

**IN THE COURT OF SH. GAURAV GUPTA,  
METROPOLITAN MAGISTRATE (North East),  
KARKARDOOMA COURTS, DELHI.**

**CC NO.1688/09**

**Unique case ID No.02402R0286382005**

**U/S. 138 N.I. Act**

**PS – Anand Vihar**

**In the matter of**

**Subhash Chand**

**S/o Late Sh. Ganga Ram**

**R/o-C-50, Chander Nagar West,**

**Gali no-3, Delhi-110051.**

**----- Complainant**

**VERSUS**

**Kamla**

**C/o Shri Gulshan Kumar**

**B-31, Abhi Apartments,**

**DLF, Top Floor, Dilshad Extn no.-II**

**Dilshad Garden, Delhi.**

**----- Accused**

Date of Institution : 08.06.2005

Date on which judgment was reserved: 15.05.12

Date of judgment : 31.05.12

## J U D G M E N T

1. Vide this judgment I shall dispose of a complaint filed by the complainant against the accused under section 138 of the Negotiable Instruments Act, 1881, (hereinafter referred to as as the “NI Act”) for dishonour of a cheque issued by the accused for a sum of Rs.50,000/-(Rupees Fifty Thousand only).
2. The brief facts of the case as averred by the complainant in his complaint are that the accused had borrowed a sum of Rs.50,000/-(Rupees Fifty Thousand only) from the complainant and executed a promissory note in favour of the complainant. It has further been averred that in discharge of her liability to repay the loan, the accused issued a cheque bearing no.522531 dt. 13.04.2005 drawn on Corporation Bank, Dilshad Garden, Delhi for a sum of Rs.50,000/- in favour of the complainant. It has further been averred that when the said cheque was presented by the complainant through his banker for clearance, the same was returned unpaid by the accused's banker vide return memo dated 15.04.2005 with remarks “Funds Insufficient.” Thereafter, a legal notice dated 05.05.2005 was sent to the accused through regd. AD post, as well as UPC however, despite service, the accused failed to make payment against the cheque

within the stipulated period. Therefore, the complainant was constrained to file the present complaint.

3. After taking the pre-summoning evidence, the court took cognizance of the offence under section 138 NI Act and directed issuance of process against the accused. In pursuance thereof, the accused made an appearance and was admitted to bail. Thereafter, notice under section 251 Cr.PC was served upon the accused on 04.03.2006 to which she pleaded not guilty and claimed trial.

4. In his evidence, the complainant examined himself as CW1 and tendered his affidavit Ex.CW1/1 in evidence. The complainant placed reliance on the following documents:

- i) The dishonoured cheque as Ex.CW1/A.
- ii) The cheque return memo as Ex.CW1/B.
- iii) Copy of legal notice as Ex. CW1/C.
- iv) Postal Receipts as Ex. CW1/D and ExCW1/E.
- v) Returned AD card as ExCW1/F.
- vi) Promissory note as ExCW1/G.

The complainant also examined handwriting expert Sayed Faisal Huda as CW2 who proved his report ExCW2/1.

5. Thereafter, statement of accused was recorded under section 313 Cr.PC on 20.12.11, wherein, all the

rejected.

14. As far as the second defence of the accused regarding non-receipt of legal notice is concerned, the same would not detain me long. It is the case of the complainant that the legal notice sent through registered post was duly served upon the accused and the returned AD Card Ex.CW1/F bearing the signatures of the accused is also placed on record. On an application of the complainant, the document Ex.CW1/F was got examined by a handwriting expert who deposed as CW-2 and prove his report as CW2/1. The handwriting expert opined that the disputed signatures on document Ex.CW1/F have indeed been written by the accused herself. Further the accused has not led any evidence to show that she was not residing at the address on which the notice was sent or that the address on the notice is incorrect.

15. Section 27, the General Clauses Act raises a presumption that where a notice has been sent to the correct address of the noticee by registered post then, unless the contrary is proved, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. The accused has not led any evidence to show that she did not receive the legal notice. Mere bald statements of

the accused do not lend any credence to the stand of the accused. As the accused failed to rebut the presumption, it is deemed that the legal notice of demand was duly served upon the accused.

16. As discussed earlier, the presumptions under section 118(a) as well as 139, NI Act are rebuttable. The onus on the accused to rebut the said presumptions can be discharged by bringing on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that it did not exist. However, after examining the evidence on record, it can be concluded that the accused has failed to discharge the onus to rebut the presumptions.

17. In the light of the foregoing discussion and findings, it can be safely concluded that the complainant has successfully proved its case that there existed a legally enforceable liability, in discharge whereof the cheque in question was issued but, despite the service of notice, the accused failed to make payment within the stipulated period. Per contra, the accused has failed to rebut the presumptions raised against her. As the ingredients of section 138 of the NI Act are squarely

made out in this case, the accused is convicted for the  
offence punishable under section 138 of the NI Act.

**Announced in the open court on 31.05.12**

**(Gaurav Gupta)**  
**Metropolitan Magistrate (North East)**  
**Karkardooma Courts, Delhi.**