

**IN THE COURT OF SH. GAURAV GUPTA , METROPOLITAN
MAGISTRATE (N/E), KARKARDOOMA COURT DELHI.**

CC NO. 525/09

Unique case ID No.02402R0378712005

U/S. 138 N.I. Act

PS. Gokul Puri

Sanjay Kumar Pandey

S/o. Sh. Baleshwar Pandey

R/o. H.No. B-85, Gali No.1,

Patel Vihar, Karawal Nagar,

Delhi-94.

----- **Complainant**

Versus

Suresh Pal

S/o. Sh. Inder

R/o. H.No. 192, B.No.7,

(Matawali Gali), Johripur,

Delhi-94.

----- **Accused**

Date of Institution : 23.07.05

Date on which judgment was reserved: 29.07.11

Date of judgment : 10.08.11

JUDGMENT

1. The present complaint U/s. 138 NI Act has been filed by the complainant against the accused for dishonour of a cheque

Kumar as Ex.D1/A.

6. Thereafter, statement of accused was recorded U/s. 313 Cr.P.C, wherein, all the incriminating circumstances were put to the accused. The accused admitted that the cheque in question was issued by him. The accused also admitted the service of legal notice upon him. However, he denied all other allegations. The accused in his defence examined two witnesses. Sh. Ashok Kumar S/o. Sh. Surjan Singh deposed as DW-1 and tendered his evidence by way of affidavit Ex.DW1/1. The accused also examined a handwriting expert, Sh. Sayed Faisal Huda as DW-2, who tendered his report as Ex.DW2/A.

7. I have heard both the sides at length and have gone through the entire case record. In order to constitute an offence within the meaning of section 138 NI Act, the following have to be proved.

- (1) That there existed a legally enforceable debt or liability.
- (2) That the cheque in question was issued

11. During his cross-examination, DW-1 Ashok Kumar admitted, after being shown a receipt Ex.D1/A, that he had taken a loan of Rs.40,000/- from the complainant. He also admitted that the accused had signed the said receipt as a witness.

12. It is pertinent to mention here that after the deposition of DW-1, the accused moved an application for obtaining expert opinion on receipt Ex.D1/A. The accused in that application denied his signatures on the receipt Ex.D1/A. The application was allowed. The handwriting expert, who examined the receipt was examined as DW-2. In his report tendered as Ex.DW2/A, DW-2 opined that the signatures in question were not written by the accused.

13. Although, the report of a handwriting expert is not binding on the court, even if, on the face of it, the report of DW-2 is accepted as correct, it would not be of much consequence as the fact whether the accused signed the receipt Ex.D1/A is not relevant for deciding the present case.

17. In the light of the above discussion, though the initial presumption U/s. 118 & 139 was raised against the accused, he was able to successfully rebut the same by raising a probable defence that the cheque in question was a security cheque and that the same was not issued in discharge of a legally enforceable debt.

18. In my considered opinion, the complainant has failed to prove that the cheque in question was issued in discharge of a legally enforceable debt or liability. As the requirements of section 138 NI Act are not fulfilled in this case, the accused is acquitted of the offence under section 138 NI Act. Personal bond and surety bond of accused furnished at the time of court bail shall be in force for six months from today, as per provision U/s. 437-A Cr.P.C. File be consigned to record room after due compliance.

**ANNOUNCED IN THE OPEN
COURT ON 10.08.11**

**(GAURAV GUPTA)
MM/(NE)/KKD/DELHI/10.08.11**