

Delhi District Court**Yashwant vs Taufique Alam on 12 September, 2014**

Author: Ms.Preeti Parewa

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IN THE COURT OF MS PREETI PAREWA : METROPOLITAN
MAGISTRATE - 02 : SOUTH : SAKET COURT : NEW DELHIYashwant vs Taufique Alam
CC No 254/14
U/s 138 [Negotiable Instruments Act](#)

Unique Identification No. : 02406R0287992010

JUDGMENT

- (1) Serial number of the case : 254/14
- (2) Name of the complainant : Yashwant
S/o Sh. Babu Ram
R/o K-7/652, Sangam Vihar,
New Delhi-62
- (3) Name of the accused : Taufique Alam
s/o Sh Hawaldar Khan
r/o K-I, House N. 180, Gali No.
18, Near South Delhi Model
School, Sangam Vihar, Delhi-62
- (4) Offence complained of or proved: 138 [Negotiable
Instruments Act](#)
- (5) Plea of the accused : Pleaded not guilty
- (6) Final Order : ACQUITTED
- (7) Date of Institution : 06/09/2010
- (8) Date on which reserved for
judgment : 05/09/2014
- (9) Date of Judgment : 12/09/2014

BRIEF STATEMENT OF THE REASONS FOR THE DECISION

1. The brief facts of this case as carved out from the complaint are that the accused being known to the complainant approached for a friendly loan of Rs.03 lacs in the month of May 2010 stating that he was in dire need of money for urgent work as he had met with an accident and at the request of the accused, the complainant advanced a loan of Rs03 lacs by way of cash more than 2-3 times with a promise from the accused that the same shall be returned in the month of July 2010. Further it is alleged that the accused issued one cheque bearing no. 062834 dated 26/07/2010 drawn on Vijaya Bank, Nehru Place Branch for a sum of Rs.03 lacs in discharge of his liability which on presentation was returned unpaid due to reasons "insufficient funds" vide memo dated 27/07/2010.

Further, it is alleged that the legal notice on 05/08/2010 was sent through UPC as well as courier and the payment of the dishonoured cheque was not made by the accused within the stipulated period of 15 days and thus the present case u/s 138 NI Act was filed against the accused.

2. The defence of the accused as culled out from the notice U/s 251 CrPC served on 03/08/2011 and statement of accused U/s 313 CrPC recorded on 01/10/2013 by my Ld. Predecessor is that the signatures on the said cheque have been forged and he has no liability towards the complainant. Further he has also stated that he did not receive the legal demand notice.

3. The complainant in this case examined two witnesses to substantiate his case. The complainant has himself been examined as CW-1 and the guarantor Ms Manju, in whose presence the loan was allegedly advanced has been examined as CW-2.

4. The accused in this case has also examined two witnesses. The accused has examined bank witness from his bank ie Vijaya Bank, Nehru Place branch as DW-1 and one handwriting expert Syed Faizal Huda has been examined as DW-2.

5. I have heard arguments advanced by both the parties and also perused the record of the case meticulously.

6. The accused in the present case has raised a three fold defence. Firstly that he did not receive the legal demand notice, secondly that the signatures on the cheque in question are forged and thirdly that there was no legal liability towards the complainant. FIRST DEFENCE- NON RECEIPT OF LEGAL DEMAND NOTICE Section 114 of Evidence Act, 1872 is applicable to communications sent by post and it enables the court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. Further Section 27 of the General Clauses Act, 1897 gives rise to a presumption that service of notice has been affected when it is sent to the correct address by Regd. Post.

In the present case, the legal demand notice dated 05/08/2010 ExCW1/C has been sent at K-I, House N. 180, Gali No.18, Near South Delhi Model School, Sangam Vihar, Delhi-62 by UPC, receipt of which is ExCW1/D as well as private courier, receipt of which is ExCW1/E. Further ExCW1/F is the notice which was served by way of courier and returned back with remarks 'NSP'. The accused in this case appeared on BW issued at this address and thus, it is for the accused to rebut the presumption U/s 114 Indian Evidence Act and Section 27 of General Clauses Act. Further in *K Bhaskaran vs Sankaran Vaidhyan Balan* (1999) 7 SCC 510 and in *Vinod Shivappa vs Nanda* (2006) 6 SCC 456, the Hon'ble Apex Court has held that service of notice is deemed to have been affected on the sendee unless he proves that it was not really served and that he was not responsible for such non service. Since the accused has not proved the non service of the demand notice, I hereby hold that the legal notice of demand Ex.CW1/C was duly served upon the accused.

SECOND DEFENCE- SIGNATURES FORGED UPON THE CHEQUE IN QUESTION In order to substantiate this defence, the accused has sought the opinion of the handwriting expert as to whether the signatures on the cheque in question is of the accused or not. The handwriting expert, Syed Faizal Huda was examined and cross examined as DW-2 and exhibited his report ExDW2/A wherein he has opined that the signatures of the accused on the cheque in question have not been written by the accused.

It is settled law that evidence of handwriting expert is not substantive evidence. It is only corroborative piece of evidence. (Relied on *Umed Chand Ramola vs State of Uttranchal* 2006 Cr.L.J. 951). It has also been held in *Amir Mohd. Vs Barkat Ali* AIR 2002 Raj 408 that the opinion of handwriting expert is required to be clearly considered and examined because of the reason that the identification of handwriting is not perfect as it excludes the chances of risk. Therefore, in my view, the only conclusion that can be drawn from the testimony of both the defence witnesses and the account opening form, ExDW1/A (colly) is that the signatures on the cheques in question are not of the accused. However, it cannot be concluded that the same has been forged by the complainant.

THIRD DEFENCE - NO LEGAL LIABILITY TOWARDS THE COMPLAINANT In his testimony, the complainant has deposed that the loan was advanced to the accused from his personal savings and the accused was introduced to him by one Manju. Further, he has deposed that loan amount of Rs.03 lacs was advanced in cash on 01/05/2010. The complainant again deposed that the loan was advanced in three installments and Rs.1,00,000/- was advance on 01/05/2010, Rs.5000/- was advanced after three days and Rs.1.5 lacs were advanced on 14/05/2010. Further, he has deposed that on 14/05/2010, the accused issued the cheque in question.

Admittedly, no document was executed by the complainant and loan was advanced on the assurance of Manju.

Manju has also appeared in the witness box and deposed as CW-2 and has testified that the cheque in question was signed by the accused in her presence and was given at the time the loan was obtained. She could not depose about the exact date of loan obtained from the complainant. Also she deposed that she did not know where the accused was working.

It is a well-settled position of law that when a negotiable instrument is drawn, two statutory presumptions arise in favour of the complainant, one under [Section 139](#) and other under [Section 118\(a\)](#) of the NI Act. The court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon. (Reliance placed on [M.S. Narayana Menon v. State of Kerala](#), (2006) 6 SCC 39).

Now, on appreciation of the testimony of both the complainant's witnesses, this court finds glaring weaknesses in the complainant's case. His conduct does not appear to be that of a reasonable prudent man. Firstly, the complainant as well as evidentiary affidavit of the complainant is silent about the loan advanced on the assurance of Manju and the fact that the accused was a friend of Manju also does not appear to be believable when Manju does not know where the accused was working. Further no reasonable man would advance a loan to a stranger without executing a document and without taking any security from the guarantor. In this case, even the friendly relation of the accused and the guarantor have not been proved and no reasonable explanation has been given for the guarantor taking the accused to the complainant for giving a loan when he was not in the business of advancing loans. Also, the complainant has deposed that the alleged loan was advanced from his personal savings and admittedly, the loan was not shown in the ITR of the relevant period. Further complainant has also deposed that the accused is a driver by profession and was driving an Auto at the relevant time, thus the only logical conclusion that can be drawn is that the accused did not have the capacity to repay the alleged loan. Thus, in such a circumstance, it is impossible to believe that a prudent person would advance a loan of Rs.03 lacs to a man who he does not have the capacity to repay the loan.

8. Once the burden of proof has shifted back to the complainant, he has to prove his case beyond reasonable doubt by establishing source of alleged friendly loan extended and since the source has not been established in the instant case, the complainant is dis-entitled to grant of any relief on the basis of negotiable instrument. [Reliance placed on [Satish Kumar vs State of NCT of Delhi & another](#) (2013 (8) AD (Delhi) 465)].

9. Therefore, in light of the above discussion, this court is of the view that the ingredients of [section 138](#) NI Act, have not been proved against the accused and thus, the accused Taufique Alam is acquitted for offence punishable u/s 138 of [NI Act](#).

Announced in the open court on 12.09.2014 (PREETI PAREWA) Metropolitan Magistrate-02/N I Act/South Saket Court/New Delhi Certified that this judgment contains 09 pages and each page bears my signature.

(PREETI PAREWA) Metropolitan Magistrate-02/N I Act/South Saket Court/New Delhi