



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Revision Petition No. 1305/2018

Ratiram Yadav S/o Late Shriram Yadav, Aged About 45 Years,
R/o Plot No.102, Anand Vihar A, Near Dadi Ka Phatak, Benad
Road, Jhotwara, Jaipur, Raj.

----Petitioner

Versus

Gopal Sharma S/o Natthuram Sharma, Proprietor/owner Pooja
Sanitary Through Address Plot No.32, Shyam Kunj Colony,
Badliwadi Dhani, Charan Nadi II, Murlipura, Jaipur.

----Respondent

Connected With

S.B. Criminal Revision Petition No. 626/2018

Gopal Sharma S/o Natthuram Sharma, Proprietor Owner Of
Pooja Sanitary Through Address Plot No.32, Shyam Kunj Colony,
Badliwadi Dhani, Charan Nadi II, Murlipura, Jaipur.

----Petitioner

Versus

Ratiram Yadav S/o Late Shriram Yadav, R/o Plot No.102, Anand
Vihar-A, Near Dadi Ka Phatak, Benar Road, Jhotwara, Jaipur.

----Respondent

S.B. Criminal Revision Petition No. 696/2018

Ratiram Yadav S/o Late Shriram Yadav, R/o Plot No.102, Anand
Vihar-A, Near Dadi Ka Phatak, Benar Road, Jhotwara, Jaipur.

----Petitioner

Versus

Gopal Sharma S/o Natthuram Sharma, Proprietor Owner Of
Pooja Sanitary Through Address Plot No.32, Shyam Kunj Colony,
Badliwadi Dhani, Charan Nadi II, Murlipura, Jaipur.

----Respondent

S.B. Criminal Revision Petition No. 1183/2018

Ratiram Yadav S/o Late Shriram Yadav, Aged About 45 Years,
R/o Plot No. 102, Anand Vihar-A, Near Dadi Ka Phatak, Benad
Road, Jhotwara, Jaipur (Raj.)

----Petitioner

Versus





Gopal Sharma S/o Natthuram Sharma, Proprietor/owner Pooja Sanitary Through Address- Plot No. 32, Shyam Kunj Colony, Badliwadi Dhani, Charan Nadi-II, Murlipura, Jaipur

----Respondent

S.B. Criminal Revision Petition No. 1258/2018

Ratiram Yadav S/o Late Shriram Yadav, Aged About 45 Years, R/o Plot No.102, Anand Vihar A, Near Dadi Ka Phatak, Benad Road, Jhotwara, Jaipur, Raj.

----Petitioner

Versus

Gopal Sharma S/o Natthuram Sharma, Proprietor/owner Pooja Sanitary Through Address Plot No.32, Shyam Kunj Colony, Badliwadi Dhani, Charan Nadi II, Murlipura, Jaipur.

----Respondent

For Petitioner(s) : Mr. Mithlesh Kumar (in CRLR No. 1305/2018, 696/2018, 1183/2018 and 1258/2018),
Mr. Vivek Choudhary in CRLR 626/2018
For Respondent(s) : Mr. Vivek Choudhary
Mr. Mithlesh Kumar (in CRLR No. 626/2018)

HON'BLE MR. JUSTICE PRAMIL KUMAR MATHUR

JUDGMENT RESERVED ON :: 15/09/2025

JUDGMENT PRONOUNCED ON :: 08/10/2025

REPORTABLE

1. These revision petitions arise from the following:
- (i) Three revision petitions have been filed by the petitioner Ratiram Yadav whereby the accused Gopal Sharma has been acquitted of the charge under Section 138 of the Negotiable Instruments Act (in short "N.I. Act").
- (ii) One revision has been filed by accused Gopal Sharma against his conviction under Section 138 of the "N.I. Act".



(iii) One revision petition has been filed by complainant Ratiram Yadav against reduction of sentence.

2. Since all the revisions are between the same parties and pertain to transaction of same nature containing common question of law, hence all are being disposed of by this common judgment.

3. The complainant-petitioner Ratiram Yadav filed four distinct complaints under Section 138 of the "N.I. Act" regarding cheque Nos. 132424, 132425, 132426 and 132427 drawn on State Bank of Bikaner and Jaipur, Murlipura Branch, Jaipur, bearing date of year 2013 and issued by accused Gopal Sharma for Rs. 1,25,000/- each. All the cheques were dishonoured on presentation for the reason "insufficient funds". Despite service of legal notice, the accused failed to make payment, compelling the complainant to file the above complaints.

4. After cognizance was taken, the accused appeared before the trial court. The substance of the offence was explained to him, to which he pleaded not guilty and claimed trial. Upon closure of complainant's evidence, the accused was examined under Section 313 Cr.P.C. He denied all incriminating circumstances and claimed that a cheque had been given to the complainant merely as security, which was allegedly misused. No defence evidence was adduced.

5. After appreciation of relevant law, the trial court convicted the accused in all cases but in appeal, the learned appellate court convicted the accused in one case with reduced sentence and acquitted in rest three cases. Hence these revision petitions.

6. Heard the rival contentions of the parties and perused the record.



7. Learned counsel for the complainant-petitioner has argued that the appellate court while acquitting the accused has passed the judgment without due application of mind. He argued that the acquittal was based solely on the ground that the alleged loan was time-barred and there was no acknowledgment to pay the time-barred debt holding that there was no legally enforceable debt. However, the appellate court failed to consider the legal position under Section 25(3) of the Indian Contract Act, 1872, which provides that a promise, made in writing and signed by the debtor, to pay a time-barred debt constitutes a valid and enforceable contract. A cheque issued towards repayment of a time-barred debt falls within this scope. Therefore, the acquittal on the above basis by the appellate court is not sustainable in law, and the accused is liable for conviction with enhanced punishment.

8. Learned counsel for the complainant petitioner further argued that although the loan transaction was not disputed, rather it is admitted by the accused that he had voluntarily signed and delivered the cheques. Thus under Section 139 of "N.I. Act" a presumption arose that cheques were issued for discharge of liability and the accused has failed to adduce any cogent evidence to rebut the said presumption. He again contended that fact of undated cheques was admitted by the accused and subsequent filling of the dates does not invalidate the instrument. Consequently, revisions filed by the complainant deserve to be allowed.

9. Learned counsel for the complainant placed reliance upon the following judgments:



- (i) Sampelly Satanarayana Rao Vs. Indian Renewable Energy Development Agency Ltd., (2016) 10 SCC 458;**
- (ii) Goa Plast (P) Ltd. Vs. Chico Ursula D-souza, (2004) 2 SCC 235;**
- (iii) Indus Airways Pvt. Ltd. & ors. Vs. Magnum Aviation Pvt. Ltd. & Anr., (2014) 12 SCC 539;**
- (iv) Anil Kumar Sawhney Vs. Gulshan Rai; (1993) 4 SCC 424;**
- (v) Sunil Todi Vs. the State of Gujarat, Cr. Appeal No. 1446/2021 decided on 3.12.2021.**

10. Refuting the above arguments, learned counsel for the respondent-accused argued that although the loan transaction was not disputed but the accused had already repaid the entire loan. It was contended that the cheques were issued in 2009, but were presented in the Bank only in 2013 and therefore, in absence of any written acknowledgment within the statutory period of limitation, claim is time-barred. The cheques in question are undated and were filled up by complainant in 2013. Presentation in 2013 cannot convert a time-barred obligation into legally enforceable debt for the purpose of Section 138 of "N.I. Act" unless there is credible evidence of clear acknowledgment to pay.

11. The learned counsel for the accused further argued that the trial court wrongly relied upon certain material and misinterpreted the facts while delivering the judgment of conviction. It was submitted that in revisional jurisdiction under Sections 397 and 401 Cr.P.C., re-appreciation of evidence is not legally permissible, as if, in a second appeal, unless the findings of the subordinate court are perverse or untenable in law.



12. It was further contended that the disputed cheques were issued only as security and not in discharge of any enforceable liability, and since payment had already been made, no liability exists on the date of presentation.

13. He again argued that in three judgments of acquittal and one of conviction on the same date on same set of facts and circumstances, appear to be contrary to law. Therefore, the revision petitions preferred by the complainant deserves to be dismissed, and revision petition filed by the accused is liable to be allowed. In support of his contentions, learned counsel for the respondent relied upon judgment of Kerala High Court in **Sasseriyl Joseph Vs. Devassia, 2001 Cri.L.J.24.**

14. I have given my earnest consideration to the rival contentions of the parties and scanned the matter carefully.

15. The admitted facts are that complainant advanced money to the accused in the year 2009, the accused delivered signed but undated cheques which, after insertion of the date in the year 2013, presented in Bank and dishonoured. Legal notice under Section 138 was duly issued to the accused and served in each case and thereafter, the accused failed to make payment within the statutory period leading to these complaints.

16. The defence of the accused is two fold; first that the loan of 2009 was repaid by the accused; and that the cheques were handed over only as a security and in any case they were presented after the period of limitation without any acknowledgment, hence, time barred.

17. The law is well settled that once the signature and execution of the cheque is admitted, a statutory presumption arises under



Section 118 and 139 of the "N.I. Act" that the cheque was issued in discharge of a debt or a liability. This presumption is rebuttable but the burden lies on the accused to adduce cogent evidence.

18. As regards limitation, it is equally settled that for the purpose of Section 138 of "N.I. Act", a cheque must be issued towards a legally enforceable debt or liability. A time-barred debt is not enforceable. However, it is significant to note that under Section 25(3) of the Indian Contract Act, even a time-barred debt can form valid consideration if there is a written promise signed by the debtor. A cheque constitutes such a promise. Therefore, when a cheque is issued towards a time-barred debt and is dishonoured, the liability under Section 138 of the "N.I. Act" squarely arises. The contention that the debt was not legally enforceable is thus without merit.

19. In **Rajeev Kumar versus THE STATE NCT OF DELHI & ANR – LiveLaw (Del) 1055**, the Delhi High Court in para 23 to 25 observed as under:

"23. The Supreme Court in A.V. Murthy v B.S. Nagabasavanna (2002) 2 SCC 642 recognized the application of Section 25(3) of the ICA while disallowing a dismissal of a complaint under section 138 of NI Act, at the behest of a complainant, where a cheque had been given for a liability which was time-barred. The relevant portion is extracted as under:

"5. As the complaint has been rejected at the threshold, we do not propose to express any opinion on this question as the matter is yet to be agitated by the parties. But, we are of the view that the learned Sessions Judge and the learned Single Judge of the High Court were clearly in error in quashing the complaint proceedings. Under Section 118 of the Act, there is a presumption that until the contrary is proved, every negotiable instrument was drawn for consideration. Even under Section 139 of the Act, it is specifically stated that 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 discharge, in whole or in part, of any debt or other liability. It is also pertinent to note that under sub-section (3) of Section 25 of the Indian Contract Act, 1872, a promise, CRL.L.P. 212/2021 14 of 24 made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits, is a valid contract. Moreover, in the instant case, the appellant has submitted before us that the respondent, in his balance sheet prepared for every year subsequent to the loan advanced by the appellant, had shown the amount as deposits from friends. A copy of the balance sheet as on 31-3-1997 is also produced before us. If the amount borrowed by the respondent is shown in the balance sheet, it may amount to acknowledgment and the creditor might have a fresh period of limitation from the date on which the acknowledgment was made. However, we do not express any final opinion on all these aspects, as these are matters to be agitated before the Magistrate by way of defence of the respondent." (emphasis supplied)

24. The Supreme Court in *S. Natarajan v Sama Dharman & Anr.* (2021) 6 SCC 413 expressed the opinion that, the High Court had erred in quashing the complaint under section 138 NI Act, on the ground that debt or liability was barred by limitation since that question can be decided only after evidence has been adduced being a mixed question of law and fact. The relevant paragraphs are extracted as under:

"7. In our opinion, the High Court erred in quashing the complaint on the ground that the debt or liability was barred by limitation and, therefore, there was no legally enforceable debt or liability against the accused. The case before the High Court was not of such a nature which could have persuaded the High Court to draw such a definite conclusion at this stage. Whether the debt was time-barred CRL.L.P. 212/2021 15 of 24 or not can be decided only after the evidence is adduced, it being a mixed question of law and fact. ... 9. In *Rangappa v. Sri Mohan* [*Rangappa v. Sri Mohan*, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184] , the legal question before this Court pertained to the proper interpretation of Section 139 of the NI Act which shifts the burden of proof on to the accused





in cheque bouncing cases. This Court observed that the presumption mandated by Section 139 of the NI Act includes a presumption that there exists a legally enforceable debt or liability. This is of course in the nature of rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. This Court further observed that Section 139 of the NI Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. This Court clarified that the reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. This Court, then, explained the manner in which this statutory presumption can be rebutted. Thus, in cheque bouncing cases, the initial presumption incorporated in Section 139 of the NI Act favours the complainant and the accused can rebut the said presumption and discharge the reverse onus by adducing evidence.” (emphasis supplied)

25. Both A.V. Murthy (supra) & S. Natarajan (supra) were noticed by the Supreme Court more recently in K. Hymavathi v. State of A.P. & Anr. 2023 SCC OnLine SC 1128 in dealing with a challenge to quashing of a 138 NI Act proceeding, basis expiry of limitation of the promissory note, prior to the CRL.L.P. 212/2021 16 of 24 issuance of cheque, and it not being a legally recoverable debt under section 138 of NI Act. The Court took a view that these prior decisions in A.V. Murthy (supra) & S. Natarajan (supra) had considered all these aspects. The relevant paragraphs are extracted as under:

“12. Having referred to the judgments cited, prima facie we are of the opinion that the decision in S. Natarajan and A.V. Murthy (supra) has taken into consideration all aspects. No other elaboration is required even if the observations contained in the case of Expeditious Trial of Cases under Section 138 of NI Act (supra) is taken note, since, whether the debt in question is a legally enforceable debt or other liability would arise on the facts and circumstance of each case and in that light the question as to whether the power under Section 482 CrPC is to be exercised or not will also arise in the facts of such case. Even otherwise we do not see the need to tread that path to undertake an academic exercise on that aspect of the matter, since from the very facts involved in the case on hand ex facie it indicates that the claim which was made in the complaint before the Trial Court based





on the cheque which was dishonoured cannot be construed as time-barred and as such it cannot be classified as a debt which was not legally recoverable, the details of which we would advert to here below. In that view, we have chosen not to refer to the cases provided as a compilation as it would be unnecessary to refer to the same.”

(emphasis supplied)

20. A meaningful reading of Sections 20, 118 and 139 of the “N.I. Act” makes it clear that a person who signs a cheque and delivers it to the payee remains liable unless he successfully rebuts the statutory presumptions. In the present case, the accused failed to discharge this burden. It is immaterial that the cheque was filled by any other person if the cheque is duly signed by the drawer and the cheque is otherwise valid, the penal provisions of Section 138 would be applicable.

21. In this regard, position of law is very clear. The Hon’ble Apex Court in **Bir Singh Vs. Mukesh Kumar, (2019) 4 SCC 197** observed that even if a blank cheque is voluntarily signed and handed over by accused towards some payment, would attract the presumption under Section 139 of the “N.I. Act”.

22. In the instant case, it was not in dispute that the accused has signed all the cheques. Even if we allow the contention raised by the accused that the cheques were issued as a security pursuant to a financial transaction then too, cannot be considered as a worthless piece of paper.

23. In **Sripati Singh Versus The State of Jharkhand & Anr., (2022) 18 SCC 614**, the Hon’ble Supreme Court observed as under:

“16. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. ‘Security’ in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is



given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified time frame and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow."

24. In the present case, the accused has not produced any material to substantiate repayment of the loan taken in the year 2009. The plea of cheques being a mere security also remains unproved. On the other hand, the execution and delivery of the cheques stand admitted by the accused. In the absence of any rebuttal evidence, the presumption under Section 139 of the "N.I. Act" continues to operate.

25. The contention that the debt was time-barred by 2012 does not *ipso facto* exonerate the accused, the very issuance of cheques constitute a promise within the meaning of Section 25(3) of the Indian Contract Act, 1872 reviving the enforceability of the debt. Accordingly, the requirement of "legally enforceable debt" under Section 138 of the "N.I. Act" is satisfied.

26. In view of the above discussion and settled position of law, the grounds urged by the accused are misconceived and untenable. The appellate court erred in setting aside the conviction by ignoring the legal effect of Section 25(3) of the Contract Act and the presumptions under "the N.I. Act".



27. In the above factual and analytical situations, the judgment cited by learned counsel for the respondent renders no assistance to him.

28. Accordingly, the revision petitions filed by the complainant against acquittal are allowed and the revision petition filed by the accused against conviction is dismissed. The judgment of acquittal dated 06.04.2018 passed by the learned Additional Sessions Judge No.12, Jaipur Metropolitan, Jaipur in Case No. 1584/2017, 1585/2017 and 1586/2017 is set aside and the judgment of conviction and sentence dated 13.11.2017 passed by the learned Special Metropolitan Magistrate (N.I. Act) Cases No.7, Jaipur Metropolitan, Jaipur in case No. 1329/2015, 1344/2025 and 1348/2015 is restored and on the same analogy, judgment of conviction by appellate court dated 06.04.2018 in Case No. 1583/2017 is affirmed by maintaining the sentence awarded by the trial court.

29. Consequently, all the revision petitions are disposed of accordingly.

(PRAMIL KUMAR MATHUR),J

BRIJ MOHAN GANDHI 77/50-54