

**HIGH COURT OF TRIPURA
AGARTALA
Crl. A. No.22 of 2024**

Sri Subrajyoti Paul

Prop-M/S Aromatica
S/O Sri Bidhu Bhusan Paul
Of East Aralia, Shib Mandir Para,
P.S. East Agartala, P.O. Aralia-799004
Agartala, Dist. West Tripura

----- Appellant

Versus

1. Sri Bijoy Sarkar

S/O Sri Anil Sarkar,
Of Laxmipur, Machmara,
P.O. Machmara,
District- Unakoti, Tripura, Pin-799263

----- Respondent

2. The State of Tripura

----- Proforma-Respondent

For Appellant(s)	:	Mr. Suman Bhattacharjee, Adv.
For Respondent(s)	:	Mr. Rajib Saha, Addl. P.P., Mr. Sayantan Talapatra, Adv,
Date of hearing	:	18.09.2025
Date of delivery of Judgment & Order	:	31.10.2025
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Leave Granted.

2. This appeal under Section 378 of Cr.P.C. is preferred challenging the judgment and order of acquittal dated 12.07.2024 delivered by Learned Additional CJM, West Tripura, Agartala in connection with case No. N.I. No.122 of 2016. By the said judgment, Learned Trial Court acquitted the respondent-accused under Section 138 of N.I. Act.

3. Heard Learned Counsel Mr. Suman Bhattacharjee appearing on behalf of the appellant and also heard Learned Counsel, Mr. Sayantan Talapatra appearing on behalf of the respondent-accused. Further heard Learned Addl. P.P., Mr. Rajib Saha appearing on behalf of the respondent-State.

4. Taking part in the hearing, Learned Counsel for the appellant has drawn the attention of the Court that the present appellant filed one case under Section 138 of N.I. Act before the Learned Trial Court and the respondent-accused appeared before the Learned Trial Court and after conclusion of trial, Learned Trial Court dismissed the case filed by the appellant-complainant and acquitted the respondent-accused from the charge levelled against him under Section 138 of N.I. Act and being dissatisfied with the judgment and order of acquittal, the appellant has preferred this appeal.

It was further submitted that the appellant-complainant is running one business for extraction of "Gandhaki Jaributi Oil" under the proprietorship of "M/S Aromatica" located at Machmara Community Common Facility Centre, near Machmara Forest Range, District Unakoti, Tripura and the respondent-accused is also a businessman and in course of business relationship, the appellant-complainant made some advance payment of Rs.70,000/- to the respondent-accused for supplying of "Gandhaki Jaributi"(Wet/Dry) but the respondent-accused failed to supply the same. After that, the appellant approached before the respondent-accused either to supply the products or to refund the amount. Thereafter, the respondent-accused issued a post-dated cheque for an amount of Rs.70,000/-

bearing cheque No.003491 dated 30.03.2016 drawn on Tripura State Cooperative Bank, Machmara Branch in the name of M/S Aromatica in discharge of legal debt and other liability and requested the appellant to present the said cheque to the banker of the complainant i.e. HDFC. Accordingly, on 26.04.2016, the appellant-complainant deposited the said cheque to his banker i.e. HDFC Bank, Math Chowmuhani Branch but the cheque was dishonoured on 27.04.2016 by the Bank with a remark "Funds Insufficient". The matter was informed to the respondent-accused who also thereafter requested the appellant-complainant to deposit the same again to the Bank stating that after some days money would be available in the said account of the accused and with that belief on 25.05.2016 after due intimation to the respondent-accused, the appellant again deposited the said cheque for collection of money to his banker namely HDFC Bank, Math Chowmuhani Branch but unfortunately the said cheque was again dishonoured on 26.05.2016 with the same remarks "Funds Insufficient". The appellant thereafter informed the matter to the respondent-accused but he did not make any payment. After that, on 02.06.2015, the appellant-complainant sent a demand notice to the respondent-accused to his address with a request to pay the money within 15 days from the date of receipt of the notice. The notice was sent through registered post and received by the respondent-accused on 13.06.2016 but inspite of that, the respondent failed to make payment of the same. Ultimately finding no other alternative the appellant-complainant filed the case before the Learned Trial Court. Before the Learned Trial Court both the parties have adduced

oral/documentary evidence on record and finally Learned Trial Court acquitted the respondent-accused. Learned Counsel Mr. Bhattacharjee at the time of hearing further submitted that the judgment of the Learned Trial Court suffers from infirmity and misconception of fact and law as because the Learned Trial Court failed to appreciate the evidence on record properly rather relied upon the evidence on record of the respondent-accused.

5. The plea of the respondent-accused was that the cheque was paid towards security deposit and the respondent-accused supplied the materials worth of Rs.2,94,172/- to the appellant-complainant which were duly acknowledged by the appellant or his engaged staff. So, according to Learned Counsel for the respondent-accused, the Learned Trial Court rightly after appreciating the evidence on record of both the parties delivered the judgment acquitting the respondent-accused from the charge of this case and there was no infirmity to that.

In support of contention both the parties referred few citations.

6. Admittedly, in this case, the respondent-accused did not take the plea that the cheque was not issued by him in favour of the appellant even his signature was not disputed. Now here in this appeal we are to see whether the cheque was issued by the respondent-accused in favour of the appellant towards discharging his debt or other liability or not. Now, to substantiate the charge as already stated both the parties have adduced oral/documentary evidence on record. It is also the admitted position that at the time of

hearing of argument Learned Counsel for the respondent-accused did not take any plea that there were procedural lapses/violation on the part of the appellant to substantiate his case. So, let us examine the evidence on record of the contesting parties.

The appellant-complainant was examined himself as PW-1 and relied upon some documents which were marked as Exhibits in this case. The appellant in his examination-in-chief in affidavit reiterated his contention made in the complaint petition but during cross-examination by the respondent-accused, he stated that he had engaged workers on daily wage basis at Machmara for business and he knows one Gyan Ranjan Chakma, Guru Bhattacharjee, Chandan Paul who used to work under him. He also admitted that his workers used to sign on the delivery slip after receiving the aromatic herbs. There was an agreement between him and the accused in writing wherein it was agreed that he will pay Rs.120/- per kg for collection of aromatic herbs and he sign on the same but again volunteered that the agreement was incomplete. He further stated that he had filled a common agreement format to be executed by him with the persons who would collect the herbs and in the complaint petition he did not mention the date of advance payment to the accused nor he obtained any money receipt from him but again volunteered that he had proof of RTGS payment made to the accused but did not submit any document before the Court. Again he admitted that the accused had delivered 2451.44 kg of aromatic herbs to him at the rate of Rs.120/kg. Again he volunteered that he had made payment of the entire delivery made to him by the accused and denied the assertions

of the respondent-accused. He also could not say under whose handwriting the column of the cheque was filed up but he volunteered that the accused had given the cheque to him with all the columns filled up and also he did not mention in the complaint petition the date on which he demanded the accused to repay the amount of Rs.70,000/-. Further he submitted that he did not submit any document to show how much money he had paid to the accused in the business transactions.

The respondent-accused was examined as DW-1. In his examination-in-chief, he stated that he met the complainant of this case in a meeting held in the Machmara Forest Bit office about 5-6 years back in connection with sale purchase of Gandhaki (medicinal plant) and as per discussions held in the meeting it was settled that one kg Gandhaki at the rate of Rs.120/- would be paid. Accordingly, an agreement was entered into between him and the complainant for supply of Gandhaki at the rate of Rs.120/- per kg and as per agreement he supplied the materials to Subrata Bhattacharjee and Gyan Ranjan Chakma on behalf of the appellant-complainant and after supplying of the material to the appellant-complainant, the complainant did not turn up for the payment of the accounts and he identified the received copy of the delivery slip which was marked as Exhibit-A series containing 4 pages (subject to objection by the appellant-complainant). During cross-examination he stated that he submitted the aforesaid receipt but he was unable to say the date and time when the materials was received by the complainant. Again admitted that Exhibit-A series do not bear his signature. He also

identified his signature on the cheque being produced by Learned Defence Counsel and volunteered that the said cheque was issued by him as a security. He further admitted that he has got an account in Tripura State Cooperative Bank Limited, Machmara Branch and he did not submit the aforesaid agreement entered between him and the complainant but again volunteered that the original agreement is in the custody of the complainant. He admitted the he received advocate's notice in connection with this case. He further admitted that he did not submit any reply in respect of the demand notice.

DW-2, Subrata Bhattacharjee deposed that he knows both the accused and the complainant, Subhrajyoti Paul. He was working as a staff under Subhrajyoti Paul in the year 2015 and served therein for 5/6 months. Subhrajyoti Paul runs a business of Gandhaki. He was working as one kind of Manager under Subhrajyoti Paul. He further stated that along with him some other staff who are the residents of Pecharthal namely Chandan Pal of Kailashahar and some Chakma of Pecharthal work under the complainant. Bijoy Sarkar is a resident of Machmara and Bijoy Sarkar and the witness are staying in the same locality. Bijoy Sarkar used to supply Gandhaki to Subhrajyoti Paul. He used to receive Gandhaki on behalf of Subhrajyoti Paul and duly signed the receipt copy of the same on behalf of Subhrajyoti Paul. He identified his signature on the receipt copy of Exhibit-A series marked Exhibit-A/1 and Exhibit-A/2 (subject to objection by the appellant) but he could not say anything regarding monetary transaction between the accused and the complainant as the matter relates to the owner of the firm. During cross-examination he stated that he did not submit

any documents before the Court pertaining to work as a Manager under Subhrajyoti Paul. He further stated that the complainant Subhrajyoti Pal runs a business under the name and style as "M/S Aromatica". He further admitted that on Exhibit-A series he did not put his signature on the receipt copy on behalf of "M/S Aromatica". He further admitted that Subhrajyoti Paul made an advance payment to the supplier for the purchase of Gandhaki. Again stated that there may be instance when Subhrajyoti Pal have made payment to Bijoy Sarkar. He also stated that he appeared before the Court to depose as a witness on the request of the accused. He could not say whether any case has been filed by Bijoy Sarkar against Subhrajyoti Paul or not.

These are the sum and substances of the evidence on record.

7. At the time of hearing Learned Counsel for the appellant relied upon few citations. Reference was made upon one citation of Hon'ble Supreme Court of India reported in **(2022) 18 SCC 631 [titled as Womb Laboratories Private Limited Vs. Vijay Ahuja and Another dated 11.09.2019]** wherein in para No.4, Hon'ble the Apex Court observed as under:

"4. In our opinion, the High Court has muddled the entire issue. The averment in the complaint does indicate that the signed cheques were handed over by the accused to the complainant. The cheques were given by way of security, is a matter of defence. Further, it was not for the discharge of any debt or any liability is also a matter of defence. The relevant facts to countenance the defence will have to be proved- that such security could not be treated as debt or other liability of the accused. That would be a triable issue. We say as debt or other liability of the accused. That would be a triable issue. We say so because, handing over of the cheques by way of security per se would not extricate the accused from the discharge of liability arising from such cheques."

Referring the same, Learned Counsel for the appellant drawn the attention of the Court that the story projected by the respondent-accused that the cheque was issued towards security cannot be taken into consideration as a valid defence to shift his burden and also to immune himself from the liability of charge under N.I. Act.

8. Again reference was made in another citation of this High Court reported in **2019 SCC OnLine Tri 134 [titled as Subal Chandra Ghosh Vs. State of Tripura and Another dated 25.04.2019]** wherein para Nos.38, 39, 44, 45, 47, 48, 49, 50, 51 and 53, this High Court observed as under:

"38. In case in hand, I find that the respondent No. 2 in course of trial has tried to give a plausible explanation that he lost the aforesaid cheques and he also made a missing diary, but, his that effort has failed to persuade this Court and his explanations in this regard are far from plausible explanation, which is required to rebut the evidence and the initial presumption that the cheques were issued by him. So, the explanation given by respondent No.2 in course of trial appears to be difficult to accept in the fact of the case.

39. It is one thing to say that issuance of notice is one of the ingredients for maintaining the complaint, but, it is another thing to say that dishonour of a cheque by itself constitutes an offence. For the purpose of proving its case that the accused had committed an offence u/s 138 of the Negotiable Instruments Act, the ingredients thereof are required to be proved.

44. The object of notice is to give a chance to the drawer of the cheque to rectify his omission and also to protect an honest drawer. Service of notice of demand in Clause (b) of the proviso, the payee or the holder of the cheque in due course is required to give a written notice to the drawer of the cheque within 30 days from the date of receipt of information from the bank regarding the return of the cheque as unpaid. So, the only question to be examined is whether in the notice there was a demand for payment or not. In the case in hand, the Ext.B shows that there was a demand for payment.

45. The accused himself admitted in his cross-examination said that he actually gave three cheques to the complainant, meaning thereby the accused made false G.D. Entry, and it has no value in the eye of law. Here, from the conduct of the accused, it is clear that he did not recognize any importance to the purported notice since it was not signed by the concerned Advocate. The accused in his 313 statement admitted that he has received the notice. Further, it is not the case of the accused-respondent that the appellant-complainant has fraudulently used the letter head of the Advocate concerned.

47. Proviso to Section 138 of N.I. Act, 1881, however, is all important and stipulates three distinct conditions precedent, which must be satisfied before the dishonor of a cheque can constitute an offence and become punishable.

48. The first condition is that the cheque ought to have been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier.

49. The second condition is that the payee or the holder in due course of the cheque, as the case may be, ought to make a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.

50. The third condition is that the drawer of such a cheque should have failed to make payment of the said amount of money to the payee or as the case may be, to the holder in due course within fifteen days of the receipt of the said notice.

51. It is only upon the satisfaction of all the three conditions mentioned above and enumerated under the proviso to section 138 as clauses (a), (b) and (c) thereof that an offence u/s 138 can be said to have been committed by the person issuing the cheque is drawn are parties against whom the payee of the cheque can have various legal rights, which may have either civil or criminal consequence or perhaps both depending upon the facts of a given case. Section 138 prescribes only one of the consequences, i.e., the prosecution and punishment of only the drawer of the cheque.

53. In Rangappa (supra), the Apex Court held that once issuance of a cheque and signature thereon are admitted, presumption of a legally enforceable debt in favour of the holder of the cheque arises, it is for the accused to rebut the said presumption, though accused need not adduce his own evidence and can rely upon the material submitted by the complainant. A post-dated cheque is a well recognized mode of payment."

Referring the aforesaid citations Learned Counsel for the appellant has drawn the attention of the Court that this present case is squarely covered by the said citation of this High Court.

9. Learned Counsel further referred another citation of the Hon'ble Supreme Court of India reported in **(2022) 6 SCC 735 [titled as Tedhi Singh Vs. Narayan Dass Mahant dated 07.03.2022]** wherein in para No.10, Hon'ble the Apex Court observed as under:

"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."

Referring the same Learned Counsel for the appellant submitted that to rebut the case of the complainant no story could be projected by the respondent-accused before this Court and as such the said principle can be applied in this case.

10. Learned Counsel Mr. Bhattacharjee again referred another citation of Hon'ble Supreme Court of India reported in **(2010) 11 SCC 441 [titled as Rangappa Vs. Sri Mohan dated 07.05.2010]** wherein in para Nos.7, 13, 18, 19, 20, 26, 27, Hon'ble the Apex Court observed as under:

"7. The complainant had then issued notice to the accused in this regard on 26-2-2001. On receiving the same, the accused failed to honour the cheque within the statutorily prescribed period and also did not reply to the notice sent in the manner contemplated under Section 138 of the Act.

13. The High Court in its order noted that in the course of the trial proceedings, the accused had admitted that the signature on the impugned cheque (No. 0886322 dated 8-2-2001) was indeed his own. Once this fact has been acknowledged, Section 139 of the Act mandates a presumption that the cheque pertained to a legally enforceable debt or liability. This presumption is of a rebuttal nature and the onus is then on the accused to raise a probable defence. With regard to the present facts, the High Court found that the defence raised by the accused was not probable.

18. Ordinarily in cheque bouncing cases, what the courts have to consider is whether the ingredients of the offence enumerated in Section 138 of the Act have been met and if so, whether the accused was able to rebut the statutory presumption contemplated by Section 139 of the Act. With

respect to the facts of the present case, it must be clarified that contrary to the trial court's finding, Section 138 of the Act can indeed be attracted when a cheque is dishonoured on account of "stop payment" instructions sent by the accused to his bank in respect of a post-dated cheque, irrespective of insufficiency of funds in the account. This position was clarified by this Court in *Goaplast (P) Ltd. v. Chico Ursula D'Souza*: (2003) 3 SCC 232, wherein it was held: (SCC pp. 232g-233c)

"Chapter XVII containing Sections 138 to 142 was introduced in the Act by Act 66 of 1988 with the object of inculcating faith in the efficacy of banking operations and giving credibility to negotiable instruments in business transactions. The said provisions were intended to discourage people from not honouring their commitments by way of payment through cheques. The court should lean in favour of an interpretation which serves the object of the statute. A post-dated cheque will lose its credibility and acceptability if its payment can be stopped routinely. The purpose of a post-dated cheque is to provide some accommodation to the drawer of the cheque. Therefore, it is all the more necessary that the drawer of the cheque should not be allowed to abuse the accommodation given to him by a creditor by way of acceptance of a post-dated cheque.

In view of Section 139, it has to be presumed that a cheque is issued in discharge of any debt or other liability. The presumption can be rebutted by adducing evidence and the burden of proof is on the person who wants to rebut the presumption. This presumption coupled with the object of Chapter XVII of the Act leads to the conclusion that by countermanding payment of post-dated cheque, a party should not be allowed to get away from the penal provision of Section 138 of the Act. A contrary view would render Section 138 a dead letter and will provide a handle to persons trying to avoid payment under legal obligations undertaken by them through their own acts which in other words can be said to be taking advantage of one's own wrong."

19. It has been contended on behalf of the appellant-accused that the presumption mandated by Section 139 of the Act does not extend to the existence of a legally enforceable debt or liability and that the same stood rebutted in this case, keeping in mind the discrepancies in the complainant's version. It was reasoned that it is open to the accused to rely on the materials produced by the complainant for disproving the existence of a legally enforceable debt or liability. It has been contended that since the complainant did not conclusively show whether a debt was owed to him in respect of a hand loan or in relation to expenditure incurred during the construction of the accused's house, the existence of a legally enforceable debt or liability had not been shown, thereby creating a probable defence for the accused.

20. The counsel appearing for the appellant-accused has relied on a decision given by a Division Bench of this Court in *Krishna Janardhan Bhat v. Dattatraya G. Hegde*: (2008) 4 SCC 54, the operative observations from which are reproduced below: (S.B. Sinha, J. at SCC pp. 61-63, paras 29-32 & 34)

"29. Section 138 of the Act has three ingredients viz.:

- (i) that there is a legally enforceable debt;
- (ii) that the cheque was drawn from the account of bank for discharge in whole or in part of any debt or other liability which presupposes a legally enforceable debt; and
- (iii) that the cheque so issued had been returned due to insufficiency of funds.

30. The proviso appended to the said section provides for compliance with legal requirements before a complaint petition can be acted upon by a court of law. Section 139 of the Act merely raises a presumption in regard to the second aspect of the matter. *Existence of legally recoverable debt is not a matter of presumption under Section 139 of the Act. It merely raises a presumption in favour of a holder of the cheque that the same has been issued for discharge of any debt or other liability.*

31. The courts below, as noticed hereinbefore, proceeded on the basis that Section 139 raises a presumption in regard to existence of a debt also. The courts below, in our opinion, committed a serious error in proceeding on the basis that for proving the defence the accused is required to step into the witness box and unless he does so he would not be discharging his burden. Such an approach on the part of the courts, we feel, is not correct.

32. An accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. An accused has a constitutional right to maintain silence. Standard of proof on the part of an accused and that of the prosecution in a criminal case is different.

* * *

34. *Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is 'preponderance of probabilities'. 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 he relies."*

(emphasis supplied)

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(supra) 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 or proof."

Referring the said citation, Learned Counsel for the appellant submitted that the appellant has duly proved his case before the Learned Trial Court but the Learned Trial Court at the time of delivery of judgment failed to appreciate the evidence on record and thus came to an erroneous finding and acquitted the respondent-accused from the charge of this case for which the interference of this Court is required. Moreso, according to Learned Counsel the story projected by the respondent-accused is nothing but to evade his responsibility towards discharge of his liability of payment of debt.

11. On the other hand Learned Counsel Mr. S. Talapatra representing the respondent-accused referred one citation of this High Court reported in **(2014) 2 TLR 274 [titled as *Jhulan Chandra Das Vs. Kamal Bhowmik* dated 05.12.2013]** wherein in para Nos.9 and 14, a coordinate bench of this High Court observed as under:

"9. In M.S. Narayana Menon (supra) it has been further held that:

".... One of the cardinal principles which has always to be kept in view in our system of administration of justice for criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused. There are certain cases in which statutory presumptions arise regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to prove the existence of facts

which have to be present before the presumption can be drawn. Once those facts are shown by the prosecution to exist, the Court can raise the statutory presumption and it would, in such an event, be for the accused to rebut the presumption. The onus even in such cases upon the accused is not as heavy as is normally upon the prosecution to prove the guilt of the accused. If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal."

14. Finally, Mr. Dutta has contended that when the finding is categorical on the basis of the presumption drawn under Section 114 (g) of the Indian Evidence Act that a blank cheque had been filled in and deposited and in the course of time that cheque got dishonoured for insufficiency of fund, despite what the complainant has stated in the complaint that there was "existence of liability", such presumption stands rebutted at the behest of the respondent. The burden was heavy on the appellant to establish that the cheque was issued by the respondent to him in discharge of a legally recoverable debt. A decision of Kerala High Court in K Chathukutty & Ors. V. K.S. Prasanna Venkitesan & Anr. reported in 2007 CRL J 1120 has been referred. It has been held there that it is trite law that when two views are possible, the appellate court should not even in a case under Section 138 of the Negotiable Instrument Act shall interfere with the finding of the acquittal recorded by the trial court. It has been also contended that after the probable defence has been set up by the respondent, the appellant could not discharge his burden that actually he had paid Rs. 3,00,000/- (rupees three lakh) in presence of the "cited witnesses". No witness has come forward to corroborate his evidence. Thus the appellant has failed to discharge his burden to show that in discharge of any debt or liability the dishonoured cheque was issued by the respondent."

Referring the same Learned Counsel Mr. Talapatra submitted that before the Learned Trial Court the complainant has failed to discharge his burden to establish that the cheque was issued in discharge of a legally recoverable debt.

12. Learned Counsel for the respondent further referred another citation reported in **(2013) 2 SCC (Cri) 237 [titled as Vijay Vs. Laxman and another dated 07.02.2013]** wherein in para Nos.14, 15 and 28, the Hon'ble Apex Court observed as under:

"14. Thus, we are of the view that although the cheque might have been duly obtained from its lawful owner i.e. the respondent-accused, it was used for unlawful reason as it appears to have been submitted for encashment on a date when it was not meant to be presented as in that event the respondent would have had no reason to ask for a loan from the complainant if he had the capacity to

discharge the loan amount on the date when the cheque had been issued. In any event, it leaves the complainant's case in the realm of grave doubt on which the case of conviction and sentence cannot be sustained.

15. Thus, in the light of the evidence on record indicating grave weaknesses in the complainant's case, we are of the view that the High Court has rightly set aside the findings recorded by the courts below and consequently set aside the conviction and sentence since there were glaring inconsistencies in the complainant's case giving rise to perverse findings resulting into unwarranted conviction and sentence of the respondent. In fact, the trial court as also the first appellate court of facts seems to have missed the important ingredients of Sections 118(a) and 139 of the NI Act which made it incumbent on the courts below to examine the defence evidence of rebuttal as to whether the respondent-accused discharged his burden to disprove the complainant's case and recorded the finding only on the basis of the complainant's version. On scrutiny of the evidence which we did to avoid unwarranted conviction and miscarriage of justice, we have found that the High Court has rightly overruled the decision of the courts below which were under challenge as the trial court as also the first appellate court misdirected itself by ignoring the defence version which succeeded in dislodging the complainant's case on the strength of convincing evidence and thus discharged the burden envisaged under Sections 118(a) and 139 of the NI Act which although speaks of presumption in favour of the holder of the cheque, it has included the provisos by incorporating the expressions "until the contrary is proved" and "unless the contrary is proved" which are the riders imposed by the legislature under the aforesaid provisions of Sections 118 and 139 of the NI Act as the legislature chooses to provide adequate safeguards in the Act to protect honest drawers from unnecessary harassment but this does not preclude the person against whom presumption is drawn from rebutting it and proving to the contrary.

28. In the totality of the above circumstances, the High Court was perfectly justified in its conclusion that the prosecution had failed to make out a case against the accused and in acquitting him of the charges. With these observations in elucidation of the conclusion drawn by my worthy colleague, I agree that the appeal fails and be dismissed."

Referring the same Learned Counsel submitted that the present case is squarely covered by the said principle of law laid down by the Hon'ble Apex Court.

13. Lastly, Learned Counsel Mr. Talapatra again referred another citation of Hon'ble Supreme Court of India reported in **AIR 2006 SUPREME COURT 3366 [titled as M.S. Narayana Menon alias Mani v. State of Kerala & Anr. dated 04.07.2006]** wherein in para Nos.30, 37 and 43, Hon'ble the Apex Court observed as under:

"30. What would be the effect of the expressions 'May Presume', 'Shall Presume' and 'Conclusive Proof' has been considered by this Court in Union of India (UOI) v. Pramod Gupta (D) by L.Rs. and Ors., [(2005) 12 SCC 1] in the following terms:

...It is true that the legislature used two different phraseologies "shall be presumed" and "may be presumed" in Section 42 of the Punjab Land Revenue Act and furthermore although provided for the mode and manner of rebuttal of such presumption as regards the right to mines and minerals said to be vested in the Government vis-a-vis the absence thereof in relation to the lands presumed to be retained by the landowners but the same would not mean that the words "shall presume" would be conclusive. The meaning of the expressions "may presume" and "shall presume" have been explained in Section 4 of the Evidence Act, 1872, from a perusal whereof it would be evident that whenever it is directed that the court shall presume a fact it shall regard such fact as proved unless disproved. In terms of the said provision, thus, the expression "shall presume" cannot be held to be synonymous with "conclusive proof""

37. The Second Respondent herein was a member of a Stock Exchange. The transactions in relation to the Stock Exchange are regulated by the statutes and statutory rules. If in terms of the provisions of a statute, a member of a Stock Exchange is required to maintain books of accounts in a particular manner, he would be required to do so, as non-compliance of the mandatory provisions of the Rules may entail punishment. It is not in dispute that transactions comprising purchases and sales of shares by investors is a matter of confidence. Both parties would have to rely upon one another. For the said purpose, the courts of law may also take judicial notice of the practice prevailing in such business. The learned Appellate Judge rightly did so.

43. In P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd edition, at page 3697, the term 'presumption' has been defined as under:

"A presumption is an inference as to the existence of a fact not actually known arising from its connection with another which is known.

A presumption is a conclusion drawn from the proof of facts or circumstances and stands as establishing facts until overcome by contrary proof.

A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged but of which there is no direct proof. It follows, therefore that a presumption of any fact is an inference of that fact from others that are known". (per ABBOTT, C.J., R. v. Burdett, 4 B. & Ald, 161)

The word 'Presumption' inherently imports an act of reasoning a conclusion of the judgment; and it is applied to denote such facts or moral phenomena, as from experience we known to be invariably, or commonly, connected with some other related facts. (Wills on Circumstantial Evidence)

A presumption is a probable inference which common sense draws from circumstances usually occurring in such cases. The slightest presumption is of the nature of probability, and there are almost infinite shades from slight

probability to the highest moral certainty. A presumption, strictly speaking, results from a previously known and ascertained connection between the presumed fact and the fact from which the inference is made."

Referring the same Learned Counsel for the respondent submitted that the appellant failed to make any strong presumption in his favour to substantiate the charge levelled against the respondent-accused and urged for dismissal of this appeal filed by the appellant-complainant.

14. I have heard detailed argument of both the sides and perused the record of the Learned Trial Court and also the citations referred by both the parties. As already discussed, the main contention before the Learned Trial Court according to the appellant-complainant was that he made advance payment of Rs.70,000/- to the respondent-accused for supplying of Gandhaki Jaributi(aromatic herbs) but the respondent-accused failed to supply the materials so the appellant-complainant requested the accused either to supply the product or to refund the money but he failed and thereafter, the respondent-accused issued one post-dated cheque on 30.03.2016 vide No.003491 which was dishonored twice on presentation of the same to the respective bank. On the other hand, the defence case according to respondent-accused was that the respondent-accused issued the cheque towards security purpose and supplied materials more than Rs.2,94,172/- but the appellant did not make any payment nor refunded back the cheque to him and ultimately with false assertions have manufactured this case against him.

Now, to substantiate the allegation and counter allegation both the parties have adduced evidence on record which have been

discussed earlier. Admittedly, the appellant was examined as PW-1 and he relied upon some documents and on the other hand, the respondent-accused examined himself and produced one witness who was once upon a time worked under the appellant stood as witness on his behalf and the status of said witness in this case can be termed as chance witness or interested witness as because the said witness himself during his cross-examination stated that on the approach of respondent-accused he appeared to depose as witness. The said witness also admitted during his cross-examination that the respondent-accused issued cheque in favour of the appellant-complainant although in his examination-in-chief he stated that he received some articles on behalf of the appellant-complainant but from his evidence it is not clear on which date the articles were received by him.

Now, the respondent-accused relying upon Exhibit-A series intended to establish that he supplied product more than Rs. 2,94,172/- to the appellant-complainant so he had some outstanding money with the appellant-complainant which the appellant-complainant failed to make payment rather the cheque issued by him was towards security purpose/deposit.

15. I have also gone through the judgment of the Learned Trial Court. Learned Trial Court elaborately discussed the evidence on record and relying upon the citations of both the sides finally concluded that the defence case was more probable and acquitted the accused from the charge of this case. As I have already stated that the respondent-accused did not take any plea that there were

procedural lapses on the part of the appellant in filing the complaint before the Court. The respondent-accused also did not deny anything regarding issuance of cheque i.e. Exhibit-1. It is on record that the said cheque dated 30.03.2016 was presented to the bank in two occasions but in both the occasions the same returned dishonored with the comments "Funds Insufficient".

16. Now in a case under N.I. Act two presumptions are to be proved whenever any case is presented to the Court and those presumptions are mentioned in Section 118(a) and Section 139 of N.I. Act. Now, for the sake of convenience let us mention the provision of Section 139 and also Section 118(a) of N.I. Act which are as under:

"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."

"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;

On bare perusal of the aforesaid provisions, it is clear that in absence of contrary evidence on record it shall be presumed 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. Here in the case at hand according to the appellant, advance payment was made for supplying of aromatic herbs by the accused but he failed to supply the materials so the cheque was issued. On the other hand, the defence case was that the cheque was submitted/issued towards security deposit and the respondent-

accused supplied articles of Rs.2,94,172/- to the appellant-complainant but the appellant-complainant did not make payment of the same. In course of hearing, Learned Counsel, Mr. Talapatra drawn the attention of the Court that the cheque was issued towards security deposit but the way and the manner in which the defence took the plea could not be explained properly by the respondent-accused. Here in the case the respondent-accused is a supplier of products so naturally a question arises as to why he shall issue cheque to any of the consumer/customer/purchaser towards security deposit. This defence story does not inspire confidence of the Court.

17. The independent witness of the accused who according to this Court is a interested witness/chance witness in his cross-examination stated that the accused issued one cheque in favour of the appellant and he also stated that he appeared before the Court to depose as a witness on the request of the respondent-accused. So, it is clear that he was an interested witness. Although in his examination in chief he stated that he received the delivery slip and identified his signature and apart from him some other workers were there but those workers have not turned up as witness on behalf of the defence. Even from the Exhibit-A series it could not be established when and how the articles were supplied because there was no signature of the accused or the appellant-complainant on those documents. Now, whether it is manufactured documents or the products actually delivered or not to the appellant could not be explained by the respondent-accused in this case.

18. Admittedly, no agreement was proved or produced by either of the parties before the Learned Trial Court. There is also no evidence on record that the accused has some outstanding dues lying with the appellant-complainant for which he sought any legal redress against him and relying upon Exhibit-1 he tried to draw the attention of the Court that cheque was issued by him towards security deposit but this defence theory fails to inspire the confidence of the Court that the accused actually issued the cheque towards security deposit because his status was simply a supplier in this case, not a customer/purchaser.

19. It is also discussed that regarding procedural lapses and regarding Exhibit-1, there was no rebuttable evidence from the side of the respondent-accused in this case and if we go by the provision of Section 139 of N.I. Act it appears that here in the case at hand presumption lies in favour of the complainant-cum-appellant of this case to the fact that the cheque was received by him from the respondent-accused towards discharging of debt which the respondent-accused took from the appellant-complainant of this case.

20. The citations as referred by Learned Counsel for the appellant appears to be more appropriate for decision of this case and accordingly, relying upon the principle of the aforesaid citations, it appears that the Learned Trial Court below has failed to appreciate the evidence on record projected by the parties properly resulting which the Learned Trial Court acquitted the respondent-accused from the charge of this case rather it appears to this Court that the present appellant-complainant has been able to prove/establish his case before the Learned Trial Court but the Learned Trial Court failed to appreciate the evidence on record and thus passed an order of

acquittal for which in the considered opinion of this Court, interference of this Court is required. Accordingly, the judgment and order of acquittal dated 12.07.2024 delivered by Learned Additional CJM, West Tripura, Agartala in connection with case No. N.I. No.122 of 2016 be liable to be interfered with and set aside.

21. In the result, the appeal filed by the appellant is hereby allowed. The judgment and order of acquittal dated 12.07.2024 delivered by Learned Additional CJM, West Tripura, Agartala in connection with case No. N.I. No.122 of 2016 is hereby set aside. The respondent-accused namely Bijoy Sarkar is accordingly convicted under Section 138 of N.I. Act and is sentenced to pay fine of Rs.1,00,000/- i.d to suffer S.I. for 6 months. The respondent-accused be asked to surrender before the Learned Trial Court on 02.01.2026 and to deposit the fine amount which be released in favour of the present appellant-complainant of this case by the Learned Trial Court.

A copy of this judgment be supplied to the Learned Counsel for the appellant free of cost for information.

Also, a copy of this judgment be furnished to the Learned Counsel for the respondent-accused free of cost for information and compliance.

With this observation, this appeal stands disposed of.

Send down the record of the Learned Court below along with a copy of this judgment and Order.

Pending applications(s), if any, also stands disposed of.

JUDGE