted that there is no merit in the Appeal, which is liable to be dismissed.

37. It is submitted that it is a settled law that acquittal Order cannot be interfered lightly by the Appellate Court, even though it has wide powers to review the evidence and to come to its own conclusion, as has been held by this Court in the case of *Neeraj vs. Ramesh Pratap Singh*, 2012 (3) JCC (NI) 235. There is a presumption of innocence of the Accused, which is further strengthened by the acquittal. If there are two views possible on the evidence adduced before the Trial Court and the view taken by the Trial Court is plausible view, then the Appellate Court must not interfere with such Judgment.

38. The Appeal could have been held maintainable only if the Appellant was able to show that the conclusions arrived at by the Trial Court, are perverse or there is misapplication of law or any other legal principle. Merely because another view is possible, the Judgment of acquittal cannot be set-aside as has been held in the case of *Arulvelu and Anr. vs. State*, 2009 (10) SCC 2006 wherein the earlier Judgment in *Ghurey Lal vs. State of Uttar Pradesh*, (2008) 10 SCC 450, was referred to with approval.

39. ***On merits***, it is contented that the Complaint was filed in the year 2017, but according to the Complainant, he had known the Respondent since last 3-4 years. He also claimed to have close relationship with the Respondent, to whom he advanced Rs.20,00,000/- as a loan. The closeness of the relationship between the parties can be assessed from the fact that during the period of 2012-2016, the Appellant visited the house of the Respondent only twice and that too for the repayment of the loan, which was not due before March, 2016, as per the contents of the Complaint.

40. Merely the standalone incident of the parties having gone together to Bangkok for a vacation as admitted by the Respondent during his cross-examination cannot be the sole fact to establish the closeness between the parties.

41. It is further contended that this friendly loan was alleged to be without interest, which further raises eyebrow as to the genuineness of the transaction as it is difficult to comprehend that loan without interest, would be given for such an amount and that too, without any written Agreement or any security.

42. It is asserted that the Appellant has baked a new false story in his Leave to Appeal that the Respondent is a builder by profession and engaged in the business of construction and sale of flats, shops, houses etc. This fact has been pleaded for the first time and did not emerge either in the Complaint or during the trial.

43. Furthermore, it is unbelievable that the Respondent approached the Complainant, for a friendly loan at the Metro Station and the loan was allegedly given to him on the same day at Metro Station. Further, the Appellant in his cross-examination had deposed that he had given the loan to the Respondent, on the advice of Mr. Sumit Rastogi but incidentally, he has not been examined to confirm the alleged loan transaction.

44. It is further submitted that despite the Complainant admitting to be an Income-Tax Payee, there is no reason why the loan amount had not been reflected in his ITRs, which make it crystal clear that the cheques issued by the Respondent, have been misused by the Appellant.

45. It is asserted that though the Appellant with *malafidely* has stated in his cross-examination that he did not know the guidelines of the RBI regarding the cash transactions. Furthermore, he admitted in his cross-examination that he did not remember the dates when cheques in question were handed over to him but asserted that it was so done in January, 2017. However, on his cross-examination, conducted on subsequent date i.e. 09.10.2019, he claimed that the cheques were handed over in December, 2016. It is claimed that it is difficult to believe that an educated person would not be aware of the RBI Guidelines. It is also not believable that he would not be aware of the date and year, on which the loan was given.

46. Furthermore, according to the Complainant, he has retired as Mechanical Engineer and was working in Parker Company as a Senior Consultant in the year 2013-2014. It is difficult to accept that a person of such high education and placement, would violate the Section 269 SS of the Income-Tax Act, by paying such amount in cash.

47. Reliance has been placed on *S.K. Jain vs. Vijay Kalra*, 2014 (2) JCC 54 wherein this Court had held that no Agreement and Promissory Note executed at the time of loan of Rs.31,00,000/- allegedly advanced by the Complainant became questionable, as under Section 269 SS Income-Tax Act, 1961, a loan of more than Rs.20,000/- cannot be advanced and accept by way of a cheque, demand draft etc. The advance cash loan of more than Rs.20,000/- is punishable.

48. The learned Metropolitan Magistrate has thus, rightly disbelieved the claim of the Complainant of having given a huge loan of Rs.20,00,000/- in cash, without securing it by any document.

49. It is further asserted that according to the Complainant, the Respondent had promised to repay the loan amount in the month of February or March, 2016 but in his cross-examination, he stated that he received both the cheques in January, 2017/December, 2016; a version which is unacceptable and is a bundle of lie.

50. It is further submitted that the Complainant has right to justify the loan of Rs.20,00,000/- by relying upon various cash entries shown in his Bank Statement, but he has not proved that these amounts were given to the Respondent at the Metro Station.

51. It is the settled proposition of law that the Accused for discharging his burden of proof under Section 138 of N.I. Act, need not examine himself but can discharge such burden on the basis of the material which is already on record. The standard of proof in criminal cases is distinct. It is the prosecution, which must prove the guilt of the Accused beyond reasonable doubt and the standard of proof so as to prove the defence on the Accused, is only of preponderance of probabilities.

52. Furthermore, the Respondent in his cross-examination had stated that he was doing construction work (as Contractor) and also stated that he is running a boutique and is a LIC Agent but surprisingly, these facts were not disclosed by the Complainant in the Complaint or in his cross-examination. He failed to explain the nature of work of the Respondent during the year 2012. He is neither a builder nor engaged in real estate business as is alleged by the Appellant in this Appeal.

53. The Respondent in his cross-examination had explained that the Committees had 20 members of which Mr. Jain, Mr. Gulati and Mr. Bansal

were also the members but not a single suggestion was given to rebut this testimony. In the absence of any challenge to the examination-in-chief of the Respondent, it has to be accepted that the Appellant in fact was running a Chit Fund. The Respondent had further explained that he had further deposed in his cross-examination that he had maintained a record of the payments made to the Complainant, on account of this Committee but again, no cross-examination was done in this aspect.

54. In the end, it is submitted that the Legal Notice was received by his wife. He did not give a Reply but approached the Complainant, to question why the present case was filed despite he having no liability to prove his defence. He has already stepped into the witness box as DW-1 and produced cogent evidence to rebut the case of the Complainant. It is thus, submitted that the present Appeal is without merit and is liable to be dismissed.

55. ***Learned counsel on behalf of the Complainant had argued on similar lines as the grounds agitated in his Appeal***. It is submitted that in the light of the admissions of the Respondent that the cheques were signed by him and the amounts had been also filled by him in his own hand-writing, the onus was on the Respondent to prove through some cogent evidence in his defence. Though he claimed that these cheques have been issued on account of Chit Fund being run by the Complainant, but no cogent evidence has been led by the Respondent***. He has miserably failed to prove any defence and therefore, the Complaint under Section 138 of N.I. Act, has been wrongly dismissed.***

56. ***The Respondent had filed a Written Submission on*** the similar lines as his contentions raised in the Counter-Affidavit.

57. **Submissions heard and the record perused.**

58. It is not in dispute that two cheques of Rs.10,00,000/- and Rs.5,00,000/- respectively dated 20.01.2017, under the signatures of the Respondent, had been issued in favour of the Complainant, which on presentation, were dishonoured.

59. It is the settled law as has also been reiterated in the Case of *Basalingappa* (supra) that once the signatures on the cheque are admitted by the Accused, there is a presumption which gets drawn against him under Section 139 of N.I. Act read with Section 118 N.I. Act. The reverse onus is on the Accused to prove his defence that the cheques had not been issued in discharge of legally enforceable liability. It is also settled proposition of law that in order to discharge his reverse onus, the Accused may adduce his own independent evidence or may prove his defence from the evidence led by the Complainant.

60. The first defence taken by the Respondent, was that *there is no proof of loan of Rs.20,00,000/- ever taken by the Respondent in the year 2012 from the Complainant.* The Complainant to prove the giving of loan to the Respondent, had *firstly* relied upon his cordial family relations with the Respondent. The Complaint has stated that they had good relations since 2008-2009 and to corroborate this, has relied upon the admission of the Respondent that they all had gone together for a family vacation to Bangkok.

61. The evidence as led by the parties, may reflect that there were friendly relations and also travelled together for a vacation to Bangkok, but the question which arises is: ***whether the loan as of Rs.20,00,000/- as alleged***

by the Complainant, was given to the Respondent. According to the Complainant, the Respondent had been asking for a loan for sometime in the year 2012 and he gave a loan of Rs.10,00,000/- each on 20.08.2012 and on 13.12.2012.

62. The ***first aspect***, which emerges from the testimony of the Complainant and has also been considered by the learned Metropolitan Magistrate, ***is his financial capacity***. His two Bank Statements of HDFC and SBI, may reflect that he had the money in his account. The perusal of the Bank Statement of HDFC Bank reflects that Rs.5,00,000/- each have been withdrawn on 17.08.2012 and 18.08.2012, through cheques. Likewise, the Statement of SBI Bank reflects that the two cash withdrawals of Rs.5,00,000/- each through cheques on 11.12.2012 and 12.12.2012 by the Complainant.

63. The **Bank Statements do establish the Financial capacity of the Complainant to give the Loan of Rs.20,00,000/-.**

64. The amounts may have been withdrawn by the Complainant, but whether ***the amounts were given to the Respondent as loan is a moot point***, which the Complainant had to prove by cogent evidence. The first question which arises for consideration is when the amount had been taken out from his Account, what was the circumstances for giving *the same in cash to the Respondent rather than giving the amount, through the cheque*, especially when the amounts were allegedly taken out by him from his Bank Accounts. *Specious defence* had been suggested by the Complainant to the Respondent in his cross-examination, that he was dealing in the construction and Real Estate business and *required the loan in cash*.

65. However, these facts had been emerged for the first time only in the cross-examination of the Respondent, who had explained that he was not a Real Estate Agent or a Builder, but was a Contractor and was also running a boutique and was a LIC Agent. *The learned Metropolitan Magistrate has, therefore, rightly observed that there was no cogent evidence led by the Complainant, to prove these cash handing over of the money as loan on 13.08.2012 and 12.12.2012, to the Respondent.*

66. The *next aspect of significance is that as per the Appellant, these two loans had been secured by the Receipts/Undertaking*. The Complainant pertinently, had given the Loan in two tranches. Pertinently, he fails to even disclose when and where and on which dates the Receipt/ Undertaking was executed. Moreover, these documents have not been placed on record, creating a doubt of any such document ever being executed. It is also difficult to comprehend that a person giving loan of such huge amount to his friend, would not even keep the documents securing the loan, with care or produce the same.

67. This fact assumes significance in the light of the assertion of the Complainant that the loan was sought at the Metro Station and the money was handed over to the Respondent on 13.08.2012 at the Metro Station. When they were having such friendly relations, there was no occasion for the money to have exchanged at Metro Station, rather than the house of either party. Clearly this circumstance itself creates a doubt of any loan having been given. It is highly unlikely that a loan of such amount would be claimed or paid at a Metro Station. Also, if the loan was given at the Metro Station a question arises as when and how to secured by any

receipt/undertaking was executed at the Metro Station while giving the Loan as has been claimed by the Complainant.

68. The next significant aspect as has also been observed by the learned Metropolitan Magistrate is that according to the Complainant, he had given this loan for a period of three years and the Respondent had assured that he would pay the same by February-March, 2016. It is difficult again to comprehend that a loan of such an amount would be given without there being any condition of payment of interest or without determining the exact terms of repayment. Rather a vague assertion that such amount was given to the Respondent, who had stated that he would return it after more than two years in February-March, 2016. No prudent person would give a loan of such an amount without securing it with a document and without working out the terms of return. *The learned Metropolitan Magistrate has rightly taken this as a circumstance creating a doubt about giving of the loan by the Complainant to the Respondent*.

69. The next fact creating a doubt about giving of loan, is the factum of neither the giving of loan nor being reflected in the Income-Tax Returns of the Complainant. It has been rightly observed that the Complainant was an educated man being a Mechanical Engineer working with Parker Company till 2013-2014, which implies that he would have been filing his regular Income-Tax Returns. No explanation whatsoever has been given by the Complainant as to why this loan amount, which had been withdrawn by him through self-cheques, was not mentioned in the Income-Tax Returns creating his case of advancing the loan as doubtful.

70. The Complainant had asserted that out of the Loan of Rs. 20,00,000/- a sum of Rs.5,00,000/- had been repaid in February, 2016. The easiest way to prove the refund of the part loan amount was to produce some documents/Bank Statement in corroboration thereof. Pertinently, no such document or explanation has been furnished.

71. Furthermore, it is asserted that while making a payment of part loan amount, the Respondent had assured that he would return the balance amount in 2-3 months. However, there is no evidence to show that the Complainant pursued the Respondent thereafter, for the return of the remaining loan amount of Rs.15,00,000/-. The alleged cheques have been given on 20.12.2016 i.e. after about 10 months of alleged part payment which is difficult to comprehend. Not only this, the Loan was taken in August, 2012 and December, 2012. It indeed a Loan was given, no explanation is forthcoming as to why the Cheques were not taken at the time of disbursement of loan in 2012, but in December, 2016.

72. The issuance of two cheques becomes significant in the light of the defence of the Respondent. He has asserted in his testimony that the Complainant was running a Chit Fund in the year 2012 for 20 months and thereafter, he started a new Chit Fund in the year 2014. The Respondent asserted that he became a member of the Chit Fund, on both the occasions. He had availed the Committee both the times prematurely in August, 2012 and September, 2014 and on both these occasions, on the asking of the Complainant, had given the cheque of Rs.10,00,000/- in 2012 and a cheque of Rs.5,00,000/- in 2014. He further stated that he had filled in the amount, as well as signed the cheques, but did not fill the dates since they were

intended to be *security cheques* for the early lifting of the Committee amount.

73. This defence becomes plausible in the light of the fact that the date on the cheques had not been filled by the Respondent. If these were for the return of the loan amount of Rs.15,00,000/-, there is no reason why the dates would not have been also filled by the Respondent, but left blank. It is pertinent to observe that because the two cheques are of Rs.10,00,000/- and Rs.5,00,000/- respectively which add up to Rs.15,00,000/-.The Complainant in order to make out a case of there being an existing liability of loan, has conveniently claimed that Rs.5,00,000/- had been paid in February, 2016, for which there is no evidence led by him.

74. In order to justify the amounts of the two cheques, the story has been fabricated which seems plausible in view of the two Cheques being of Rs.15,00,000/- instead of the entire amount of Rs.20,00,000/-.

75. It is also intriguing to note that when the cheques had been issued on the same date, why not one cheque instead of two, for the total amount of Rs.15,00,000/- were issued by the Respondent. The factum of there being two signed cheques further corroborates the defence of the Respondent that these cheques that had been given earlier in 2012 and 2014, and the dates on the Cheques of December, 2016, have been filled by the Complainant.

76. This factum is further established by the Respondent, who has shown that these two cheques pertain to the cheque book of 2012 and the cheques of that leaflet, had been utilised in the year 2012 and 2014 respectively. There is no reason for the Respondent to have kept these two leaflets of cheques from the earlier cheque books, to be utilised subsequently in the

year 2016. This fact also corroborates the defence of the Respondent that the cheques had not been given in December, 2016 as claimed by the Complainant, but in the year 2012 and 2014 respectively.

77. There is also merit in the contentions of the Respondent that while the Receipt/Undertaking alleged by the Complainant to have been executed, has not been proved, the Complainant has also failed to examine Mr. Sumit Rastogi on whose advice, allegedly this loan was given to the Respondent. If there was no document, then at least the oral ocular corroborative evidence should have been led, which the Complainant has failed to do.

78. To conclude, the learned Metropolitan Magistrate has rightly held that the Respondent/ Accused had been able to discharge the onus of proving from the evidence on record, that there was no existing debt or liability by way of loan as was alleged by the Complainant.

79. ***The Complaint under Section 138 of N.I. Act has been rightly, dismissed.***

80. There is no merit in the present Appeal, which is hereby dismissed. The pending Applications are accordingly, disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

JUNE 30, 2025/RS