

**IN THE COURT OF  
JUDICIAL MAGISTRATE FIRST CLASS-02  
NORTH WEST DISTRICT, ROHINI COURTS, DELHI  
PRESIDED BY : SH. APOORV BHARDWAJ**

In case of:-

**SAVITA SINGH MEENA**

**... Complainant**



***VERSUS***

**NAWAB SINGH**

**... Accused**

**JUDGMENT**

a) Sl no. of the case	11119/2019
b) CNR of the case	DLNW02-015078-2019
c) Date of institution	22.06.2019
d) Name, parentage and address of the complainant	Ms. Savita Singh Meena, W/o Sh. Ganga Prasad, R/o H. No. D-30, Shiv Vihar, Karala, Delhi.
e) Name, parentage and address f) of the accused	Nawab Singh, S/o Sh. Kanchan Singh, Proprietor of M/s. Supar Bag Industries, Jewar Road, Near Shivam Public School, Khurja Junction, Dist. Bulandshar, Uttar Pradesh.
g) Offence complained of	138 NI Act
h) Total cheque amount	(1)Rs 76,700/- (2)Rs 77,290/- (3)Rs 62,900/- (4)Rs 60,000/- (5)Rs 1,30,500/- <b>Total : Rs 4,07,390/-</b>
i) Plea of the accused	Pleaded not guilty
j) Reserved for judgement	01.05.2025
k) Final order :	Held not guilty/Acquitted.
l) Date of Judgment :	15.05.2025

## **BRIEF STATEMENT OF FACTS FOR THE DECISION**

1. Vide this judgment, I shall decide the present complaint filed under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act') by the complainant against the accused.

### **Factual Background**

2. As per the version set out by the complainant, she is the proprietor of the firm namely M/S GA Enterprises, having offices in UP and Delhi. The said firm is engaged in the manufacturing of all types of plastic coolers. The accused had placed five orders with the complainant and purchased 69 coolers in total. In discharge of his liability the accused had issued the cheques in question; four as the proprietor of Super Bag Industries and one in his personal capacity. The complainant presented these cheques to her bank i.e. **Corporation Bank, Main Kanjhawla Road, Delhi** however, all the cheques were returned unpaid for the reason **funds insufficient**. Thereafter, legal demand notice was issued to the accused in regular course, however, he failed to pay the total cheque amount within 15 days thereof and hence the present case.

### **Trial & Proceedings before the Court**

3. Upon a *prima facie* consideration of pre-summoning evidence, cognizance of offence under section 138 NI Act was taken and the accused was summoned. Thereafter, separate notice explaining the accusation was put to the accused under section 251 of The Code

of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') to which the accused pleaded not guilty and claimed trial. At this stage, the following aspects were admitted/denied by him:-

- 3.1. Signatures on the cheque in question :- ***Admitted***
- 3.2. Issuing the cheque in question :- ***Admitted.***
- 3.3. Receiving the legal demand notice :- ***Admitted.***

In his defence, he stated that some of the products supplied by the complainant were defective. The cheques in question were security cheques. He had given some payments to the complainant and some payment was due on his part.

Thereafter, he was granted an opportunity to cross-examine the complainant under section 145(2) NI Act.

- 4. The complainant was examined as CW-1 and **she** adopted her pre-summoning evidence as post-summoning evidence and relied her affidavit i.e. Ex CW1/1 and on the following documents:-

- 4.1. Her Aadhar Card i.e. Ex CW1/A
- 4.2. Bills i.e. Ex CW1/B to Ex CW1/F
- 4.3. Cheques in question i.e. Ex CW1/G to Ex CW1/K
- 4.4. Return memos i.e. Ex CW1/L (colly)
- 4.5. Legal Demand Notice i.e. Ex CW1/M
- 4.6. Postal Receipt Ex CW1/N
- 4.7. Tracking report Ex CW1/O

- 5. Thereafter, CW-1 was cross-examined. During her cross-examination, she stated that she was 12 th pass and used to look after the factory work from her home. She admitted that all the work of the factory was looked after by her husband. It was correct that she had never met with the accused during the

business transaction as her husband used to look after the work and she had seen him for the first time in Court. She admitted that she did not know the contents of her affidavit. She however proved her signatures on her affidavit.

6. Thereafter CE was closed.
7. Thereafter a statement of the accused under section 313 CrPC was recorded wherein he reiterated his innocence. He did not opt to lead defence evidence.
8. Final arguments were heard. On behalf of the complainant, Sh. Sarveshwar Jha prayed that the complainant had proved her case by bringing on record entire documentary evidence and the accused failed to lead any iota of credible or believable evidence to substantiate his defence.
9. On behalf of the accused, Sh. K K Sharma submitted that the complainant has categorically said that she does not know the contents of her affidavit and did not have any direct communication with the accused, this shows that her affidavit is merely hearsay and cannot be relied on. He further argued that since the complainant lacked personal knowledge about the incident, no effective cross-examination of such a witness could have been conducted and thus the accused was deprived of his valuable right to an effective cross-examination regarding his defence. He further submitted that the complainant could have easily examined her husband, which for reasons best known to her, she did not do. He prayed for acquittal on this ground.

**Legal Position:-**

10. The foremost check point is whether the facts averred by the complainant fulfil the basic statutory requirement for constituting an offence under section 138 NI Act. To establish the offence under Section 138 of the NI Act against the accused, the complainant must prove the following:-

(i) The accused must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;

(ii) The cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) That cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity whichever is earlier;

(iv) That cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(v) The payee or the holder in due course of the cheque makes a demand for the payment of the said

amount of money by giving a notice in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

Being cumulative it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under section 138 NI Act.

11. In the present case, the complainant has filed on record the original cheques as **Ex. CW1/G to Ex CW1/K**. The genuineness of the cheques is not disputed. The accused has also admitted his signatures on the cheque in question.

**Therefore ingredient number (i) stands fulfilled in the present case.**

12. The said cheques were presented to the bank within a period of three months from the date on which they were drawn and were returned dishonoured for the reason “**Funds Insufficient**”. The returning memos dated **30.03.2019 & 02.04.2019** bearing the fact of dishonour of cheques in question has been exhibited by the complainant as **Ex. CW1/L (colly)**. The genuineness of the

returning memo is also not disputed by the accused.

**Therefore ingredient number (iii) & (iv) also stand fulfilled in this case.**

13. The complainant then sent a legal notice, **Ex CW1/M** dated **12.04.2019**. The original postal receipts dated **13.04.2019** has been placed on record as **Ex CW1/M**. The accused had admitted that he received the legal demand notice. The fact that the legal demand notice has made a clear and unambiguous demand for payment of the cheque amount(s) in question is also not disputed.

**Therefore, the ingredient number (v) and (vi) are also fulfilled in the present case.**

14. Now, I shall consider whether condition number (ii) i.e. the requirement that the cheque in question have been issued for the discharge, in whole or in part, of any debt or other liability is fulfilled or not. Towards this end, it is apt to discuss that a negotiable instrument including a cheque carries following presumptions in terms of Section 118 (a) and Section 139 of the NI Act.

Section 118 of the NI Act provides :

**"Presumptions as to negotiable instruments:** *Until the contrary is proved, the following presumptions shall be made:*

**(a) of consideration :-** *that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred was accepted, indorsed, negotiated or transferred for consideration;"*

Section 139 of the N.I Act further provides as follows:

***"Presumption in favour of holder:-** 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 the discharge, in whole or in part, of any debt or other liability"*

Thus, the combined effect of Section 118(a) and Section 139 of NI Act raises a presumption in favour of the holder of the cheque that he has received the same for discharge, in whole or in part of any debt or other liability. **Therefore, existence of condition number (ii) is also presumed against the accused.**

15. When the presumption is raised in favour of the complainant, the burden is shifted on the accused to disprove the case of the complainant by rebutting the presumption. The accused can displace this presumption on the scale of preponderance of probabilities. Lack of consideration or a legally enforceable debt need not be proved beyond a reasonable doubt as is the general rule in criminal cases. The accused has to make out a fairly plausible defence which is acceptable to the court. This the accused can do either by leading his own evidence or by raising doubt /demolishing the material or evidence brought on record by the complainant. Reliance can be placed on **Basalingappa v Mudibasappa** (2019) 5 SCC 418.
16. Further, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused

should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. The accused may also rely upon circumstantial evidence to shift the burden again on the complainant. [Refer: **Bharat Barrel and Drum Manufacturing Company v Amin Chand Pyarelal** 1999 SCCOnline SC 188 and **Kumar Exports v Sharma Carpets**, 2008 SCC OnLine SC 1885].

17. Also, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof. Presumption of innocence as a human right needs to be delicately balanced with doctrine of reverse burden contained in section 139 of NI Act. [Reference can be made to **Rangappa v Sri Mohan** 2010 SCC OnLine SC 583 and **Krishna Janardhan Bhat v Dattatreya G Hegde** 2008 (4) SCC 54].

18. Having referred to the above judicial pronouncements, I shall now analyse the record in their light.

**Whether the accused has been able to rebut the presumption against him.**

19. In the present case the main defence of the accused is that the evidence given by the complainant is not admissible as the same is merely hearsay. In **A. C. Narayan v State of Maharashtra & Anr.** (2014) 11 SCC 790 while deciding the aspect that whether a

complaint under section 138 NI Act can be filed and continued through a power of attorney holder, the Hon'ble Supreme Court of India held that the same is permissible, however, the power of attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transactions. As a necessary corollary, it is imperative that the complainant has personal knowledge of the transaction. Similarly, it has been held by Hon'ble Kerala High Court in **Padma Conductors Pvt. Ltd. v MIRC Electronics & Anr.** (CRL.REV.PET NO. 741 OF 2016 decided on 07.02.2024) that

“...in order to prove the transaction led to execution of the cheque, somebody who should have direct knowledge regarding the transaction, issuance and execution of the cheque must be examined. When the complainant limits the evidence as that of an officer of a company, who did not have any direct knowledge regarding the transaction and he did not witness the execution of the cheque, the evidence is insufficient to discharge the initial burden cast upon the complainant. So, it could not be held that the complainant succeeded in discharging his initial burden, to avail the benefit of presumptions under Sections 118 and 139 of the N.I.Act.”

20. Bearing this principle in mind and examining the testimony of the complainant, it is quite clear that not only she disowned her affidavit but she also negated the possibility of being personally aware about the transaction as she admitted that all the work of the factory was looked after by her husband and she had never

met with the accused during the business transaction. Therefore, the evidence of the complainant cannot be believed as a gospel truth.

21. To prove the transaction with the accused the complainant could have easily examined her husband who had personal knowledge regarding the transaction, however, for reasons best known to the complainant, the same was not done.
22. Therefore, I am of the view that on a scale of preponderance of probabilities, the accused has been able to rebut the presumption against him and the complainant has failed to prove the case against the accused beyond reasonable doubt.

**Therefore ingredient no. (ii) has not been established against the accused beyond reasonable doubt.**

### **Conclusion**

23. In view of the evidence adduced, documents put forth and arguments advanced by the parties and further in view of the above discussion, the court is of the considered view that **Sh. Nawab Singh** is **not guilty** of offence under Section 138 of Negotiable Instruments Act, 1881 and accordingly, **he** is hereby **acquitted** under Section 138 of Negotiable Instruments Act, 1881.

**Announced in open court on 15.05.2025**

**Judgment consists of 11 pages.**

**(APOORV BHARDWAJ)**  
**JMFC-02, NORTH WEST DISTRICT**  
**ROHINI COURTS DELHI/15.05.2025**