IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No.97 of 2025
Reserved on: 15.05.2025
Date of Decision: 18.06.2025

Ramesh Hetta ...Petitioner

Versus

Jyoti Badehta ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] No

For the Petitioner : Mr. Arvind Negi, Advocate.
For the Respondent : Nemo

Rakesh Kainthla, Judge

The present revision is directed against the judgment 17.08.2024 passed by the learned Additional Sessions Judge, Rohru Camp at Theog, District Shimla, H.P. (learned Appellate Court) vide which the judgment of conviction dated 01.11.2023 and order of sentence dated 09.11.2023, passed by learned Additional Chief Judicial Magistrate, Theog, District Shimla, H.P. (learned Trial Court), were upheld. *(Parties shall hereinafter be referred to in the*

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

same manner as they were arrayed before the learned Trial Court for convenience.)

2. Briefly stated, the facts giving rise to the present petition are that the complainant filed a complaint against the accused before the learned Trial Court 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 is an orchardist. The accused used to purchase the apples from the growers. The complainant sold the apple boxes to the accused for ₹ 1,72,000/- and the accused issued a post-dated cheque towards the sale consideration of the apple boxes purchased by him. The complainant presented the cheque, but it was dishonoured with an endorsement 'insufficient funds'. The complainant issued a notice to the accused asking him to pay the amount within 15 days of the receipt of the notice. The notice was duly served upon the accused on 04.03.2016, however, the accused failed to pay the amount. Hence, the complaint was filed against the accused for taking action as per the law.

3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a 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 herself (CW1) to prove her case.

5. The accused, in his statement recorded under Section 313 of the CrPC, admitted that he was involved in the business of the purchase of apples from the growers. He denied the rest of the complainant's case. He stated that he had purchased an apple crop from the complainant; however, she did not allow him to pluck apples from the orchard and misused the cheque handed over to her as security. He examined himself as DW-1.

6. Learned Trial Court held that issuance of cheque was not disputed, and there is a presumption that the cheque was issued to discharge a legal liability. The accused had taken a contradictory stand before the Court. His plea that he had issued the cheque as a security would not help him because a cheque issued towards the security also attracts the provisions of Section 138 of the NI Act. The cheque was dishonoured with an endorsement 'insufficient funds'. The notice was delivered to the

accused. He failed to pay the amount despite the receipt of the notice of demand. Hence, the learned Trial Court convicted the accused for the commission of an offence punishable under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for one year and pay compensation of ₹. 3,44,000/- to the complainant.

7. Being aggrieved from the judgment and order passed by the learned Trial Court, the accused filed 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 cheque was presumed to be issued in discharge of legal liability. The accused failed to rebut the presumption attached to the cheque. The cheque was dishonoured with an endorsement of insufficient funds. The notice was duly served upon the accused, and he failed to pay the amount despite the receipt of a valid notice of demand. Therefore, the accused was rightly convicted and sentenced by the learned Trial Court.

8. Being aggrieved from the judgments and order passed by the learned Courts below, the accused has filed the present revision asserting that the learned Courts below erred in

convicting and sentencing the accused. The judgments are based on conjectures and surmises. The accused had issued the cheque to the complainant as security, but he was not allowed to pluck the apple from the orchard. Therefore, the purpose of the security cheque was not fulfilled. The complainant failed to return the cheque to the accused and instead presented it before the bank. The contents and signatures were filled in with different pens, and there are material alterations in the cheque. The statutory notice was served upon the accused, and the necessary ingredients of Section 138 of the NI Act were not satisfied. Therefore, it was prayed that the present revision petition be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr. Arvind Negi, learned counsel for the petitioner, who submitted that the learned Courts below erred in convicting and sentencing the accused. The complainant failed to prove the goods receipts, which are necessary to establish that she had sold the apple crop to the accused. The plea taken by the accused that he had issued a cheque as a security towards the payment of the apple crop, but he was not allowed to pluck the apple, is highly probable. Learned Courts below erred in rejecting

this plea. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

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

11. 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.

12. 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."

13. 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)
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> > "*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.

14. 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.

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."

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

16. The accused did not dispute the issuance of the cheque in his statement recorded under Section 313 of Cr.P.C. and in the statement on oath. He specifically stated while appearing as DW-1 that the cheque (Ext.C-1) was signed by him. 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 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 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....."

> 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.

17. 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."

18. 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 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."

19. 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.

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."

20. 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:

> "**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."

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:

> "**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."

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:

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.

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."

21. 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..."

22. 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."

23. 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]
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> **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*".
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> **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]***]

24. The accused claimed in his statement recorded under Section 313 of Cr.P.C. that he had issued the cheque as security to the complainant, and he was not allowed to pluck the apple crop from the orchard. This plea was not established by the statement of the accused while appearing as DW-1. He stated in his cross-examination that he had not purchased any apples from the complainant, nor was the cheque issued regarding the consideration of the apple crop. He claimed that he had taken money from the complainant and had issued the cheque as security. Learned Trial Court had rightly pointed out that the defence taken by the accused was highly contradictory. He claimed in his statement recorded under Section 313 of Cr.P.C. that the cheque was issued as security for the purchase of an apple crop but he claimed in his statement on oath that the cheque was issued as security for repayment of the loan taken by him. Both these pleas

cannot be taken together, and the contradictory statement of the accused was not sufficient to rebut the presumption.

25. It was submitted that the complainant had failed to produce goods receipts, which falsifies her version. This submission cannot be accepted. A similar situation arose 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 the complainant's claim was doubted because of the contradiction in the number of apple boxes and failure to produce the receipt. It was held by the Hon'ble Supreme Court that the complainant is not to prove the debt in view of the statutory presumption contained in Section 139 of the NI Act. The burden is upon the accused to rebut the presumption. It was observed at page 293:

> "**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 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 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 on to 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 facts. 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

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.

***

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."

26. 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."

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

27. 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)'*

(underlining in original; emphasis supplied by us in bold)

28. Therefore, the version of the complainant cannot be doubted because of the failure to produce the receipts.

29. It was submitted that the signatures and body of the cheque were filled with a different pen, and there is a material alteration in the cheque. This submission is not acceptable. No expert was examined to prove that the body and signatures were written with different pens. In any case, 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 a person is liable for the commission of an offence punishable under Section 138 of the NI Act even if the cheque is filled by some other person. It was observed:

> "**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.
>
> **34.** If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.
>
> **35.** It is not the case that the respondent accused him of either signing the cheque or parted with it under any threat

> or coercion. Nor is it the case that the respondent accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.
>
> **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."

30. This position was reiterated in ***Oriental Bank of Commerce v. Prabodh Kumar Tewari, 2022 SCC OnLine SC 1089,*** wherein it was observed:

> "12. The submission, which has been urged on behalf of the appellant, is that even assuming, as the first respondent submits, that the details in the cheque were not filled in by the drawer, this would not make any difference to the liability of the drawer.
>
> xxxxxx
>
> 32. A drawer who signs a cheque and hands it over to the payee is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in the discharge of a liability. The presumption arises under Section 139.

31. Therefore, the cheque is not bad even if it is not filled by the drawer.

32. The accused claimed that the cheque was issued as a security. However, he has taken contradictory pleas regarding the purpose for which the cheque was issued; hence, this plea is not proved on record. In any case, it was laid down by this Court in ***Hamid Mohammad Versus Jaimal Dass 2016 (1) HLJ 456***, that even if the cheque was issued towards the security, the accused will be liable. It was observed:

> "9. Submission of learned Advocate appearing on behalf of the revisionist that the cheque in question was issued to the complainant as security and on this ground, criminal revision petition be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. As per Section 138 of the Negotiable Instruments Act 1881, if any cheque is issued on account of other liability, then the provisions of Section 138 of the Negotiable Instruments Act 1881 would be attracted. The court has perused the original cheque, Ext. C-1 dated 30.10.2008 placed on record. There is no recital in the cheque Ext. C-1, that cheque was issued as a security cheque. It is well-settled law that a cheque issued as security would also come under the provision of Section 138 of the Negotiable Instruments Act 1881. See ***2016 (3) SCC page 1 titled Don Ayengia v. State of Assam & another***. It is well-settled law that where there is a conflict between former law and subsequent law, then subsequent law always prevails."

33. It was laid down by the Hon'ble Supreme Court in ***Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited 2016(10) SCC 458*** that issuing a cheque toward security will also attract the liability for the

commission of an offence punishable under Section 138 of N.I. Act.

It was observed: -

> "10. We have given due consideration to the submission advanced on behalf of the appellant as well as the observations of this Court in ***Indus Airways Private Limited versus Magnum Aviation Private Limited (2014) 12 SCC 53*** with reference to the explanation to Section 138 of the Act and the expression "for the discharge of any debt or other liability" occurring in Section 138 of the Act. We are of the view that the question of whether a post-dated cheque is for "discharge of debt or liability" depends on the nature of the transaction. *If on the date of the cheque, liability or debt exists or the amount has become legally recoverable, the Section is attracted and not otherwise.*
>
> 11. Reference to the facts of the present case clearly shows that though the word "security" is used in clause 3.1(iii) of the agreement, the said expression refers to the cheques being towards repayment of instalments. The repayment becomes due under the agreement, the moment the loan is advanced and the instalment falls due. It is undisputed that the loan was duly disbursed on 28th February 2002, which was prior to the date of the cheques. Once the loan was disbursed and instalments have fallen due on the date of the cheque as per the agreement, the dishonour of such cheques would fall under Section 138 of the Act. The cheques undoubtedly represent the outstanding liability.
>
> 12. Judgment in ***Indus Airways (supra)*** is clearly distinguishable. As already noted, it was held therein that liability arising out of a claim for breach of contract under Section 138, which arises on account of dishonour of a cheque issued, was not by itself at par with a criminal liability towards discharge of acknowledged and admitted debt under a loan transaction. Dishonour of a cheque issued for discharge of a later liability is clearly covered by the statute in question. Admittedly, on the date of the cheque, there was a debt/liability in praesenti in terms of the loan

agreement, as against the case of ***Indus Airways (supra)***, where the purchase order had been cancelled and a cheque issued towards advance payment for the purchase order was dishonoured. In that case, it was found that the cheque had not been issued for discharge of liability but as an advance for the purchase order, which was cancelled. Keeping in mind this fine, but the real distinction, the said judgment cannot be applied to a case of the present nature where the cheque was for repayment of a loan instalment which had fallen due, though such deposit of cheques towards repayment of instalments was also described as "security" in the loan agreement. In applying the judgment in Indus Airways (supra), one cannot lose sight of the difference between a transaction of the purchase order which is cancelled and that of a loan transaction where the loan has actually been advanced and its repayment is due on the date of the cheque.

13. The crucial question to determine the applicability of Section 138 of the Act is whether the cheque represents the discharge of existing enforceable debt or liability, or whether it represents an advance payment without there being a subsisting debt or liability. While approving the views of different High Courts noted earlier, this is the underlying principle as can be discerned from the discussion of the said cases in the judgment of this Court." (Emphasis supplied)

34. This position was reiterated in ***Sripati Singh v. State of Jharkhand, 2021 SCC OnLine SC 1002: AIR 2021 SC 5732***, and it was held that a cheque issued as security is not waste paper and a complaint under section 138 of the N.I. Act can be filed on its dishonour. It was observed:

"17. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of

paper under every circumstance. 'Security' in its true sense is the state of being safe, and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of the amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.

18. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as 'security cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form, and in that manner, if the amount of the loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be an understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in proceedings initiated under Section 138 of the N.I. Act. Therefore, there cannot be a hard and fast rule that a cheque, which is issued as security, can never be presented by the drawee of the cheque. If such is the understanding, a cheque would also be reduced to an 'on-demand promissory note' and in all circumstances, it would only be civil

> litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security' the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation."

35. Therefore, even if the cheque was a security cheque, it would not absolve the accused of his criminal liability. In the present case, there is no evidence that the complainant did not allow the accused to pluck the apple crop or that the accused had paid the loan taken by him; therefore, the issuance of the security cheque will make the accused liable.

36. Therefore, learned Courts below had rightly held the accused had issued the cheque in discharge of his legal liability and he had failed to rebut the presumption under Sections 118 (a) and 139 of the NI Act.

37. The complainant stated that the cheque was dishonoured due to insufficient funds. Memo (Ext.C-2) mentions that the cheque was dishonoured due to insufficient funds. 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.

38. In the present case, no evidence was produced to rebut the presumption, and the learned Courts below had rightly held that the cheque was dishonoured with an endorsement 'insufficient funds'

39. The complainant stated that she had issued a notice to the accused. This notice was sent through RAD cover. The acknowledgement (Ext. C-5) bears the signatures of the accused, which are similar to the signatures on the statement on oath, notice of accusation and the statement recorded under Section 313 of Cr. P.C. The accused stated in his cross-examination that he might have received the notice, and he had not sent a reply to the notice. Thus, he has not specifically denied the receipt of the

notice, and the learned Courts below had rightly held that the notice was duly served upon the accused.

40. It was laid down in ***C.C. Allavi Haji vs. Pala Pelly Mohd. 2007(6) SCC 555*** that the person who claims that he had not received the notice has to pay the amount within 15 days from the date of the receipt of the summons from the Court and in case of failure to do so, he cannot take the advantage of the fact that notice was not received by him. It was observed:

> "It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of notice before filing a complaint. *Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of the complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the G.C. Act and Section 114 of the Evidence Act.* In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in ***Bhaskaran's case*** (supra), if the giving of notice in the context of Clause (b) of the proviso was the same as the receipt of notice a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of Section

138 of the Act." (Emphasis supplied)

41. The accused has not paid any money to the complainant; hence, it was duly proved that the accused had failed to pay the money despite the receipt of the notice.

42. Therefore, it was duly proved before the learned Trial Court that the cheque was issued in discharge of legal liability. It was dishonoured with an endorsement 'funds insufficient' and the accused had failed to pay the amount despite the receipt of the notice of demand. Hence, the complainant had proved his case beyond a reasonable doubt, and the learned Trial Court had rightly convicted the accused of the commission of an offence punishable under Section 138 of the NI Act.

43. The learned Trial Court sentenced the accused to undergo simple imprisonment for one year. 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 provisions 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."

44. Keeping in view the deterrent nature of the sentence to be awarded, the sentence of one year's imprisonment cannot be said to be excessive, and no interference is required with it.

45. Learned Trial Court had ordered the accused to pay a compensation of ₹3,44,000/- to the complainant, which is double of the cheque amount. The cheque was issued on 12.11.2015, and the learned Trial Court imposed the sentence on 09.11.202 after the lapse of 8 years. The complainant lost interest on the amount, and she had to pay the litigation expenses for filing the complaint. She was entitled to be compensated for the same. 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***]"

46. The amount of ₹ 1,23,840/- would accrue as interest for a period of 8 years @9% per annum on the principal of ₹ 1,72,000/- . The complainant had also paid money to her lawyer and had incurred the litigation expenses; therefore, the amount of ₹1,72,000/- awarded as compensation cannot be said to be excessive.

47. No other point was urged.

48. In view of the above, the present revision fails, and the same is dismissed.

49. Records of the learned Courts below be sent back forthwith, along with a copy of this judgment.

(Rakesh Kainthla)
Judge

18th June, 2025
(ravinder)