

## Om Prakash Taneja Vs Raj Kumar

**Court:** DELHI HIGH COURT

**Date of Decision:** Oct. 5, 2016

**Acts Referred:** Negotiable Instruments Act, 1881 (NI) - Section 138

**Citation:** (2016) ACD 1072 : (2016) 4 JCC 246

**Hon'ble Judges:** Mr. S.P. Garg, J.

**Bench:** Single Bench

**Advocate:** In person, for the Respondent; Mr. Narender Bhandari, Advocate, for the Appellant

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

Mr. S.P. Garg, J. - Challenge in this appeal is a judgment dated 07.05.2011 of learned Addl. Sessions Judge in Crl.A.No.04/2011 by which

orders on conviction and sentence dated 29.01.2011 and 04.02.2011 respectively of learned Metropolitan Magistrate in the proceedings instituted

under Section 138 Negotiable Instruments Act were set aside. The appeal is contested by the respondent.

2. I have examined the file. The appellant in the proceedings under Section 138 Negotiable Instruments Act examined himself as CW-1; whereas

the respondent appeared as DW-1 besides examining DW-2 (Ramesh Chandra) and DW-3 (Ashok Kumar). The Trial Court by a judgment

dated 29.01.2011 held the respondent guilty for committing offence under Section 138 Negotiable Instruments Act. Aggrieved by the said orders,

the respondent went in appeal and it resulted in setting aside of the orders on conviction and sentence. Being dissatisfied, the appellant has come in

appeal.

3. In the complaint under Section 138 Negotiable Instruments Act, the appellant claimed that in September, 2003 the respondent and his associate

Ramesh Chandra (since acquitted) had approached him for acquiring certain gold ornaments worth around Rs. 4 lacs. The respondent had issued

two post-dated cheques No.408915 and 408916 dated 08.10.2003 as "consideration" for the ornaments given by him (the complainant). A

receipt (Ex.CW-1/3) was executed. On presentation, the cheques were dishonoured. The respondent failed to make the payment despite service

of legal notice.

4. In the complaint, the complainant, however, did not disclose any specific date as to when the respondent had approached him for acquiring gold

ornaments worth Rs. 4 lacs; what were its specifications. It was not disclosed as to what was the total weight of the gold ornaments and what was

its valuation. It was also not clarified as to on what particular date the gold ornaments were handed over by the appellant to the respondent. In the

complaint, the complainant also did not reveal if any time the respondent had pledged ornaments with him and if so, what was its weight and

valuation and whether these were ever returned, and if so, when and for what consideration.

5. During trial, the complainant (CW-1) while reiterating his version in the examination-in-chief, admitted in the cross-examination that the

respondent had pledged some gold ornaments worth Rs. 5 lacs at that time, the value of which was around Rs. 12 lacs at present. The

complainant, however, did not claim as to when the gold ornaments so pledged were returned to the respondent. In the further cross-examination,

the complainant admitted that, in lieu of the ornaments, he had paid Rs. 4 lacs to the respondent. He further stated that no writing was made

regarding the payment made by him to the respondent. Apparently, the appellant has not presented true facts. It was not claimed that cheques in

question were issued by the respondent in the discharge of "debt" or "other liability".

6. Admittedly, receipt (Ex.CW-1/3) was executed between the parties. However, there is controversy as to the "date" when it was so executed;

the word ""Liya or Diya"" mentioned in it are also disputed. The complainant did not examine any attesting witness to corroborate his version.

Admittedly, the revenue stamp was affixed on the receipt subsequently; there are certain alterations in receipt (Ex.CW-1/3). It further records that

the cheques in question were given to the complainant as security (""Bator Amanat Diye""). The complainant alleged that these words were

incorporated subsequently by DW-2 (Ramesh Chandra) in connivance of the respondent. This receipt records that ornaments worth Rs. 2.30 lacs

and Rs. 1.70 lac were given. It is, however, unclear whether the gold ornaments were given by the complainant to the respondent or vice versa. In

the complaint, the complainant did not disclose if ornaments worth Rs. 2.30 lacs and Rs. 1.70 lacs were given by him to the respondent.

7. The respondent examined DW-2 (Ramesh Chandra) and DW-3 (Ashok Kumar) attesting witnesses to the receipt (Ex.CW-1/3). They have

supported the respondent's version. It was specifically denied that the words in Ex.CW-1/3 were manipulated or fraudulently inserted. At no

stage, the complainant lodged any complaint for fabrication of the receipt (Ex.CWCrl. 1/3) though it continued to be in his possession. Contents of

the receipt can't be permitted to be denied under Sections 91 and 92 of the Indian Evidence Act.

8. It is amply clear from the evidence referred above that at the time of issuance of the cheques there was no outstanding liability on the

respondent's part. The complainant has not established if any jewellery purportedly pledged by the respondent with him was ever returned to him.

The appellant cannot be permitted to enjoy the alleged pledged jewellery as well as to ask for cheque amount given as security/entrustment.

9. In the light of above discussion, impugned judgment suffers from no illegality.

10. The appeal lacks in merits and is dismissed.

11. Trial Court record be sent back forthwith with the copy of the order.