



CNR: KAHC010548742017

NC: 2026:KHC:46609
CRL.A No. 110 of 2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL APPEAL No. 110 OF 2017 (A)

BETWEEN:

SMT. RAMADEVI
W/O C.S. MUNIRAJU
AGED ABOUT 39 YEARS
R/AT No. 56, 4TH CROSS
AMCO LAYOUT, KODIGEHALLI
BENGALURU - 560 092.

...APPELLANT

(BY SRI A N RADHA KRISHNA, ADVOCATE)

AND:

KUM. DHANALAKSHMI
D/O JAYACHANDRA,
AGED 31 YEARS,
R/AT No. 166, GROUND FLOOR,
AMCO LAYOUT, KODIGEHALLI
BENGALURU - 560 092.

...RESPONDENT

(BY SRI PRAJITH C, ADVOCATE)

THIS CRL.A. IS FILED UNDER SECTION 378(4) Cr.P.C
PRAYING TO SET ASIDE THE JUDGMENT DATED:16.11.2016
PRODUCED AT ANNEXURE-A PASSED BY THE XVIII
ADDL.C.M.M., BANGALORE IN C.C.No.8222/2015 -ACQUITTING
THE RESPONDENT/ACCUSED FOR THE OFFENCE PUNISHABLE
UNDER SECTION 138 ON N.I ACT.

Digitally signed by
LAKSHMINARAYANA
MURTHY RAJASHRI
Location: HIGH
COURT OF
KARNATAKA



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THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 19.08.2026, THIS DAY, **SHIVASHANKAR AMARANNAVAR J**, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

CAV JUDGMENT

1. This appeal is filed by the complainant under Section 378(4) of Cr.P.C. praying to set aside the judgment of acquittal passed by XVIII Additional Chief Metropolitan Magistrate, Bangalore in C.C. No. 8222/2015 dated 16.11.2016 acquitting the respondent -accused for the offence punishable under Section 138 of Negotiable Instruments Act (hereinafter referred to as the 'NI Act') and consequently convict the respondent - accused for offence punishable under Section 138 of N.I. Act, pass appropriate sentence and compensate the appellant.

2. Case of appellant - complainant before the trial Court is as under:

a). The accused is known to the complainant for the past 15 years. Accused approached the complainant and



demanded hand loan of Rs.3,00,000/- for her financial necessities and legal obligations. The complainant advanced Rs.3,00,000/- to the accused and at the time of borrowing the accused had agreed to repay the said amount to the complainant within two months. After two months the complainant demanded the accused to repay the loan amount and at that time the accused had issued a cheque in favour of the complainant dated 05.12.2014 for Rs.3,00,000/- drawn on Corporation Bank, Sahakarnagara Branch, Bangalore. The complainant presented the said cheque for encashment but it was returned unpaid with an endorsement 'funds insufficient' as per memo dated 05.12.2014. After dishonour of the cheque the accused had informed the complainant to again present the cheque for encashment. Complainant again presented the cheque for encashment and again it was dishonored on 07.01.2015 with an endorsement 'funds insufficient'.

b). The complainant got issued legal notice on 05.02.2015 to the accused demanding to repay the



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cheque amount within 15 days. Said legal notice has been served on the respondent accused on 07.02.2015. Even in spite of service of notice the accused has neither made payment of cheque amount nor sent any reply to the legal notice.

c). The complainant presented the complaint on 18.03.2015. Sworn statement of the complainant has been recorded. Cognizance of offence under Section 138 of N.I. Act has been taken and a case has been registered against the respondent accused for offence under Section 138 of N.I. Act.

d). Respondent accused appeared through counsel and pleaded not guilty. Complainant has been examined as P.W.1 and got marked Ex.P.1 to Ex.P.7. Complainant has examined one Smt. Jayalakshmi as P.W.2. Respondent accused has not entered the witness box and not produced any document. The trial Court, after hearing arguments on both sides, appreciating the evidence on record, has passed impugned judgment whereunder respondent -



accused has been acquitted for offence punishable under Section 138 of N.I. Act. Appellant -complainant has challenged the said judgment of acquittal passed by the trial Court in the present appeal.

3. Heard arguments of learned counsel for appellant and learned counsel for respondent - accused.

4. Learned counsel for appellant would contend that signature on Ex.P.1 - cheque has not been disputed by respondent - accused. Therefore, a presumption has to be drawn under Section 139 of the N.I. Act that the cheque is issued for legally recoverable debt. Accused has not got issued any reply to the legal notice - Ex.P.4 putting forth her defence. Even in the cross-examination of P.W.1 there is no suggestion as to how the cheque Ex.P.1 landed in the hands of the complainant. P.W.2 is one Jayalakshmi who has deposed that in her presence complainant has handed over hand loan of Rs.3,00,000/- to the accused. P.W.2 in the cross-examination has denied that Asha, herself and complainant were members of chit transaction.



The trial Court, merely because date of borrowing is not stated in the legal notice, complaint and that there are some discrepancies in the evidence, complaint and legal notice, has erred in acquitting the respondent - accused. The material on record clearly establishes essentials of offence under Section N.I. 138 of an Act. Therefore, respondent - accused has to be convicted for offence under Section 138 of N.I. Act by setting aside the judgment of acquittal passed by the trial Court. With this he prayed to allow the appeal.

5. Learned counsel for respondent - accused would contend that the date of lending has not been stated in complaint, legal notice and sworn statement. There are contradictions in the evidence of P.W.1, complaint and legal notice. The transaction relates to the year 2014, but the cheque - Ex.P.1 is non-CTS cheque and it is issued before the year 2010. The defence of the accused is that the cheque is issued towards chit transaction. The complainant has not explained the source of Rs.3,00,000/.



Complainant had no financial capacity to lend Rs.3,00,000/-. Considering the said aspect, the trial Court has rightly acquitted the respondent accused for offence under Section N.I. 138 of Act by the impugned judgment. As the appeal is against acquittal, the judgment of acquittal cannot be lightly reversed. There is double presumption of innocence of the accused. If two views are possible, the appellate Court cannot reverse the finding of acquittal and convert it to a conviction. On that point, learned counsel for the respondent placed reliance on the following decisions:

- i. Sheo Swarup and others Vs. The King - Emperor, AIR 1934 PC 227
- ii. Chandrappa and others Vs. State of Karnataka, 2007 (4) SCC 415
- iii. Rajesh Prasad Vs. State of Bihar and another 2022 (3) SCC 471
- iv. H.D. Sundara and others Vs. State of Karnataka, 2023 (9) SCC 581



6. The learned counsel for respondent - placing reliance on the decision of Hon'ble Apex Court in the case of ***Kumar Exports Vs. Sharma Carpets, 2009 (2) SCC 523*** contended that 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 a case act upon the plea that they did not exist.

7. Learned counsel placing reliance on the decision of the Hon'ble Apex court in the case of ***John K. Abraham Vs. Simon C. Abraham and another, 2014 (2) SCC 236*** would contend that in order to draw presumption under Section 118, read along with Section 139 of the N.I. Act, the burden was heavily upon the complainant to have shown that he had the required funds for having advanced the money to the accused.



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8. Learned counsel placing reliance on the decision of Hon'ble Apex court in the case of ***Baslingappa Vs. Mudibasappa, 2019 (5) SCC 418*** would contend that the standard of proof for rebutting the presumption is that of preponderance of probabilities. The accused, in order to revert the presumption, can rely on materials submitted by the complainant in order to raise a probable defence and it is not necessary that the accused has to enter witness box in support of his defence.

9. Learned counsel placing reliance on the decision of ***K Subramani Vs. K Damodara Naidu, 2015 (1) SCC 99*** would contend that presumption under Section 139 of N.I. Act is a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of legally enforceable debt or liability can be contested. On these grounds, he submits that the judgment passed by the trial Court is correct and prayed for dismissal of the appeal.

10. Having heard learned counsel the Court has perused the judgment and the trial Court records.



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11. The contention of the learned counsel for respondent - accused is that the order of acquittal should not be lightly reversed and judgment of acquittal itself indicates that there is double presumption of innocence of the accused.

12. In the case of ***Sheo Swaroop and others, (supra)***, the Privy Council has observed thus:

"Sects. 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived



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at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice."

13. In the case of ***Chandrappa and others*** (***supra***), the Hon'ble Apex Court has observed thus:

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail



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extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

14. In the case of **Rajesh Prasad (*supra*)**, the Apex Court has observed thus;



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"28. This Court in Chandrappa & Ors. vs. State of Karnataka, (2007) 4 SCC 415, highlighted that there is one significant difference in exercising power while hearing an appeal against acquittal by the appellate court. The appellate court would not interfere where the judgment impugned is based on evidence and the view taken was reasonable and plausible. This is because the appellate court will determine the fact that there is presumption in favour of the accused and the accused is entitled to get the benefit of doubt but if it decides to interfere it should assign reasons for differing with the decision of acquittal.

29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words (Chandrappa case, SCC p.432, para 42)"

15. In the case of **H.D. Sundara (supra)**, the Apex Court has observed thus:

"9. Normally, when an Appellate Court exercises appellate jurisdiction, the duty of the Appellate Court is to find out whether the verdict which is under challenge is correct or incorrect in law and on facts.



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The Appellate Court normally ascertains whether the decision under challenge is legal or illegal. But while dealing with an appeal against acquittal, the Appellate Court cannot examine the impugned judgment only to find out whether the view taken was correct or incorrect. After re-appreciating the oral and documentary evidence, the Appellate Court must first decide whether the Trial Court's view was a possible view. The Appellate Court cannot overturn acquittal only on the ground that after re-appreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt. Only by recording such a conclusion an order of acquittal cannot be reversed unless the Appellate Court also concludes that it was the only possible conclusion. Thus, the Appellate Court must see whether the view taken by the Trial Court while acquitting an accused can be reasonably taken on the basis of the evidence on record. If the view taken by the Trial Court is a possible view, the Appellate Court cannot interfere with the order of acquittal on the ground that another view could have been taken."

16. The above said decisions relied upon by the learned counsel for respondent - complainant are in cases



involving offences under IPC and other penal laws. In the case on hand, the offence for which the respondent - accused has been acquitted is offence under Section 138 of N.I. Act.

17. What are the matters to be taken into consideration while considering an appeal challenging acquittal of offence under Section 138 of N.I. Act has been considered by the Hon'ble Apex Court in the case of ***Kalamani Tex and another Vs. P. Balasubramanian, 2021 (5) SCC 283***, wherein it is observed thus:

"11. Having given our thoughtful consideration to the rival submissions, we do not find any valid ground to interfere with the impugned judgment. It is true that the High Court would not reverse an order of acquittal merely on formation of an opinion different than that of the trial Court. It is also trite in law that the High Court ought to have compelling reasons to tinker with an order of acquittal and no such interference would be warranted when there were to be two possible conclusions. Nonetheless, there are numerous decisions of this Court, justifying the invocation of powers by the High Court



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under Section 378 CrPC, if the trial Court had, inter alia, committed a patent error of law or grave miscarriage of justice or it arrived at a perverse finding of fact."

18. Considering the above aspects, if the trial Court has committed a patent error of law or grave miscarriage of justice or it arrived at a perverse finding of fact, then the High Court, under Section 378 Cr.P.C., can exercise its power and reverse the judgment of acquittal into a conviction.

19. Respondent - accused has not denied the issuance of cheque - Ex.P.1 and signature on it. Therefore, a presumption has to be raised under Section 139 of N.I. Act that the cheque has been issued for discharge of legally enforceable debt or liability.

20. The Hon'ble Apex Court in ***Rangappa versus Sri Mohan. 2010 (11) SCC 441*** has observed as under:

"The presumption mandated by Section 139 includes a presumption that there exists a legally enforceable debt or liability. This is of



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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 respondent complainant"

21. How the accused can rebut the said presumption and what is the standard of proof has been considered by the Hon'ble Apex Court in the case of **Basilingappa (supra)** wherein it is held as under:

*"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 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 probable defence. The standard of



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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 in 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 in the witness box to support his defence."

22. In the case on hand, respondent - accused has not chosen to lead evidence by entering the witness box. Respondent - accused has not produced any documents in support of his defence. Respondent - accused places reliance on the documents produced by the complainant, evidence of complainant and his witness P.W.2 in order to



rebut the presumption drawn under Section 139 of N.I. Act.

23. In order to rebut the presumption, respondent - accused has to raise a probable defence. On careful perusal of cross-examination of P.W.1, there is no suggestion as to what is the defence of respondent - accused as to how the cheque Ex.P.1 landed at the hands of appellant - complainant.

24. P.W.2 - Jayalakshmi has deposed that she was present when respondent accused borrowed Rs.3,00,000/- from appellant - complainant. On perusal of the cross-examination there is no suggestion as to what is the defence of the respondent - accused. In cross-examination, it is asked to P.W.2 that she, complainant and one Asha are members of chit and that is not admitted by P.W.2. P.W.1 has also denied the suggestion that she was member of a chit transaction. It is not the defence suggested to P.W.1 and P.W.2 that the cheque Ex.P.1 has been issued in connection with the chit



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transaction to P.W.1, for the chit transaction run by her, Asha and P.W.2 - Jayalakshmi.

25. In the cross- examination of P.W.1, much has been asked with regard to the source and capacity to lend a sum of Rs.3,00,000/-. Learned counsel for appellant has argued that the date of lending has not been mentioned in the legal notice and complaint. P.W.1 in her cross-examination has stated that during May 2014, respondent - accused has borrowed Rs.3,00,000/- from her. She has further stated that she had saved some money from her tailoring work and took some portion of the money from her husband who had been sanctioned housing loan at the relevant point of time. Learned counsel for respondent has much highlighted the fact of non-examination of the husband of the complainant as a witness to prove that he had borrowed housing loan and out of that he gave money to his wife to lend it to accused. Ex.P.7 is Bank passbook of the Bank account of the husband of the complainant Muniraja C. S. with Canara Bank, wherein there are entries



of credit of loan of Rs.6,00,000/- on 23.05.2014 by Repco Home Finance and he drawing cash of Rs.2,00,000/- on 24.05.2014, Rs.1,00,000/- on 02.06.2014 and Rs.2,00,000/- on 11.06.2014. The said borrowing is during May 2014 as stated by P.W.1 in her cross-examination. This document Ex.P.7 - Bank passbook corroborates the evidence of P.W.1 with regard to period of lending and source of money for lending.

26. The trial Court has much highlighted with regard to money lent without charging any interest when her husband borrowed housing loan from a finance company, source of money for lending by the complainant and non-stating of date of lending in the complaint and legal notice. Said contradictions highlighted by the trial Court are not of much importance.

27. The Hon'ble Apex Court in the case of ***Rohitbhai Jivanlal Patel Vs. State of Gujarat and another, 2020 (3) SCC (Criminal) 575***, has observed as under:



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"20. On perusing the order of the Trial Court, it is noticed that the Trial Court proceeded to pass the order of acquittal on the mere ground of 'creation of doubt'. We are of the considered view that the Trial Court appears to have proceeded on a misplaced assumption that by mere denial or mere creation of doubt, the appellant had successfully rebutted the presumption as envisaged by Section 139 of the NI Act. In the scheme of the NI Act, mere creation of doubt is not sufficient.

21. The result of 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 reasonable doubt. Such being the fundamental flaw on the part of the Trial Court, the High Court 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 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



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had to be made for just and proper decision of the matter."

28. On perusal of the judgment of the trial Court, it is noticed that the trial Court proceeded to pass the order of acquittal on the mere ground of creation of doubt. The trial Court appears to have proceeded on a misplaced assumption that by mere denial or mere creation of doubt, the accused had successfully rebutted the presumption as envisaged by Section 139 of N.I. Act. In the scheme of N.I. Act, mere creation of doubt is not sufficient.

29. With regard to financial capacity to be disputed by the accused the Hon'ble Apex Court in the case of ***Tedhi Singh Vs. Narayan Dass Mahant, 2022 (6) SCC 735*** has observed thus:

"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



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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."

30. The Hon'ble Apex Court in another decision, in the case of **Kunte Gowda Vs. Thurubaiah, 2026 INSC 790** has observed thus:



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"6.7. Furthermore, the failure of the accused to respond to the statutory notice issued under Section 138 of the NI Act gives rise to an inference that the complainant's version carries merit. The initial burden of raising a defence that the complainant lacked the financial capacity to advance the loan rests upon the accused and ought to have been specifically pleaded in the reply to the demand notice. In the absence of such a plea, the complainant cannot be expected, to adduce evidence establishing his financial capacity to pay the loan to the accused while leading his evidence. The accused may discharge this burden by producing independent witnesses or documentary evidence to demonstrate the complainant's lack of financial means. Alternatively, he may rely upon the materials produced by the complainant himself or establish the same through an effective cross-examination of the complainant and his witnesses. In the facts of the present case, no such contra material has been placed on record before us to further the case of the accused that the complainant did not have any means to extend the hand loan and therefore the argument and defence of the accused on this aspect falls flat."



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31. Considering the above decisions, the defence that the complainant has to raise with regard to financial capacity to advance the loan is in the reply to the demand notice. In the case on hand, the respondent accused has not issued any reply to the demand notice.

32. The Hon'ble Apex Court in the case of ***Kalamani Tex (supra)*** has held as under:

"13. Adverting to the case in hand, we find on a plain reading of its judgment that the trial Court completely overlooked the provisions and failed to appreciate the statutory presumption drawn under Section 118 and Section 139 of NIA. The Statute mandates that once the signature(s) of an accused on the cheque/negotiable instrument are established, then these 'reverse onus' clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him. This point of law has been crystallized by this Court in Rahobhai Jivanlal Patel V. State of Gujarat in the following words:

"18. In the case at hand, even after purportedly drawing the presumption under Section 139 of the NI Act, the trial court proceeded to question the want of



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evidence on the part of the complainant as regards the source of funds for advancing loan to the accused and want of examination of relevant witnesses who allegedly extended him money for advancing it to the accused. This approach of the trial court had been at variance with the principles of presumption in law. After such presumption, the onus shifted to the accused and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the appellantaccused...."

33. There is a presumption under Section 139 of N.I. Act that the cheque is issued for discharge of legally enforceable debt or liability. After such a presumption, the onus is shifted to the accused and unless the accused has discharged the onus by bringing on record such facts and circumstances as to show the preponderance of



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probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the accused.

34. What is the effect of non-rebutting the presumption drawn under Section 139 of N.I. Act has been considered by the Hon'ble Apex Court in the case of ***Rajesh Jain Vs. Ajay Singh, AIR 2023 Online SC 807*** has held as under:

"55. As rightly contended by the appellant, there is a fundamental flaw in the way both the Courts below have proceeded to appreciate the evidence on record. Once the presumption under Section 139 was given effect to, the Courts ought to have proceeded on the premise that the cheque was, indeed, issued in discharge of a debt/liability. The entire focus would then necessarily have to shift on the case set up by the accused, since the activation of the presumption has the effect of shifting the evidential burden on the accused. The nature of inquiry would then be to see whether the accused has discharged his onus of rebutting the presumption. If he fails to do so, the Court can straightaway proceed to convict him,



subject to satisfaction of the other ingredients of Section 138. If the Court finds that the evidential burden placed on the accused has been discharged, the complainant would be expected to prove the said fact independently, without taking aid of the presumption. The Court would then take an overall view based on the evidence on record and decide accordingly."

35. On considering the entire facts and circumstances of the case, there is no probable defence raised by the respondent – accused to rebut the presumption drawn under Section 139 of N.I. Act. There is no iota of suggestion to P.W.1 and P.W.2 as to how cheque Ex.P.1 drawn by the accused on her account landed in the hands of the complainant. The accused has not discharged his onus of rebutting the presumption. If the accused fails to rebut the presumption, the Court can straight away proceed to convict him subject to satisfaction of other ingredients of Section 138 of N.I. Act.

36. The dishonour of the cheque has been for want of sufficient funds in the account of the accused. The



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dishonour of the cheque has been intimated by demand notice to the accused within the period and the same has been served on the accused. The accused did not repay the cheque amount within the period after receipt of the legal notice. Considering all these aspects, the appellant - complainant has established that the respondent - accused has committed an offence under Section 138 of N.I. Act. Therefore the judgment of acquittal passed by the trial Court requires to be set aside and respondent - accused requires to be convicted for offence under Section 138 of N.I. Act.

37. In the result of the following

ORDER

- I. The appeal is ***allowed.***
- II. The impugned judgment of acquittal passed by the trial Court is set aside.
- III. The respondent accused is convicted for offence under Section 138 of N.I. Act.



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- IV. The respondent accused is sentenced to pay fine of Rs.6,00,000/- and in default of payment of fine amount, to undergo imprisonment for 6 months.
- V. Out of the said fine amount a sum of Rs.5,50,000/- is ordered to be paid as compensation to the appellant – complainant.

Sd/-
(SHIVASHANKAR AMARANNAVAR)
JUDGE

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