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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 75 of 2024
Reserved on: 30.5.2025
Date of Decision: 18.6.2025.

Kuram Dev ...Petitioner

Versus

Surender Kumar Sharma ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] Yes.

For the Petitioner : Mr. Nitin Rishi, Advocate.
For the Respondent : Mr. Javed Khan, Advocate.

Rakesh Kainthla, Judge

The present petition is directed against the judgment dated 18.12.2023, passed by learned Sessions Judge, Kullu, District Kullu, H.P. (learned Appellate Court), vide which the judgment of conviction and order of sentence dated 1.4.2023, passed by learned Judicial Chief Judicial Magistrate, Lahaul & Spiti, at Kullu, H.P. (learned Trial Court) were upheld. *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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2. Briefly stated, the facts giving rise to the present petition are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (in short "NI Act"). It was asserted that the complainant and the accused knew each other. The accused borrowed a sum of ₹1,50,000/- from the complainant on 19.5.2014. He issued post-dated cheque for ₹1,50,000/- drawn on Central Bank of India to discharge his liability. The accused again borrowed a sum of ₹3.00 lacs on 19.7.2014 from the complainant. The accused issued a post-dated cheque of ₹3.00 lacs drawn on Central Bank of India to discharge his liability. The complainant presented both the cheques to his Bank, but these were dishonoured with the memo 'funds insufficient'. The complainant served a legal notice upon the accused asking him to pay the amount within 15 days of the receipt of the notice. The notice was duly received by the accused, but he failed to pay the amount; hence, the complaint was filed before the learned Trial Court for taking action as per law.

3. The learned Trial Court recorded the preliminary evidence and summoned the accused. When the accused

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appeared, notice of accusation was put to him for the commission of an offence punishable under Section 138 of the NI Act, to which he pleaded not guilty and claimed to be tried.

4. The complainant examined himself as (CW1). The accused, in his statement recorded under Section 313 of Cr.P.C., admitted that he knew the complainant, he had borrowed a sum of ₹3.00 lacs from the complainant and issued a cheque of ₹3.00 lacs to discharge his liability. He denied that he had borrowed a sum of ₹1,50,000/- and issued a cheque for the repayment of the amount. He stated that he had taken an amount of ₹3.00 lacs from the complainant, which was returned by him through a cheque. He had also paid an extra amount of ₹50,000/- to the complainant. The complainant had taken blank cheques as security. He admitted that the notice was received by him. He examined Vikas Kumar (DW1) in his defence.

5. Learned Trial Court held that the accused admitted the issuance of one cheque. He claimed that the cheques were taken by the complainant as security, which shows that the issuance of the second cheque was not denied by the accused. There is a presumption under Section 118(a) and 139 of the NI

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Act that the cheque was issued for valid consideration to discharge the legal liability. The burden shifted upon the accused to rebut the presumption. The accused examined Vikas Kumar (DW1), who proved the statement of account (Ex.DW1/A), which shows that ₹3.00 lacs and ₹50,000/- were debited in favour of Surender on 11.11.2014; however, there is no evidence to establish that Surender is the complainant. Hence, this evidence was insufficient to rebut the presumption. The cheques were dishonoured with an endorsement 'insufficient funds'. The accused admitted the receipt of the notice, but he failed to pay the amount; hence, the accused was convicted of the commission of an offence punishable under Section 138 of the NI Act and he was sentenced to undergo simple imprisonment for three months and to pay compensation of ₹4,50,000/- to the complainant.

6. Being aggrieved from the judgment and order passed by the learned Trial Court, the accused preferred an appeal which was decided by the learned Appellate Court. Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the accused had issued the cheques in discharge of his legal liability, he had failed to rebut the

presumption of consideration attached to the cheque, the cheques were dishonoured with an endorsement 'insufficient funds' and the defence witness could not establish the identity of Surender to whom ₹3,00,000/- were transferred from the account of the complainant. The accused tried to demonstrate that the complainant was a moneylender, and a suggestion to this effect was given to the complainant, but the complainant denied the same, and a denied suggestion does not amount to any proof. Therefore, this plea was not established. The cheques were dishonoured with an endorsement 'funds insufficient', and notice was duly served upon the accused but the accused failed to pay the amount of the cheque to the complainant. Hence, he was rightly convicted and sentenced by the learned Trial Court. Consequently, the appeal preferred by the accused was dismissed.

7. Being aggrieved by the judgment passed by the learned Courts below, the accused has filed the present revision, asserting that the judgments passed by the learned Courts below are based on conjectures and surmises. The provisions of Section 138 of the NI Act were ignored. There was some dispute related to the sale of land. This fact was admitted by the

complainant in his cross-examination. The complainant admitted that he was contesting similar litigation about the agreements involving a huge amount of ₹96.00 lacs. The complainant failed to produce the Income Tax Returns to prove his financial capacity. The plea that the accused is a money lender is highly probable and learned Courts erred in rejecting this plea. The agreement executed between the parties mentions that the cheques were given to the complainant as security and were to be presented after 19.9.2014. However, the complainant presented the cheque before the due date without serving any notice upon the accused. The accused had discharged his part liability through the cheques of ₹3,00,000/-, and this was duly proved by the statement of account. The cheque returning memo was not a certified copy and could not have been admitted in evidence. The money borrowed by the accused was repaid to the complainant. Therefore, it was prayed that the present petition be allowed and the judgments and orders passed by learned Courts below be set aside.

8. I have heard Mr. Nitin Rishi, learned counsel for the petitioner/accused, and Mr. Javed Khan, learned counsel, for the respondent/complainant.

9. Mr. Nitin Rishi, learned counsel for the petitioner/complainant, submitted that the learned Courts below erred in convicting and sentencing the accused. The accused had proved that ₹3,00,000/- was transferred to the complainant. This evidence was wrongly ignored by the learned Courts below. The accused admitted that he had filed many cases pertaining to the cheques, which shows that he is a moneylender. He could not have filed the complaints without the registration under the H.P. Registration of Money Lenders Act. He relied upon the judgment of this Court in ***Bal Krishan Rawat v. Gian Lal 2020:HHC:6491*** and the judgment of the Hon'ble Supreme Court in ***Rajendra Anant Varik Vs. Govind B. Prabhugaonkar 2025 INSC 633*** in support of his submission.

10. Mr. Javed Khan, learned counsel for the respondent/complainant, submitted that the learned Courts below had rightly appreciated the evidence. This Court should not interfere with the reasonable view of the learned Courts below, even if another view is possible. Learned Courts below had rightly held that the cheque carried with it a presumption of consideration that it was issued in discharge of the legal liability. The accused failed to prove that the amount of

₹3,00,000/- was paid to the complainant. There was no evidence to connect the complainant to Surender Kumar mentioned in the statement of account, and the learned Trial Court had rightly discarded this evidence. Therefore, he prayed that the present appeal be dismissed.

11. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

12. It was laid down by the Hon'ble Supreme Court in ***Malkeet Singh Gill v. State of Chhattisgarh*, *(2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786*** that the revisional court is not an appellate court and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed on page 207: -

> "**10.** Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short "CrPC") vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the

provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error which is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

13. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, 2023 SCC OnLine SC 1294,*** wherein it was observed:

> "**13.** The power and jurisdiction of the Higher Court under Section 397 Cr. P.C., which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularity of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept into such proceedings. It would be apposite to refer to the judgment of this court in ***Amit Kapoor v. Ramesh Chandra, (2012) 9 SCC 460,*** where the scope of Section 397 has been considered and succinctly explained as under:
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> > "12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with the law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous,

> there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes but are merely indicative. Each case would have to be determined on its own merits.
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> 13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much-advanced stage in the proceedings under the CrPC."

14. It was held in ***Kishan Rao v. Shankargouda*, (2018) 8 SCC 165: *(2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651*** that it is impermissible for the High Court to reappreciate the evidence and come to its conclusions in the absence of any perversity. It was observed on page 169:

> "**12.** This Court has time and again examined the scope of Sections 397/401 CrPC and the ground for exercising the revisional jurisdiction by the High Court. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri [State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275]***, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following: (SCC pp. 454-55, para 5)

> "*5.* ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court, nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in coming to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ..."

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke [Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]***. This Court held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

> "*14.* ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of

> records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction."

14. In the above case, also conviction of the accused was recorded, and the High Court set aside [***Dattatray Gulabrao Phalke v. Sanjaysinh Ramrao Chavan, 2013 SCC OnLine Bom 1753***] the order of conviction by substituting its own view. This Court set aside the High Court's order holding that the High Court exceeded its jurisdiction in substituting its views, and that too without any legal basis.

15. This position was reiterated in ***Bir Singh v. Mukesh Kumar*, *(2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 13,*** wherein it was observed at page 205:

> **"16.** It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.
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> **17.** As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern***

> ***Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457]***, it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is therefore, in the negative."

16. The present revision has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

17. The accused stated in his statement recorded under Section 313 of Cr.P.C. that the complainant had obtained blank cheques as security. This statement clearly shows that the accused has not disputed his signatures on the cheque. He has only disputed that the cheques were filled at the time of their issuance. It was laid down by this Court in ***Naresh Verma vs. Narinder Chauhan 2020(1) Shim. L.C. 398*** that where the accused had not disputed his signatures on the cheque, the Court has to presume that it was issued in discharge of his legal liability and the burden would shift upon the accused to rebut the presumption. It was observed: -

> "8. Once signatures on the cheque are not disputed, the plea with regard to the cheque having not been issued towards discharge of lawful liability, rightly came to be rejected by learned Courts below. Reliance is placed upon ***Hiten P. Dalal v. Bartender Nath Bannerji, 2001 (6) SCC 16***, wherein it has been held as under:
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> "The words 'unless the contrary is proved' which

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> occur in this provision make it clear that the presumption has to be rebutted by 'proof' and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when, upon the material before it, the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted....."
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> 9. S.139 of the Act provides that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

18. Similar is the judgment in ***Basalingappa vs. Mudibasappa 2019 (5) SCC 418,*** wherein it was held:

> "26. Applying the proposition of law as noted above, in the facts of the present case, it is clear that the signature on the cheque, having been admitted, a presumption shall be raised under Section 139 that the cheque was issued in discharge of debt or liability."

19. This position was reiterated in ***Kalamani Tex v. P. Balasubramanian, (2021) 5 SCC 283: (2021) 3 SCC (Civ) 25: (2021) 2 SCC (Cri) 555: 2021 SCC OnLine SC 75*** wherein it was held at page 289:

> "14. Once the 2nd appellant had admitted his signatures on the cheque and the deed, the trial court ought to have presumed that the cheque was issued as consideration for a legally enforceable debt. The trial court fell in error when it called upon the respondent complainant to

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> explain the circumstances under which the appellants were liable to pay. Such an approach of the trial court was directly in the teeth of the established legal position as discussed above, and amounts to a patent error of law."

20. Similar is the judgment in ***APS Forex Services (P) Ltd. v. Shakti International Fashion Linkers (2020) 12 SCC 724,*** wherein it was observed: -

> "**7.2.** What is emerging from the material on record is that the issuance of a cheque by the accused and the signature of the accused on the said cheque are not disputed by the accused. The accused has also not disputed that there were transactions between the parties. Even as per the statement of the accused, which was recorded at the time of the framing of the charge, he has admitted that some amount was due and payable. However, it was the case on behalf of the accused that the cheque was given by way of security, and the same has been misused by the complainant. However, nothing is on record that in the reply to the statutory notice, it was the case on behalf of the accused that the cheque was given by way of security. Be that as it may, however, it is required to be noted that earlier the accused issued cheques which came to be dishonoured on the ground of "insufficient funds" and thereafter a fresh consolidated cheque of ₹9,55,574 was given which has been returned unpaid on the ground of "STOP PAYMENT". Therefore, the cheque in question was issued for the second time. Therefore, once the accused has admitted the issuance of a cheque which bears his signature, there is a presumption that there exists a legally enforceable debt or liability under Section 139 of the NI Act. However, such a presumption is rebuttable in nature, and the accused is required to lead evidence to rebut such presumption. The accused was required to lead evidence that the entire amount due and payable to the complainant was paid.

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> **9.** Coming back to the facts in the present case and considering the fact that the accused has admitted the issuance of the cheques and his signature on the cheque and that the cheque in question was issued for the second time after the earlier cheques were dishonoured and that even according to the accused some amount was due and payable, there is a presumption under Section 139 of the NI Act that there exists a legally enforceable debt or liability. Of course, such presumption is rebuttable in nature. However, to rebut the presumption, the accused was required to lead evidence that the full amount due and payable to the complainant had been paid. In the present case, no such evidence has been led by the accused. The story put forward by the accused that the cheques were given by way of security is not believable in the absence of further evidence to rebut the presumption, and more particularly, the cheque in question was issued for the second time after the earlier cheques were dishonoured. Therefore, both the courts below have materially erred in not properly appreciating and considering the presumption in favour of the complainant that there exists a legally enforceable debt or liability as per Section 139 of the NI Act. It appears that both the learned trial court as well as the High Court have committed an error in shifting the burden upon the complainant to prove the debt or liability, without appreciating the presumption under Section 139 of the NI Act. As observed above, Section 139 of the Act is an example of reverse onus clause and therefore, once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter, it is for the accused to rebut such presumption by leading evidence."

21. The presumption under Section 139 of the NI Act was explained by the Hon'ble Supreme Court in ***Triyambak S. Hegde v.***

Sripad, (2022) 1 SCC 742: (2022) 1 SCC (Civ) 512: 2021 SCC OnLine SC 788 as under at page 747:

> "**12.** From the facts arising in this case and the nature of the rival contentions, the record would disclose that the signature on the documents at Exts. P-6 and P-2 are not disputed. Ext. P-2 is the dishonoured cheque based on which the complaint was filed. From the evidence tendered before the JMFC, it is clear that the respondent has not disputed the signature on the cheque. If that be the position, as noted by the courts below, a presumption would arise under Section 139 in favour of the appellant who was the holder of the cheque. Section 139 of the NI Act reads as hereunder:
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> > "**139.** ***Presumption in favour of the 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."
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> **13.** Insofar as the payment of the amount by the appellant in the context of the cheque having been signed by the respondent, the presumption for passing of the consideration would arise as provided under Section 118(*a*) of the NI Act, which reads as hereunder:
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> > "**118.** ***Presumptions as to negotiable instruments***. — Until the contrary is proved, the following presumptions shall be made:
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> > (*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."
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> **14.** The above-noted provisions are explicit to the effect that such presumption would remain until the contrary is proved. The learned counsel for the appellant in that

regard has relied on the decision of this Court in ***K. Bhaskaran v. Sankaran Vaidhyan Balan [K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510: 1999 SCC (Cri) 1284]*** wherein it is held as hereunder: (SCC pp. 516-17, para 9)

> "*9.* As the signature in the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Section 139 of the Act enjoins the Court to presume that the holder of the cheque received it for the discharge of any debt or liability. The burden was on the accused to rebut the aforesaid presumption. The trial court was not persuaded to rely on the interested testimony of DW 1 to rebut the presumption. The said finding was upheld [***Sankaran Vaidhyan Balan v. K. Bhaskaran, Criminal Appeal No. 234 of 1995, order dated 23-10-1998 (Ker)***] by the High Court. It is not now open to the accused to contend differently on that aspect."

15. The learned counsel for the respondent has, however, referred to the decision of this Court in ***Basalingappa v. Mudibasappa [Basalingappa v. Mudibasappa, (2019) 5 SCC 418: (2019) 2 SCC (Cri) 571***] wherein it is held as hereunder: (SCC pp. 432-33, paras 25-26)

> "*25.* We having noticed the ratio laid down by this Court in the above cases on Sections 118(*a*) and 139, we now summarise the principles enumerated by this Court in the following manner:
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> *25.1.* Once the execution of the cheque is admitted, Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.
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> *25.2.* The presumption under Section 139 is a rebuttable presumption, and the onus is on the accused to raise the probable defence. The standard

of proof for rebutting the presumption is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come into the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

25.5. It is not necessary for the accused to come into the witness box to support his defence.

26. Applying the preposition of law as noted above, in the facts of the present case, it is clear that the signature on the cheque, having been admitted, a presumption shall be raised under Section 139 that the cheque was issued in discharge of debt or liability. The question to be looked into is as to whether any probable defence was raised by the accused. In the cross-examination of PW 1, when the specific question was put that a cheque was issued in relation to a loan of Rs 25,000 taken by the accused, PW 1 said that he does not remember. PW 1 in his evidence admitted that he retired in 1997, on which date he received a monetary benefit of Rs 8 lakhs, which was encashed by the complainant. It was also brought in evidence that in the year 2010, the complainant entered into a sale agreement for which he paid an amount of Rs 4,50,000 to Balana Gouda towards sale consideration. Payment of Rs 4,50,000 being admitted in the year 2010 and further payment of

> loan of Rs 50,000 with regard to which Complaint No. 119 of 2012 was filed by the complainant, a copy of which complaint was also filed as Ext. D-2, there was a burden on the complainant to prove his financial capacity. In the years 2010-2011, as per own case of the complainant, he made a payment of Rs 18 lakhs. During his cross-examination, when the financial capacity to pay Rs 6 lakhs to the accused was questioned, there was no satisfactory reply given by the complainant. The evidence on record, thus, is a probable defence on behalf of the accused, which shifted the burden on the complainant to prove his financial capacity and other facts."

16. In that light, it is contended that the very materials produced by the appellant and the answers relating to lack of knowledge of property details by PW 1 in his cross-examination would indicate that the transaction is doubtful, and no evidence is tendered to indicate that the amount was paid. In such an event, it was not necessary for the respondent to tender rebuttal evidence, but the case put forth would be sufficient to indicate that the respondent has successfully rebutted the presumption.

17. On the position of law, the provisions referred to in Sections 118 and 139 of the NI Act, as also the enunciation of law as made by this Court, need no reiteration as there is no ambiguity whatsoever. In ***Basalingappav. Mudibasappa [Basalingappa v. Mudibasappa, (2019) 5 SCC 418 : (2019) 2 SCC (Cri) 571***] relied on by the learned counsel for the respondent, though on facts the ultimate conclusion therein was against raising presumption, the facts and circumstances are entirely different as the transaction between the parties as claimed in the said case is peculiar to the facts of that case where the consideration claimed to have been paid did not find favour with the Court keeping in view the various transactions and extent of amount involved. However, the legal position relating to the presumption arising under

> Sections 118 and 139 of the NI Act on signature being admitted has been reiterated. Hence, whether there is a rebuttal or not would depend on the facts and circumstances of each case."

22. This position was reiterated in ***Tedhi Singh v. Narayan Dass Mahant, (2022) 6 SCC 735: (2022) 2 SCC (Cri) 726: (2022) 3 SCC (Civ) 442: 2022 SCC OnLine SC 302*** wherein it was held at page 739:

> "8. It is true that this is a case under Section 138 of the Negotiable Instruments Act. Section 139 of the NI Act provides that the court shall presume 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. This presumption, however, is expressly made subject to the position being proved to the contrary. In other words, it is open to the accused to establish that there is no consideration received. It is in the context of this provision that the theory of "probable defence" has grown. In an earlier judgment, in fact, which has also been adverted to in ***Basalingappa [Basalingappa v. Mudibasappa, (2019) 5 SCC 418: (2019) 2 SCC (Cri) 571]***, this Court notes that Section 139 of the NI Act is an example of reverse onus (see ***Rangappa v. Sri Mohan [Rangappa v. Sri Mohan, (2010) 11 SCC 441: (2010) 4 SCC (Civ) 477: (2011) 1 SCC (Cri) 184]***). It is also true that this Court has found that the accused is not expected to discharge an unduly high standard of proof. It is accordingly that the principle has developed that all which the accused needs to establish is a probable defence. As to whether a probable defence has been established is a matter to be decided on the facts of each case on the conspectus of evidence and circumstances that exist..."

23. Similar is the judgment in ***P. Rasiya v. Abdul Nazer,*** ***2022 SCC OnLine SC 1131,*** wherein it was observed:

> "As per Section 139 of the N.I. Act, 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 discharge, in whole or in part, of any debt or other liability. Therefore, once the initial burden is discharged by the Complainant that the cheque was issued by the accused and the signature and the issuance of the cheque are not disputed by the accused, in that case, the onus will shift upon the accused to prove the contrary that the cheque was not for any debt or other liability. The presumption under Section 139 of the N.I. Act is a statutory presumption and thereafter, once it is presumed that the cheque is issued in whole or in part of any debt or other liability which is in favour of the Complainant/holder of the cheque, in that case, it is for the accused to prove the contrary."

24. This position was reiterated in ***Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148: 2023 SCC OnLine SC 1275,*** wherein it was observed at page 161:

> **33.** The NI Act provides for two presumptions: Section 118 and Section 139. Section 118 of the Act inter alia directs that it shall be presumed until the contrary is proved that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that "unless the contrary is proved, it shall be presumed that the holder of the cheque received the cheque for the discharge of, whole or part of any debt or liability". It will be seen that the "*presumed fact*" directly relates to one of the crucial ingredients necessary to sustain a conviction under Section 138. [The rules discussed hereinbelow are common to both the presumptions under Section 139 and

Section 118 and are hence not repeated—reference to one can be taken as reference to another]

34. Section 139 of the NI Act, which takes the form of a "*shall presume*" clause, is illustrative of a presumption of law. Because Section 139 requires that the Court "*shall presume*" the fact stated therein, it is obligatory for the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. But this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary, as is clear from the use of the phrase "*unless the contrary is proved*".

35. The Court will necessarily presume that the cheque had been issued towards the discharge of a legally enforceable debt/liability in two circumstances. *Firstly*, when the drawer of the cheque admits issuance/execution of the cheque and *secondly*, in the event where the complainant proves that the cheque was issued/executed in his favour by the drawer. The circumstances set out above form the fact(s) which bring about the activation of the presumptive clause. [***Bharat Barrel & Drum Mfg. Co.*** **v.** ***Amin Chand Payrelal*** [***Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal, (1999) 3 SCC 35***]]

36. Recently, this Court has gone to the extent of holding that presumption takes effect even in a situation where the accused contends that a blank cheque leaf was voluntarily signed and handed over by him to the complainant. [***Bir Singh v. Mukesh Kumar [Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Civ) 309: (2019) 2 SCC (Cri) 40]***]. Therefore, the mere admission of the drawer's signature, without admitting the execution of the entire contents in the cheque, is now sufficient to trigger the presumption.

37. As soon as the complainant discharges the burden to prove that the instrument, say a cheque, was issued by the accused for discharge of debt, the presumptive device under Section 139 of the Act helps shifting the burden on

> the accused. The effect of the presumption, in that sense, is to transfer the evidential burden on the accused of proving that the cheque was not received by the Bank towards the discharge of any liability. Until this evidential burden is discharged by the accused, the presumed fact will have to be taken to be true, without expecting the complainant to do anything further.

38. ***John Henry Wigmore [John Henry Wigmore and the Rules of Evidence: The Hidden Origins of Modern Law]*** *on Evidence* states as follows:

> "The peculiar effect of the presumption of law is merely to invoke a rule of law compelling the Jury to reach the conclusion in the absence of evidence to the contrary from the opponent but if the opponent does offer evidence to the contrary (sufficient to satisfy the Judge's requirement of some evidence), the presumption 'disappears as a rule of law and the case is in the Jury's hands free from any rule'."

39. The standard of proof to discharge this evidential burden is not as heavy as that usually seen in situations where the prosecution is required to prove the guilt of an accused. The accused is not expected to prove the non-existence of the presumed fact beyond a reasonable doubt. The accused must meet the standard of "*preponderance of probabilities*", similar to a defendant in a civil proceeding. [***Rangappa v. Sri Mohan][Rangappa v. Sri Mohan, (2010) 11 SCC 441: (2010) 4 SCC (Civ) 477: (2011) 1 SCC (Cri) 184: AIR 2010 SC 1898]***]

25. The accused also claimed in his statement recorded under Section 313 of Cr.P.C. that he had borrowed ₹3.00 lacs from the complainant and he had returned the amount of ₹3.00 lacs by way of a cheque. He had also paid an extra amount of ₹50,000/- to the complainant. He examined Vikas

Kumar (DW1), who proved the statement of account (Ex.DW1/A), in which an entry of payment of ₹3.00 lacs by means of cheque to Surender Kumar was mentioned. Vikas Kumar admitted in his cross-examination that he could not say which Surender Kumar had taken the money. He volunteered to say that he could disclose this fact by checking the voucher. The record of the voucher was not requisitioned from him.

26. Learned Courts below had rightly held that the testimony of this witness did not prove the defence of the accused. This witness could not identify the person to whom the money was paid. The complainant denied his cross-examination that the accused had returned the money by way of cheque No. 007069, and he had also returned ₹50,000/- to the complainant. A denied suggestion does not amount to any proof, and learned Courts below had rightly held that there was no evidence to prove that the money was paid to the complainant.

27. It was submitted that the payment was to be made after ascertaining the identity of the person to whom the

money was being paid. The bank failed to maintain the record regarding the identity for which the accused should not be penalised. This submission is only stated to be rejected. Vikash Kumar (DW1) categorically stated that the identity of the person could be verified by checking the vouchers; however, the vouchers were not requisitioned from him. His statement shows that the complete record was not requisitioned by the accused to prove his defence. Hence, there is no evidence that the proper record regarding the disbursal of the money was not maintained.

28. Moreover, the accused could have issued an account payee cheque, and there was no need to issue a bearer cheque. He had taken money from the complainant through a cheque, and it was expected of him to return the money by using an account payee cheque so as to retain the proof of the payment. If he had issued the cheque in favour of the bearer, he could only blame himself and not the Bank.

29. The complainant stated in his cross-examination that an agreement dated 19.7.2014 was executed between the parties. He had litigation with the accused regarding the

earnest money for some land. The earnest money was ₹3,50,000/- out of which he had paid ₹3.00 lacs, and ₹50,000/- was to be paid by him at the time of the sale deed. The sale deed was not executed in this case. He had 10 cases pending against Jagdish Sharma regarding the cheque and the earnest money for ₹96.00 lacs. One case was pending with Anil Kumar for ₹1,90,000/-, one case was pending with Ram Singh for ₹3,10,000/-, one case was pending with Fun Chong Tashi for ₹50,000/-, one case was pending against Prem Singh for ₹2.00 lacs, and one case pertaining to earnest money was pending with Lekh Raj for ₹10.00 lacs and ₹7.00 lacs. He denied that he used to advance money on interest. He admitted that he had not mentioned the amount in his Income Tax Return.

30. It was submitted that the cross-examination of the complainant shows that he is a moneylender and, in the absence of registration, he could not have filed the present complaint. This submission is not acceptable. The complainant specifically denied in his cross-examination that he is a moneylender and denied suggestion does not amount

to any proof. Further, the cross-examination of the complainant shows that the cases pertain to the earnest money and not to the return of money advanced by the complainant. The term money lender has been defined in Section 2(a) of the H.P. Registration of Money Lenders Act, 1976 as a person carrying on the business of advancing loans. The term loan means advancing money at interest. The cross-examination of the complainant does not show that he is engaged in the business of advancing money on interest. Therefore, the findings recorded by the learned Courts that the complainant was not proved to be the moneylender cannot be faulted.

31. It was submitted that the loan of ₹1,50,000/- was advanced in cash as per the complainant, which is contrary to the provision of Section 269(SS) of the Income Tax Act. The loan was not reflected in the income tax returns, and the complaint is liable to be dismissed. This submission is not acceptable. It was laid down by this Court in ***Surinder Singh vs. State of H.P. 2018(1) D.C.R. 45*** that contravention of Section 269 SS of the Income Tax

Act will give rise to a penalty, but will not invalidate the transaction. It was observed:-

> 5. The relevant portion of Section 269 SS of the IT Act reads thus:-
>
> > "(a) the amount of such loan or deposit or the aggregate amount of such loan and deposit' or
> >
> > (b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or
> >
> > (c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is (twenty) thousand rupees or more. Provided....."
>
> 6. Section 271D provides for a penalty for failure to comply with the aforesaid provisions which reads thus:
>
> > "271D. Penalty for failure to comply with the provisions of Section 269-SS - (1) If a person takes or accepts any loan or deposit in contravention of the provisions of Section 269-SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so taken or accepted.
> >
> > (2) Any penalty impossible under sub-section (1) shall be imposed by the Joint Commissioner."
>
> 7. A collective reading of both the aforesaid Sections would go to show that even though contravention of Section 269-SS of the IT Act would be visited with a strict penalty on the person taking the loan or deposit. However, Section 271D does not in any manner suggest or even provide that such a transaction would be null and void. The payer of money in cash, in violation of Section 269 SS of the IT Act can always have the money recovered.

8. The object of introducing Section 269 of the IT Act has been succinctly set out by the Hon'ble Supreme Court in ***Asstt. Director of Inspection Investigation vs. A.B. Shanthi (2002) 6 SCC 259***, wherein it was observed as under:-

> "8. The object of introducing Section 269-SS is to ensure that a taxpayer is not allowed to give a false explanation for his unaccounted money, or if he has given some false entries in his accounts, he shall not escape by giving false entries in his accounts, he shall not escape by giving a false explanation for the same. During search and seizures, unaccounted money is unearthed and the taxpayer would usually give the explanation that he had borrowed or received deposits from his relatives or friends and it is easy for the so-called lender also to manipulate his records later to suit the plea of the taxpayer. The main objection of Section 269-SS was to curb this menace."

9. In light of the aforesaid observations it cannot but be said that Section 269-SS only provides for the mode of accepting payment or repayment in certain cases so as to counteract evasion of tax. However, Section 269-SS does not declare all transactions of loan by cash in excess of ₹20,000/- as invalid, illegal or null and void as the main object of introducing the provision was to curb and unearth black money.

32. It was further held that the failure to mention the loan in the income tax return will not entitle the accused to acquittal. It was observed:-

> 10. It would further be noticed that the learned trial Magistrate has acquitted the accused on the ground that the loan has not been shown in the Income Tax Return

furnished by the complainant and while recording such finding has placed reliance upon the judgment of the Hon'ble Delhi High Court in ***Vipul Kumar Gupta vs. Vipin Gupta 2012 (V) AD (CRI) 189***. However, after having perused the said judgment, it would be noticed that the amount in the said case was ₹ 9 lacs and it is in that background that the Court observed as under:-

> "9. I find myself in agreement with the reasoning given by the learned ACMM that before a person is convicted for having committed an offence under Section 138 of the Act, it must be proved beyond a reasonable doubt that the cheque in question, which has been made as a basis for prosecuting the respondent/accused, must have been issued by him in the discharge of his liability or a legally recoverable debt. In the facts and circumstances of this case, there is every reason to doubt the version given by the appellant that the cheque was issued in the discharge of a liability or a legally recoverable debt. The reasons for this are a number of factors which have been enumerated by the learned ACMM also. Some of them are that non-mentioning by the appellant in his Income Tax Return or the Books of Accounts, the factum of the loan having been given by him because by no measure, an amount of ₹ 9,00,000/- can be said to be a small amount which a person would not reflect in his Books of Accounts or the Income Tax Return, in case the same has been lent to a person. The appellant, neither in the complaint nor in his evidence, has mentioned the date, time or year when the loan was sought or given. The appellant has presented a cheque, which obviously is written with two different inks, as the signature is appearing in one ink, while the remaining portion, which has been filled up in the cheque, is in different ink. All these factors prove the defence of the respondent to be plausible to the effect that he

> had issued these cheques by way of security to the appellant for getting a loan from Prime Minister Rojgar Yojana. The respondent/accused has only to create doubt in the version of the appellant, while the appellant has to prove the guilt of the accused beyond a reasonable doubt, in which, in my opinion, he has failed miserably. There is no cogent reason which has been shown by the appellant which will persuade this Court to grant leave to appeal against the impugned order, as there is no infirmity in the impugned order."

33. Therefore, the submission that the complaint was liable to be dismissed because the amount was given in violation of Section 269(SS) and was not reflected in the income tax return cannot be accepted.

34. It was submitted that the complainant admitted the execution of an agreement between the parties; however, this agreement was not placed on record. Therefore, an adverse inference should be drawn against the complainant. This submission is not acceptable. It was rightly pointed out by the learned Courts below that the cheque carries with it a presumption of consideration and the complainant is not required to prove the consideration before the Court. This proposition was laid down by Hon'ble Supreme Court in ***Uttam Ram v. Devinder Singh Hudan, (2019) 10 SCC 287: (2020) 1 SCC***

(Cri) 154: (2020) 1 SCC (Civ) 126: 2019 SCC OnLine SC 1361 wherein it was observed:-

> "**19.** A negotiable instrument including a cheque carries a presumption of consideration in terms of Section 118(*a*) and under Section 139 of the Act. Sections 118(*a*) and 139 read as under:
>
> "**118.** ***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;
>
> ***
>
> **139.** ***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."
>
> **20.** The trial court and the High Court proceeded as if, the appellant is to prove a debt before civil court wherein, the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the recovery of the amount due. A dishonour of a cheque carries a statutory presumption of consideration. The holder of the cheque in due course is required to prove that the cheque was issued by the accused and that when the same presented, it was not honoured. Since there is a statutory presumption of consideration, the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability.
>
> **21.** There is the mandate of presumption of consideration in terms of the provisions of the Act. The onus shifts to

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the accused on proof of issuance of cheque to rebut the presumption that the cheque was issued not for discharge of any debt or liability in terms of Section 138 of the Act which reads as under:

> "**138.** ***Dishonour of cheque for insufficiency, etc. of funds in the account.***—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that 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 that bank, such person shall be deemed to have committed an offence and shall, ..."

22. In ***Kumar Exports [Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513: (2009) 1 SCC (Civ) 629: (2009) 1 SCC (Cri) 823]***, it was held that mere denial of the existence of debt will not serve any purpose but the accused may adduce evidence to rebut the presumption. This Court held as under: (SCC pp. 520-21, para 20)

> "*20*. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that, under the particular circumstances of the case, the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions, an accused is not expected to prove his defence beyond a reasonable doubt, as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, 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. *At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently, would not serve the purpose of the accused. 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.* Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence, and if the circumstances so relied upon are compelling, the burden may likewise shift again onto the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act, to rebut the presumptions arising under Sections 118 and 139 of the Act." (emphasis supplied)

23. In the judgment ***Kishan Rao v. Shankargouda [Kishan Rao v. Shankargouda, (2018) 8 SCC 165 : (2018) 4 SCC (Civ) 37 : (2018) 3 SCC (Cri) 544]***, this Court referring to ***Kumar Exports [Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513 : (2009) 1 SCC (Civ) 629 : (2009) 1 SCC (Cri) 823] and Rangappa [Rangappa v. Sri Mohan, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184]*** returned the following findings : (***Kishan Rao case [Kishan Rao v. Shankargouda, (2018) 8 SCC 165 : (2018) 4 SCC (Civ) 37 : (2018) 3 SCC (Cri) 544***], SCC pp. 173-74, para 22)

"22. Another judgment which needs to be looked into is ***Rangappa v. Sri Mohan [Rangappa v. Sri Mohan, (2010) 11 SCC 441: (2010) 4 SCC (Civ) 477: (2011) 1 SCC (Cri) 184]***. A three-judge Bench of this Court had occasion to examine the presumption under Section

139 of the 1881 Act. This Court in the aforesaid case has held that in the event the accused is able to raise a probable defence which creates doubt with regard to the existence of a debt or liability, the presumption may fail. The following was laid down in paras 26 and 27: (SCC pp. 453-54)

> '26. In light of these extracts, we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in ***Krishna Janardhan Bhat [Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54: (2008) 2 SCC (Cri) 166]*** may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is, of course, in the nature of a rebuttable presumption, and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.
>
> 27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions.

> In such a scenario, 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 of proof."

24. In the judgment ***Bir Singh v. Mukesh Kumar [Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Civ) 309: (2019) 2 SCC (Cri) 40]***, this Court held that presumption under Section 139 of the Act is a presumption of law. The Court held as under: (SCC pp. 206 & 208-09, paras 20, 33 & 36)

> "*20.* Section 139 introduces an exception to the general rule as to the burden of proof and shifts the onus on the accused. The presumption under Section 139 of the Negotiable Instruments Act is a presumption of law, as distinguished from a presumption of fact. Presumptions are rules of evidence and do not conflict with the presumption of innocence, which requires the prosecution to prove the case against the accused beyond a reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law and presumptions of fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact as held in ***Hiten P. Dalal [Hiten P., Dalal v. Bratindranath Banerjee, (2001) 6 SCC 16: 2001 SCC (Cri) 960]***.
>
> ***
>
> *33.* A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer if the cheque is duly

signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

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36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

25. In other judgment ***Rohitbhai Jivanlal Patel v. State of Gujarat [Rohitbhai Jivanlal Patel v. State of Gujarat, (2019) 18 SCC 106: 2019 SCC OnLine SC 389: AIR 2019 SC 1876]*** this Court held as under: (SCC paras 15, 17 and 22)

"*15*. So far the question of the existence of basic ingredients for drawing of presumption under Sections 118 and 139 of the NI Act is concerned, apparent it is that the appellant-accused could not deny his signature on the cheques in question that had been drawn in favour of the complainant on a bank account maintained by the accused for a sum of Rs 3 lakhs each. The said cheques were presented to the bank concerned within the period of their validity and were returned unpaid for the reason of either the balance being insufficient or the account being closed. All the basic ingredients of Section 138, as also of Sections 118 and 139, are apparent on the face of the record. The trial court had also consciously taken note of these facts and had drawn the requisite presumption. Therefore, it is required to be presumed that the cheques in question were drawn for consideration and the holder of the cheques, i.e. the complainant, received the same in discharge of an existing debt. The onus, therefore, shifts on the appellant-accused to establish a probable defence so as to rebut such a presumption.

***

> *17.* On the aspects relating to a preponderance of probabilities, the accused has to bring on record such facts and such circumstances which may lead the Court to conclude either that the consideration did not exist or that its non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that the consideration did not exist. This Court has, time and again, emphasised that though there may not be sufficient negative evidence which could be brought on record by the accused to discharge his burden, yet mere denial would not fulfil the requirements of rebuttal as envisaged under Sections 118 and 139 of the NI Act....
>
> ***
>
> *22.* The result of the discussion in the foregoing paragraphs is that the major considerations on which the trial court chose to proceed clearly show its fundamental error of approach, where, even after drawing the presumption, it had proceeded as if the complainant was to prove his case beyond a reasonable doubt. Such being the fundamental flaw on the part of the trial court, the High Court [***Shashi Mohan Goyanka v. State of Gujarat, 2018 SCC OnLine Guj 3674***] cannot be said to have acted illegally or having exceeded its jurisdiction in reversing the judgment of acquittal. As noticed hereinabove, in the present matter, the High Court has conscientiously and carefully taken into consideration the views of the trial court and, after examining the evidence on the record as a whole, found that the findings of the trial court are vitiated by perversity. Hence, interference by the High Court was inevitable; rather had to be made for a just and proper decision of the matter."

"20. The Trial Court and the High Court proceeded as if the appellant were to prove a debt before a civil court, wherein the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the recovery of the amount due. Dishonour of a cheque

> carries a statutory presumption of consideration. The holder of the cheque in due course is required to prove that the cheque was issued by the accused and that when the same was presented, it was not honoured. Since there is a statutory presumption of consideration, the burden is on the accused to rebut the presumption that the cheque was issued not for any debt or other liability."

35. A similar view was taken in ***Rohitbhai Jivanlal Patel v. State of Gujarat (2019) 18 SCC 106,*** and it was held that once a presumption has been drawn, the onus shifts to the accused. It was observed: -

> **12.** According to the learned counsel for the appellant-accused, the impugned judgment is contrary to the principles laid down by this Court in ***Arulvelu [Arulvelum v. State, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288]*** because the High Court has set aside the judgment of the trial court without pointing out any perversity therein. The said case of ***Arulvelu [Arulvelum v. State, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288]*** related to the offences under Sections 304-B and 498-A IPC. Therein, on the scope of the powers of the appellate court in an appeal against acquittal, this Court observed as follows : (SCC p. 221, para 36)
>
> > "*36*. Careful scrutiny of all these judgments leads to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal, particularly in a case where two views are possible. The trial court judgment cannot be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."

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The principles aforesaid are not of much debate. In other words, ordinarily, the appellate court will not be upsetting the judgment of acquittal, if the view taken by the trial court is one of the possible views of the matter and unless the appellate court arrives at a clear finding that the judgment of the trial court is perverse i.e. not supported by evidence on record or contrary to what is regarded as normal or reasonable; or is wholly unsustainable in law. Such general restrictions are essential to remind the appellate court that an accused is presumed to be innocent unless proved guilty beyond a reasonable doubt, and a judgment of acquittal further strengthens such presumption in favour of the accused. However, such restrictions need to be visualised in the context of the particular matter before the appellate court and the nature of the inquiry therein. The same rule with the same rigour cannot be applied in a matter relating to the offence under Section 138 of the NI Act, particularly where a presumption is drawn that the holder has received the cheque for the discharge, wholly or in part, of any debt or liability. Of course, the accused is entitled to bring on record the relevant material to rebut such presumption and to show that preponderance of probabilities are in favour of his defence but while examining if the accused has brought about a probable defence so as to rebut the presumption, the appellate court is certainly entitled to examine the evidence on record in order to find if preponderance indeed leans in favour of the accused.

13. For determination of the point as to whether the High Court was justified in reversing the judgment and orders of the trial court and convicting the appellant for the offence under Section 138 of the NI Act, the basic questions to be addressed are twofold: as to whether the complainant Respondent 2 had established the ingredients of Sections 118 and 139 of the NI Act, so as to justify drawing of the presumption envisaged therein; and if so, as to whether the appellant-accused had been

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able to displace such presumption and to establish a probable defence whereby, the onus would again shift to the complainant?

36. This position was reiterated in ***Ashok Singh v. State of U.P., 2025 SCC OnLine SC 706,*** wherein it was observed:

> **22.** The High Court while allowing the criminal revision has primarily proceeded on the presumption that it was obligatory on the part of the complainant to establish his case on the basis of evidence by giving the details of the bank account as well as the date and time of the withdrawal of the said amount which was given to the accused and also the date and time of the payment made to the accused, including the date and time of receiving of the cheque, which has not been done in the present case. Pausing here, such presumption on the complainant, by the High Court, appears to be erroneous. The onus is not on the complainant at the threshold to prove his capacity/financial wherewithal to make the payment in discharge of which the cheque is alleged to have been issued in his favour. Only if an objection is raised that the complainant was not in a financial position to pay the amount so claimed by him to have been given as a loan to the accused, only then the complainant would have to bring before the Court cogent material to indicate that he had the financial capacity and had actually advanced the amount in question by way of loan. In the case at hand, the appellant had categorically stated in his deposition and reiterated in the cross-examination that he had withdrawn the amount from the bank in Faizabad (Typed Copy of his deposition in the paperbook wrongly mentions this as 'Firozabad'). The Court ought not to have summarily rejected such a stand, more so when respondent no. 2 did not make any serious attempt to dispel/negate such a stand/statement of the appellant. Thus, on the one hand, the statement made before the Court, both in examination-in-chief and cross-examination, by the appellant with regard to withdrawing the money from the bank for giving it to the accused has been disbelieved whereas the argument on behalf of the accused that he had not received any payment

of any loan amount has been accepted. In our decision in ***S. S. Production v. Tr. Pavithran Prasanth, 2024 INSC 1059***, we opined:

> '*8. From the order impugned, it is clear that though the contention of the petitioners was that the said amounts were given for producing a film and were not by way of return of any loan taken, which may have been a probable defence for the petitioners in the case, but rightly, the High Court has taken the view that evidence had to be adduced on this point which has not been done by the petitioners. Pausing here, the Court would only comment that the reasoning of the High Court, as well as the First Appellate Court and Trial Court, on this issue is sound.* ***Just by taking a counter-stand to raise a probable defence would not shift the onus on the complainant in such a case, for the plea of defence has to be buttressed by evidence, either oral or documentary, which in the present case has not been done. Moreover, even if it is presumed that the complainant had not proved the source of the money given to the petitioners by way of loan by producing statement of accounts*** *and/or Income Tax Returns,* ***the same ipso facto, would not negate such claim for the reason that the cheques having being issued and signed by the petitioners has not been denied, and no evidence has been led to show that the respondent lacked capacity to provide the amount(s) in question.*** *In this regard, we may make profitable reference to the decision in* ***Tedhi Singh v. Narayan Dass Mahant, (2022) 6 SCC 735****:*
>
> > '*10. The trial court and the first appellate court have noted that* ***in the case under Section 138 of the NI Act, the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity.*** *To that extent, the courts in our view were right in holding on those lines. However, the* ***accused has the right to demonstrate that the complainant in a particular case did not have the***

> ***capacity and therefore, the case of the accused is acceptable, which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant.*** *Ultimately,* ***it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether, in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.'***
>
> (emphasis supplied)'

37. The accused has not disputed the loan of ₹3.00 lacs. His claim is that he had repaid the amount, which was not proved satisfactorily. Thus, the production of the agreement was not essential to prove the consideration.

38. Therefore, the complainant's version cannot be doubted because of the failure to produce the agreement executed between the parties.

39. Therefore, learned Courts below had rightly held that the accused had failed to rebut the presumption contained in Sections 118 (a) and 139 of the NI Act. This was a reasonable view which could have been taken based on the evidence led before the learned Trial Court.

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40. The complainant stated that the cheque was dishonoured with an endorsement 'funds insufficient'. The memos of dishonour (Ex. CW1/E and Ex.CW1/G) show that the cheques were returned with an endorsement of 'funds insufficient'. It was laid down by the Hon'ble Supreme Court in ***Mandvi Cooperative Bank Ltd. v. Nimesh B. Thakore*, *(2010) 3 SCC 83: (2010) 1 SCC (Civ) 625: (2010) 2 SCC (Cri) 1: 2010 SCC OnLine SC 155*** that the memo issued by the Bank is presumed to be correct and the burden is upon the accused to rebut the presumption. It was observed at page 95:

> **24.** Section 146, making a major departure from the principles of the Evidence Act, provides that the bank's slip or memo with the official mark showing that the cheque was dishonoured would, by itself, give rise to the presumption of dishonour of the cheque, unless and until that fact was disproved. Section 147 makes the offences punishable under the Act compoundable.

41. It was submitted that the cheque return memo does not contain the certificate under the Banker Book Evidence Act. This submission will not help the accused because the memo is the original and does not require any certificate.

42. The accused admitted in his statement recorded under Section 313 of Cr.P.C. that he had received the notice.

Thus, the receipt of the notice is undisputed. The accused claimed that he had paid ₹3,50,000/-; however, it was not proved that this amount was paid to the complainant; therefore, no advantage can be derived from the payment made by the accused.

43. Thus, it was duly proved on record that the cheque was issued in discharge of legal liability, the cheque was dishonoured due to insufficient funds, and the accused failed to repay the amount despite the receipt of a valid notice of demand; therefore, all the ingredients of Section 138 of NI Act were duly satisfied and the accused was rightly convicted of the commission of offence punishable under Section 138 of the NI Act.

44. The Learned Trial Court sentenced the accused to undergo simple imprisonment for three months. It was laid down by the Hon'ble Supreme Court in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 138*** that the penal provision of section 138 is deterrent in nature. It was observed at page 203:

> "6. The object of Section 138 of the Negotiable Instruments Act is to infuse credibility into negotiable instruments, including cheques, and to encourage and promote the use of negotiable instruments, including cheques, in financial transactions. The penal provision of Section 138 of the Negotiable Instruments Act is intended to be a deterrent to callous issuance of negotiable instruments such as cheques without serious intention to honour the promise implicit in the issuance of the same."

45. Keeping in view the deterrent nature of the sentence to be awarded, the sentence of three months' imprisonment cannot be said to be excessive, and no interference is required with it.

46. Learned Trial Court had ordered the accused to pay a compensation of ₹4,50,000/- to the complainant, which is the cheque amount. It was laid down by the Hon'ble Supreme Court in ***Kalamani Tex v. P. Balasubramanian, (2021) 5 SCC 283: (2021) 3 SCC (Civ) 25: (2021) 2 SCC (Cri) 555: 2021 SCC OnLine SC 75 that*** the Courts should uniformly levy a fine up to twice the cheque amount along with simple interest at the rate of 9% per annum. It was observed at page 291: -

> 19. As regards the claim of compensation raised on behalf of the respondent, we are conscious of the settled principles that the object of Chapter XVII of NIA is not only punitive but also compensatory and restitutive. The provisions of NIA envision a single window for criminal liability for the dishonour of a cheque as well as civil

> liability for the realisation of the cheque amount. It is also well settled that there needs to be a consistent approach towards awarding compensation, and unless there exist special circumstances, the courts should uniformly levy fines up to twice the cheque amount along with simple interest @ 9% p.a. [***R. Vijayan v. Baby, (2012) 1 SCC 260, para 20: (2012) 1 SCC (Civ) 79: (2012) 1 SCC (Cri) 520***]"

47. Therefore, the amount of ₹4,50,000/- awarded by the learned Trial Court was inadequate, but no appeal was preferred; therefore, no interference is required with the sentence awarded by the learned Trial Court as affirmed by the learned Appellate Court.

48. No other point was urged.

49. In view of the above, the present petition fails, and the same is dismissed.

50. A copy of the judgment and the record of the learned Trial Court be sent back forthwith.

(Rakesh Kainthla)
Judge

18th June, 2025
(Chander)