

**IN THE COURT OF RAKESH KUMAR RAMPURI,  
METROPOLITAN MAGISTRATE (NI ACT) KARKARDOOMA COURTS:  
SHAHDARA, DELHI.**

**JUDGMENT U/S 355 Cr.PC**

- a. Serial No. of the case : VK-2487/05
- b. Date of the commission of the offence : 22/09/2005
- c. Name of the complainant Govind Jain
- d. Name of accused person and his parentage:  
and residence Hari Prakash,  
S/o Late Mishri Lal,  
R/o 2127, New Basti,  
Narela, Delhi-40.
- e. Offence complained of : Dishonoring of  
cheque for  
funds insufficient.
- f. Plea of the accused and his examination (if any): Not guilty  
Because no fabric supplied  
by the complainant and cheque  
was given by accused to the  
complainant for advancement of  
loan of Rs. 1,00,000/- at the  
request of complainant.
- g. Final Order : Held not guilty.  
Acquitted.

- h. **Order reserved on** : **21.08.2012.**
- i. **Order pronounced on** : **01.09.2012.**

**Brief reasons for decision:-**

1. The facts of present complaint under section 138 of Negotiable Instrument Act 1881 (in short NI Act) in nutshell are that complainant had supplied cloth of Rs. 4,80,448.05/- to the accused and in part discharge of aforesaid liability accused issued a post dated cheque Ex. CW1/1 bearing 000557 dt. 22.08.05 of Rs. 1,00,000/- (hereinafter referred to as cheque in question). It is case of complainant that cheque in question returned unpaid vide cheque returning memo Ex. CW1/2 dt. 24.08.2005 with remark "Funds Insufficient". It is further case of complainant that accused did not pay cheque amount despite service of legal demand notice Ex. CW1/3 dt. 06.09.2005 within 15 days from the receipt of said legal notice. Hence the present complaint case filed on 18.10.2005.

2. Notice of accusation u/s 251 Cr.P.C was served on accused on 01.09.2007 to which he pleaded not guilty and claim trial. CW1 complainant examined and cross examined to strengthen his version of the case. Accused examined himself u/s 315 Cr.P.C. as a witness. Deepak Bansal (DW2) and handwriting expert Sh. Sayed Faizal Huda (DW3) were also examined on behalf of accused. Both counsel made oral argument on behalf of their respective parties and also filed written argument in course of trial of this case.

3. I heard the respective submissions of both counsels and made

careful perusal of entire record of this case.

4. The defence story of accused is that cheque in question was given to complainant at the request of some Deepak as they approached him for a loan of Rs. 1,00,000/- and he agreed for advancing the same on condition that Deepak would be guarantor of complainant. It is also case of accused that after some time Deepak refused to remain guarantor. Accordingly, accused was allegedly compelled to stop payment regarding cheque in question. It is further case of accused that he had been dealing in the business of Mustered oil since 1977 and he had no knowledge of cloth/garments. Accused has filed documents Ex. DW1/3 showing dealing of accused in the business of mustered oil. Aforesaid Deepak Bansal DW2 has deposed before the court that complainant had asked him for a loan of Rs. 1,00,000/- and in turn he approached the accused for providing the same through cheque. DW2 further stated that at the time of handing over of cheque in question, accused asked him to remain guarantor on behalf of complainant. DW2 further stated that after his refusal as guarantor of complainant accused stopped payment of cheque in question. During his examination DW2 categorically stated that complainant asked him to issue cheque either in name of Har Govind Jain or In the name of Shree Vardhman Fashion as per slip/parchi Ex. DW2/1. There is nothing in cross examination of DW2 casting any reasonable doubt over the testimony of DW2. Handwriting expert DW3 Sh. Sayed Faizal Huda had stated that after careful scientific examination and comparison he is of considered opinion that disputed English

handwriting of complainant appearing on slip Ex. DW2/1 has been written by the same person who had written the admitted signatures marked A-1 to A-6.

5. During cross examination of CW1 (complainant) it was suggested by the counsel for accused that accused had given cheque in question as friendly loan on the responsibility of some common friend who refused to accept the responsibility subsequently. It was further suggested by the counsel for accused that accused deals in mustered oil only and not in the business of cloths. It reflects that it has been consistent stands of accused that he dealt in the business of mustered oil and cheque in question had been given to the complainant for loan on the guarantee of common friend Deepak, who refused to remain guarantor later on.

6. Ld. Counsel for complainant contends that complainant had filed bill regarding supply of printed fabric and despite supply of cloths accused failed to honour cheque in question. Ld. Counsel for complainant further contends that no witness was called from the bank to prove alleged instruction of accused for stopping payment qua cheque in question, although cheque return memo suggests the reason as "Funds Insufficient" for dishonouring of cheque in question. Here, court is of considered opinion that both reasons for dishonouring of any cheque namely stop payment" and "funds insufficient" do fall within the mischief u/s 138 of NI Act. Thus, plea of stop payment would not exonerate accused from the deemed culpability u/s 138 of NI Act, otherwise every drawer would issue instruction for stopping payment on one ground or other to get away.

instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt.

8. It is further noticeable that as per basic tenant of criminal jurisprudence of India every benefit of reasonable doubt must go in favour of accused. From the testimony of DW2 (Deepak) and DW3 (handwriting expert Sh. Huda) it stands proved that some slip Ex. D2/1 was given by complainant for issuance of cheque in question. From the testimony of eye witness DW2 (Deepak) it is also clear that he was guarantor initially for advancing some loan of Rs. 1 Lakh through cheque in question by the accused to the complainant. In this circumstances, court is of considered opinion that accused manages to

create probable doubt over the story of complainant. It is also noticeable that complainant failed to explain as to why he accepted only one cheque of Rs. 1 Lakh despite alleged liability of 4,80,448.05/- on part of accused towards him. Thus, it was up to the complainant to prove his case beyond all reasonable doubts. It is further noticeable that the case of complainant must stand on its own legs and lacuna in the defence of accused can not taken benefit in discharging unalienable duty for proving his case beyond all reasonable doubts by the complainant.

9. In upshot of aforesaid discussion the court is of considered opinion that complainant failed to prove his case beyond all reasonable doubts and accused had rebutted legal presumption by leading cogent and reliable evidence with standard of balance of probabilities. Thus, I return finding of innocence of accused u/s 138 of NI Act and accused stands acquitted.

**ANNOUNCED IN THE OPEN COURT  
ON 01<sup>st</sup> Day of September, 2012**

**(Rakesh Kumar Rampuri)  
MM, NI Act, (East)  
KKD Courts, Delhi.**