

Neutral Citation No. - 2025:AHC:111982

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

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**Judgement Reserved on 04.07.2025**

**Judgement Delivered on 14.07.2025**

**Court No. - 78**

**Case :- APPLICATION U/S 482 No. - 38104 of 2017**

**Applicant :-** Shree Ganesh Vaishno Developers And 5 Others

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** Surendra Kumar Chaubey

**Counsel for Opposite Party :-** G.A.,Rajnish Sahai Saxena,Ram Bahadur,Shantanu Srivastava,Usha Srivastava

**Hon'ble Anish Kumar Gupta,J.**

1. Heard Sri Surendra Kumar Chaubey, learned counsel for the applicants, Sri Ram Bahadur, learned counsel for the opposite party no.2 and Sri Raj Kumar Gupta, learned A.G.A. for the State.

2. This application under Section 482 Cr.P.C. has been filed seeking quashing of the summoning order dated 03.05.2016 passed in Case No. 759 of 2016 under Section 138 Negotiable Instruments Act, 1881 (in short, '*the N.I. Act*'), Police Station- Nagina, District- Bijnor, pending in the Additional Court, Bijnor.

3. The brief facts of the instant case are that the opposite party no.2 was the co-owner of the plot, Municipality Assessment No. P-5804 (1-2)/26-8, Survey No. 143 and C.T.S No. 605, which was situated at Malad, Mumbai. The other co-owners of the said plot were Smt. Emaman Begam, Smt. Jaibunisha, Smt. Khairunisha, Smt. Raziya. The applicants no. 2 to 6 herein were the managing

partners of applicant no.1/Firm, which used to develop the plots. Therefore, the aforesaid applicants got executed a Conveyance Deed dated 24.03.2014, which was registered with the Sub-Registrar, Borivali, Mumbai, whereby the opposite party no.2 alongwith the co-owners of the said plot agreed to execute a registered sale deed for a sum of Rs. 4,00,00,000/- for part of the said plot. The opposite party no.2 alongwith the co-owners of the said plot agreed to execute a registered sale deed of a portion of the said plot, out of which Rs. 1,27,26,672/- came in the share of the opposite party no. 2. In connection with the same, the applicant no. 2 paid a sum of Rs. 31,81,668/- to the opposite party no. 2 through cheques, which were encashed. It was also agreed between the parties that in addition to the aforesaid amount of Rs. 1,27,26,672/-, the opposite party no. 2 would also be entitled for an area of 600 sq. ft. on the first floor of the building which were to be constructed on the said plot. For payment of the remaining amount of Rs. 95,45,004/-, the applicant no. 2 had issued a Cheque No. 271763 dated 20.12.2015 from the account of the applicant no. 1- Firm, in favour of the opposite party no. 2, which was produced by the opposite party no. 2 for encashment in his account in HDFC Bank, Branch- Mandi, Mallganj, Nagina, District- Bijnor but the same was dishonored for insufficient funds. The information of dishonor of the said cheque was given by the opposite party no. 2 on 22.02.2016 and when upon such information the applicants herein avoided the payment of the said cheque amount, thereupon, a legal notice was issued by the opposite party no. 2 on 15.03.2016 to the applicant no. 1, which was received by the applicant no.5 on behalf of the Firm. The other applicants did not receive the notice. Subsequent thereto, a complaint case was lodged by the opposite party no. 2 under Section 138 of the N.I. Act against the applicants herein. The trial court having analyzed the facts of the case and having found a *prima facie* case made out against the applicants herein, had summoned the applicants no. 2 to 6 vide impugned summoning order dated 03.05.2016, against which the instant application under Section 482 Cr.P.C. has been filed by the applicants herein.

4. Learned counsel for the applicants submits that for the same set of transactions between the parties, the opposite party no. 2 also filed a Suit No. 2364 of 2016 in the City Civil Court, Dindoshi, Mumbai, in which an interim order was passed on 03.10.2016 by the City Civil Court, Dindoshi, Mumbai, directing the applicants herein to deposit a sum of Rs. 95,45,004/- being the cheque amount due to the opposite party no. 2. In pursuance of the said order, the applicants have deposited the said amount with the City Civil Court, Dindoshi, Mumbai on 15.10.2016. Learned counsel for the applicants informs, on a specific query made by the Court, that the said amount is still deposited with the City Civil Court, Dindoshi, Mumbai and the same has not yet been withdrawn by the opposite party no. 2. The submission of learned counsel for the applicants is that once the cheque amount in question has already been deposited by the applicants in pursuance of the order passed by the City Civil Court, Dindoshi, Mumbai, therefore, there is no liability on the part of the applicants towards the opposite party no. 2. Hence, the instant prosecution of the applicants under Section 138 of the N.I. Act is uncalled for. Once the cheque amount has been deposited by the applicants in the City Civil Court, Dindoshi, Mumbai, the cause of action for continuance of the instant case ceases to exist. Therefore, no cause of action for maintaining the instant complaint against the applicant survives. Therefore, learned counsel for the applicants seeks quashing of the entire proceedings of the instant case against the applicants.

5. In support of his submissions, learned counsel for the applicants has placed reliance upon the following judgments, which read as under:

*(i) 2009 Vol. 2 (SC) 513 Kumar Sports Vs. Sharma Carpets. Relevant paragraphs 14,15,17,18,19 & 20.*

*(ii) Supreme Today, 2019 (423) Basalingappa Vs. Mudibasappa, Relevant paragraph 17,18 & 19.*

*(iii) 2023 Law Suit (S.C.) 1002 Rajesh Jain Vs. Ajay Singh, relevant paragraphs 41 & 42.*

(iv) 2003 Supreme (Del) 975 Nizzar Agro Foods Ltd. Vs. Naseeb Chand, relevant paragraphs 2,3,4 & 5.

6. *Per contra*, learned counsel for the opposite party no.2 submits that from the averments made in the instant application under Section 482 Cr.P.C. coupled with the averments made in the complaint under Section 138 N.I. Act, lodged by the opposite party no.2, the applicants have admitted their liability of the cheque amount on the date of issuance of cheque. Admittedly, the cheque in question has been dishonored. The legal notice was issued by the opposite party no.2. Despite the receipt of the notice the applicants have failed to make the payment of the cheque amount within the statutory period. Further, even after the receipt of the summons from the trial court the applicants have failed to compound the offence by depositing the cheque amount on the first date so fixed by the trial court. So far as the instant complaint case is concerned the applicants have failed to make payment of the cheque amount in the instant complaint case. The amount deposited in pursuance of the order of the City Civil Court, Dindoshi, Mumbai is still in deposit as per the orders of the City Civil Court, Dindoshi, Mumbai and the same has not yet been disbursed to the opposite party no.2 and the same has been kept in the fixed deposit account that will be disbursed to the parties subject to the final outcome of the said City Civil Court, Dindoshi, Mumbai and the deposit of the said amount in the City Civil Court, Dindoshi, Mumbai would not absolve applicants from the criminal liability under the provisions of Sections 138 and 142 of the N.I. Act.

7. Admittedly, till the date of filing of the complaint no amount was deposited/paid by the applicants to the opposite party no.2 against the aforesaid cheque. Therefore, a *prima facie* case has been found to have been made out against the applicants. The applicants have been summoned in the instant case. Therefore, there is no illegality in the summoning order as well as the prosecution of the applicants under the provisions of Section 138 of the N.I. Act. Therefore, learned counsel for

the opposite party no.2 seeks dismissal of the instant application filed by the applicants.

**8.** Learned A.G.A. appearing for the State also supports the submissions made by learned counsel for the opposite party no.2.

**9.** Having heard the rival submissions made by learned counsels for the parties, this Court has carefully gone through the record of the case. Admitted facts of the instant case are that conveyance deed was executed between the parties and in pursuance thereof there was a liability on the part of the applicants against the opposite party no.2. In discharge of the said liability the applicants have issued the Cheque No. 271763 amount Rs. 95,45,004/- drawn on Dena Bank, Malad, Mumbai in favour of the opposite party no.2, which was presented for encashment and the same was dishonored for the reason '*insufficient funds*'. The said fact was informed by the opposite party no.2 to the applicants and subsequent thereto, a legal notice was also issued within the statutory period. Despite the receipt of the notice the applicants have failed to make the payment of the cheque amount within the statutory period. Thus, after the expiry of a notice period an offence under Section 138 of the N.I. Act is made out against the applicants herein. Subsequent thereto, the complaint case under Section 138 of the N.I. Act, was filed by the opposite party no.2 within the limitation period prescribed. The trial court having satisfied that a *prima facie* case has been made out against the applicants, has summoned the applicants in the instant complaint case under Section 138 of the N.I. Act.

**10.** Therefore, from the facts as narrated in the complaint and admitted by the applicants, on the date of filing of the complaint under Section 138 of the N.I. Act, the offence under Section 138 of the N.I. Act was made out against the applicants. After receipt of the summons in the instant complaint case no attempt was made by the applicants to compound the offence on the first date fixed by the trial court. Therefore, so far as the proceedings in the instant case under Section 138 of the

N.I. Act, is concerned there is no illegality on the part of the trial court. So far as the subsequent deposit of the cheque amount by the applicants before the City Civil Court, as per the directions issued by the City Civil Court in the civil suit filed by the opposite party no.2 is concerned, the said amount is still in deposit and same has not been received by the opposite party no.2, as admitted by learned counsel for the applicants and the disbursement of the said amount is at the discretion of the City Civil Court subject to the final outcome of the said suit. Therefore, any deposit so made by learned counsel for the applicants in other proceedings would not be sufficient to compound the offence, specifically when the opposite party had never agreed for compounding of the offence nor any amount has been paid in the instant proceedings by the applicants.

**11.** Before proceeding further it would be relevant to take note of the judgements relied by learned counsel for the applicants.

**12.** In ***Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513***, the Apex Court in para 14, 15, 17, 19 and 20 has held as under:

*"14. Section 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 the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.*

*15. Presumptions are devices by use of which the courts are enabled and entitled to pronounce on an issue notwithstanding that there is no evidence or insufficient evidence. Under the Evidence Act all presumptions must come under one or the other class of the three classes mentioned in the Act, namely, (1) "may presume" (rebuttable), (2) "shall presume" (rebuttable), and (3) "conclusive presumptions" (irrebuttable). The term "presumption" is used to designate an inference, affirmative or disaffirmative of the existence of a fact, conveniently called the "presumed fact" drawn by a judicial tribunal, by a process of probable reasoning from some matter of fact, either judicially noticed or admitted or established by*

*legal evidence to the satisfaction of the tribunal. Presumption literally means "taking as true without examination or proof".*

*17. 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.*

*18. Applying the definition of the word "proved" in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.*

*19. The use of the phrase "until the contrary is proved" in Section 118 of the Act and use of the words "unless the contrary is proved" in Section 139 of the Act read with definitions of "may presume" and "shall presume" as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over.*

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."

12. In **Basalingappa v. Mudibasappa, (2019) 5 SCC 418**, the Apex Court in para '19', '20' and '21' has held as under:

"19. In *Kumar Exports v. Sharma Carpets* [*Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513 : (2009) 1 SCC (Civ) 629 : (2009) 1 SCC (Cri) 823*] , this Court again examined as to when the complainant discharges the burden to prove that

*the instrument was executed and when the burden shall be shifted. In paras 18 to 20, the following has been laid down:*

*"18. Applying the definition of the word "proved" in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.*

*19. The use of the phrase "until the contrary is proved" in Section 118 of the Act and use of the words "unless the contrary is proved" in Section 139 of the Act read with definitions of "may presume" and "shall presume" as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over.*

*20. ... 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....."*

20. A three-Judge Bench of this Court in *Rangappa v. Sri Mohan* [*Rangappa v. Sri Mohan*, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184] had occasion to elaborately consider the provisions of Sections 138 and 139. In the above case, the trial court had acquitted the accused in a case relating to dishonour of cheque under Section 138. The High Court had reversed [*Mohan v. Rangappa*, 2005 SCC OnLine Kar 783] the judgment of the trial court convicting the accused. In the above case, the accused had admitted signatures on the cheque. This Court held that where the fact of signature on the cheque is acknowledged, a presumption has to be raised that the cheque pertained to a legally enforceable debt or liability, however, this **presumption is of a rebuttal nature and the onus is then on the accused to raise a probable defence**. In para 13, the following has been laid down: (SCC p. 446)

*"13. The High Court in its order [*Mohan v. Rangappa*, 2005 SCC OnLine Kar 783] 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."*

21. After referring to various other judgments of this Court, this Court in Rangappa case [Rangappa v. Sri Mohan, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184] case held that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability, which, of course, is in the nature of a rebuttable presumption. In para 26, the following was laid down: (Rangappa case [Rangappa v. Sri Mohan, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184] , SCC p. 453)

*"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.**"*

13. In *Rajesh Jain v. Ajay Singh*, (2023) 10 SCC 148, the Apex Court in para '40' and '41' has held as under:

*"40. In order to rebut the presumption and prove to the contrary, it is open to the accused to raise a probable defence wherein the existence of a legally enforceable debt or liability can be contested. The words "until the contrary is proved" occurring in Section 139 do not mean that the accused must necessarily prove the negative that the instrument is not issued in discharge of any debt/liability but the accused has the option to ask the Court to consider the non-existence of debt/liability so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that debt/liability did not exist. [Basalingappa v. Mudibasappa*

*[Basalingappa v. Mudibasappa, (2019) 5 SCC 418 : (2019) 2 SCC (Cri) 571 : AIR 2019 SC 1983] ; see also Kumar Exports v. Sharma Carpets [Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513 : (2009) 1 SCC (Civ) 629 : (2009) 1 SCC (Cri) 823] ]*

41. In other words, the accused is left with two options. The first option—of proving that the debt/liability does not exist—is to lead defence evidence and conclusively establish with certainty that the cheque was not issued in discharge of a debt/liability. The second option is to prove the non-existence of debt/liability by a preponderance of probabilities by referring to the particular circumstances of the case. The preponderance of probability in favour of the accused's case may be even fifty-one to forty-nine and arising out of the entire circumstances of the case, which includes : the complainant's version in the original complaint, the case in the legal/demand notice, complainant's case at the trial, as also the plea of the accused in the reply notice, his Section 313CrPC statement or at the trial as to the circumstances under which the promissory note/cheque was executed. All of them can raise a preponderance of probabilities justifying a finding that there was "no debt/liability". *[Kumar Exports v. Sharma Carpets [Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513 : (2009) 1 SCC (Civ) 629 : (2009) 1 SCC (Cri) 823] ]"*

**14. In *Nijjer Agro Foods Limited vs. Nasib Chand* : 2003 0 Supreme(Del) 975** the Apex Court in para '2', '3', '4', & '5' has held as under:

*"(2) ADMITTEDLY in terms of para 9 of the terms and conditions, the petitioner gave two post dated cheques dated 1. 6. 1996 and 30. 6. 96 in favour of respondent no. 1 for Rs. 20 lac each. In terms of the agreement, these cheques were to be replaced by the petitioner company by way of demand draft of the total value of Rs. 20 lac each. Admittedly demand drafts amounting to Rs. 40 lac were given to respondent no. 1. Instead of replacing the cheques with these demand drafts respondent no. 1 presented those cheques which obviously were dishonoured.*

*(3) THE question before the learned trial court was whether there was any liability of the petitioner towards these cheques in question or not. Merely because some amount or remaining balance payment was due from the petitioner does not mean that respondent no. 1 was entitled to recover those payments by virtue of the aforesaid two cheques given by the petitioner as security which were replaceable by way of demand drafts.*

*(4) ONCE the payment against those cheques was made by way of demand drafts the liability qua these cheques ceased to exist and therefore the respondent no. 1 was not entitled to present those cheques even if some amount or balance amount was due from the petitioner. Section 138 of the Negotiable Instruments Act pertains to those cheques which are towards liability. Once the said liability stands discharged the offence under Section 138 of the Negotiable Instruments Act ceases to exist. Proceedings under Section 138 of the Negotiable Instruments Act cannot be converted into civil suit for recovery. These are specific proceedings and confine only to 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 or other liability.*

*(5) IN the instant case, the liability of Rs. 40 lac created by way of postdated cheques was duly discharged by way of aforesaid demand drafts and therefore there was no occasion for the learned trial court to reject the application for dropping the proceedings. The impugned order suffers from inherent infirmity. In the result, petition is allowed. Impugned order is set aside. Proceedings are dropped."*

**16.** The judgements relied upon by learned counsel for the applicants basically deals with the presumption under Sections 118 and 139 of the N.I. Act and the proceedings for rebuttal of presumption. In the instant case, there is no dispute with the regard to the liability of the applicants towards the opposite party no.2. In the instant complaint neither they had denied the issuance of cheque nor the dishonour of the same. Therefore, *prima facie* since it is an admitted case, the judgements relied upon by the learned counsel for the applicants with regard to the presumption of

existence of liability and rebuttal thereof would not be applicable in the instant case.

**17.** In the instant case, the liability is not disputed nor the issuance of cheque. Rather, the liability is admitted by the applicants, however, they only want to take the benefit of deposit of the cheque amount in some other proceedings, in the instant proceedings by submitting that they had discharged their liability even if the offence is made out against the applicants. Till, now the opposite party no.2, has not received any amount out of the said cheque amount. Although the applicant in pursuance of the order of the City Civil Court have deposited the amount through cheque on 15.10.2016, which is still in deposit there but the same has not been disbursed to the opposite party no. 2, till now.

**17.** Therefore, in the considered opinion of this Court *prima facie* a case is made out against the applicants and deposit of the cheque amount by the applicants in the other proceedings, would not absolve them from the liability in the instant case.

**18.** For the reasons aforesaid, the instant application is devoid of merits and the same is accordingly ***dismissed***.

**Order Date :-** 14.07.2025

Shubham Arya

**(Anish Kumar Gupta, J.)**