

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 14.07.2015

% Date of Decision: 12.08.2015

+ **CRL.L.P.535/2013**

ANIL AGGARWAL Petitioner
Through Mr. Ashutosh Gupta, Adv.
versus

STATE & ANR Respondents
Through Mr. Lovkesh Sawhney, APP.
Mr.Milind Gautam, Adv. For R2.

+ **CRL.L.P. 540/2013**

ANIL AGGARWAL Petitioner
Through: Mr.Ashutosh Gupta, Adv.

Versus

STATE & ANR Respondents
Through: Mr. Lovkesh Sawhney, APP.
Mr.Milind Gautam, Adv. For R2.

+ **CRL.L.P. 541/2013**

ANIL AGGARWAL Petitioner
Through Mr.Ashutosh Gupta, Adv.
versus

STATE & ANR Respondents

Through Mr. Lovkesh Sawhney, APP.
Mr.Milind Gautam, Adv. For R2.

+

CRL.L.P. 542/2013

ANIL AGGARWAL Petitioner
Through Mr.Ashutosh Gupta, Adv.

versus

STATE & ANR Respondents

Through Mr. Lovkesh Sawhney, APP.
Mr.Milind Gautam, Adv. For R2.

+

CRL.L.P. 543/2013

ANIL AGGARWAL Petitioner
Through Mr. Ashutosh Gupta, Adv.

versus

STATE & ANR Respondents

Through Mr. Lovkesh Sawhney, APP.
Mr.Milind Gautam, Adv. For R2.

+

CRL.L.P. 544/2013

ANIL AGGARWAL Petitioner
Through Mr. Ashutosh Gupta, Adv.

versus

STATE & ANR. Respondents

Through Mr. Lovkesh Sawhney, APP.
Mr.Milind Gautam, Adv. For R2.

+

CRL.L.P. 545/2013

ANIL AGGARWAL Petitioner

Through Mr. Ashutosh Gupta, Adv.

versus

STATE OF NCT OF DELHI & ORS. Respondents

Through Mr. Lovkesh Sawhney, APP.
Mr.Milind Gautam, Adv. For R2.

+

CRL.L.P. 546/2013

ANIL AGGARWAL Petitioner

Through Mr.Ashutosh Gupta, Adv.

versus

STATE GOVT. OF NCT OF DELHI & ORS. Respondents

Through Mr. Lovkesh Sawhney, APP.
Mr.Milind Gautam, Adv. For R2.

+

CRL.L.P. 547/2013

ANIL AGGARWAL Petitioner

Through Mr.Ashutosh Gupta, Adv.

versus

STATE & ANR Respondents

Through Mr. Lovkesh Sawhney, APP.
Mr.Milind Gautam, Adv. For R2.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J:

1. The batch of petitions seeking leave to appeal relate to the same parties and same transaction, but through nine different cheques, which

were dishonoured, leading to nine different complaints. As such, all the above petitions are disposed of by this common order.

2. The aforementioned petitions, seeking leave to appeal, are directed against the judgment and order of acquittal dated 08.10.2012 passed by Shri Rakesh Kumar Singh, learned MM-01, Central District, Tis Hazari Courts, Delhi, in Criminal Complaints No.301/2010 whereby the respondent no.2 has been acquitted.

3. It would be relevant to mention that against the aforementioned order of acquittal, the petitioner herein, erroneously preferred an appeal before the Additional Sessions Judge. In the aforesaid criminal appeal, the judgment of acquittal was reversed and the respondent no.2 herein was sentenced to imprisonment of 2 years and a fine of double the amount of cheque with the default clause for undergoing 6 months simple imprisonment.

4. The respondent no.2, challenged the aforesaid order in appeal by way of Criminal Revision Petition No.147/2013.

5. This Court vide order dated 19.08.2013, found the Appellate Court judgment to be unsustainable as no appeal could have been preferred against the judgment and order of acquittal in a complaint case as it could have been challenged only by way of appeal under Section 378(4) of the Code of Criminal Procedure before the High Court. The judgment in appeal, therefore, was set aside and the petitioner/complainant was granted liberty to prefer an appeal before the High Court against the order of acquittal of the accused.

6. Consequently, the present leave to appeal has been filed.
7. The petitioner and the respondent no.2 were known to each other and a friendly loan of Rs.14 lacs was taken by the respondent no.2 from the petitioner with an agreement to return the amount along with interest at the interest of 1 ½ % per month. The aforesaid loan was given in the month of July 2005. The respondent no.2 executed a Demand Promissory Note as well as Consideration Receipt dated July 2005.
8. The respondent no.2 issued nine post-dated cheques, all drawn on The Catholic Syrian Bank Limited, Delhi. The aforesaid cheques, on presentation were dishonoured for insufficiency of funds, for which separate complaints were filed.
9. Despite notices having been served to the respondent no.2, no reply to the said notice or payment in terms of the notice was made by him.
10. Hence, the complaints.
11. It has been submitted on behalf of the petitioner that while the substance of accusation was being explained to the respondent no.2, he admitted to have issued the cheques as advance towards the repayment of loans but clarified that no loan was released to him and, therefore, he pleaded not guilty and claimed to be tried.
12. The petitioner got himself examined and tried to establish the case on the basis of mandatory presumption of law under Section 118 and 139 of the Negotiable Instrument Act to establish the liability on the part of the respondent no.2.

13. Since the original copy of the promissory note and receipt could not be filed by the petitioner, the same was not taken in evidence.

14. From the perusal of the complaint petitions, it appears that no details of the date on which the loan was advanced or as to from which source, the amount of Rs.14 lacs was arranged for giving loan to the respondent no.2 has been disclosed.

15. However, in the cross examination, the petitioner deposed that the amount in question was borrowed from his friends and relatives. The petitioner has gone on to state that he managed Rs.9 lacs from one Arvind Garg; Rs.3 lacs from Gauri Shankar and Rs.2 lacs from Suresh Gupta. Thus, the entire amount of loan is stated to have arranged by the petitioner through his friends who gave such loan to him in cash.

16. The respondent no.2 examined the aforesaid three persons through whom the petitioner had arranged for money as defence witnesses.

17. Arvind Garg (DW.1), who is stated to have given Rs.9 lacs to the petitioner, deposed before the Court that he had given such friendly loan to the petitioner about 5 or 6 years ago. However, in his Income Tax Return for the year 2006-07 (Ex.DW.1/51), no such loan has been shown. He has further stated that this amount of Rs.9 lacs was given to him by his father for the purposes of marriage and education of his children.

18. Suresh Kumar Gupta (DW.2) gave a loan of Rs.2 lacs to the petitioner. He is also an Income Tax assessee but in his Income Tax Return for the year 2005-06 (Ex.DW.2/52), there is no reference of such loan. He also claims to have received the money from his father in cash.

19. Gauri Shankar Aggarwal (DW.3), though admitted to have given Rs.3 lacs to the petitioner as loan, but was not very categorical as to whether he had submitted his return for the year 2004-05 and 2005-06. The aforesaid defence witness was cross examined by the respondent no.2 and in cross examination, he claimed that he had given Rs.3 lacs to the petitioner at the interest of 1.5% p.a. In the cross examination, he has categorically stated that he had not filed the Income Tax Return for the year 2005-06.

20. The Trial Court did not agree with the contentions of the petitioner that there was any legally enforceable debt, for the discharge of which the cheques in question were issued as neither the original copy of the promissory note and receipt was furnished by the petitioner nor the persons from whom he arranged Rs.14 lacs were examined by him during trial to establish his claim. The Trial Court took note of the fact that in the cross examination, the petitioner accepted that such facts were not mentioned in the complaint nor were disclosed by him to his counsel for preparing the complaint and the affidavit.

21. The Trial Court disbelieved the testimonies of three defence witnesses referred to above. Non-mentioning of Rs.9 lacs in the Income Tax Return of DW.1 made his claim unbelievable. Similarly, the claim of DW.2 of having received Rs.1.50 lacs from his father in cash was also not accepted by the Trial Court for the reason that DW.2 was in Government Service and he ought to have intimated about such a transaction in his office. DW.2 was also disbelieved because of his

divergent stand that such loan was given from his personal savings which was kept at his home.

22. On the same grounds, DW.3 was also disbelieved.

23. What the Trial Court found to be disquieting, and rightly so, was that all the nine cheques were issued on the same date.

24. The respondent no.2, on the contrary, took a specific plea that the petitioner was his partner in a firm and a vehicle was purchased in his name. The respondent no.2 had paid substantial amount to the earlier owner of the vehicle and the balance amount was later paid by cash and cheque. Several receipts of payment were brought on record by the respondent no.2. It is further contended by him that the petitioner sold the vehicle without his permission and misappropriated the entire sale proceeds. Since the respondent no.2 and the petitioner were partners, the petitioner was permitted by the respondent no.2 to borrow money from market and it was for that purpose, that some blank signed cheques and pro-notes were obtained by the petitioner from the respondent no.2. Such blank cheques and pro-notes were misused when the respondent no.2 demanded his share of the sale proceeds of the vehicle. Such contention of the respondent no.2 was partly accepted by the petitioner in as much as he admitted in his cross examination that a vehicle was purchased in his name but clarified that it was purchased by him only and that such vehicle was given to the respondent no.2 for plying it as a commercial vehicle.

25. The Trial Court did not accept the version of the respondent no.2 regarding borrowing of money from the market by the petitioner. Nonetheless, the claim of the respondent no.2, regarding the purchase of vehicle in the name of the petitioner for which substantial contribution was made by the respondent no.2, was accepted.

26. For the offence under Section 138 of the Negotiable Instrument Act to be brought home, what is required is

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

27. The proviso appended to Section 138 of the Act provides for compliance of legal requirements before the complaint petition could be acted upon by a Court of Law.

28. Section 139 of the Act reads 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."*

29. Section 139 of the Act merely raises a presumption in favour of the holder of a cheque that the same has been issued for discharge of any

debt or other liability. The existence of a legally recoverable debt is not presumed under Section 139 of the Act.

30. In *Krishna Janardhan Bhat vs. Dattatreya Hegde* (2008) 4 SCC 54, the law with respect to the burden of proof while dealing with the presumptions under Section 139 of the Negotiable Instruments Act, has been succinctly adumbrated. The relevant portion of the said judgment is being reproduced herein below:

"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.

33. In Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal [(1999) 3 SCC 35] interpreting Section 118(a) of the Act, this Court opined: (SCC pp. 50-51, para 12)

"12. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the

plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt.”

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.*

35. *A statutory presumption has an evidentiary value. The question as to whether the presumption stood rebutted or not, must, therefore, be determined keeping in view the other evidence on record. For the said purpose, stepping into the witness box by the appellant is not imperative. In a case of*

this nature, where the chances of false implication cannot be ruled out, the background fact and the conduct of the parties together with their legal requirements are required to be taken into consideration.

36. In M.S. Narayana Menon v. State of Kerala [(2006) 6 SCC 39 : (2006) 3 SCC (Cri) 30] it was held that once the accused is found to discharge his initial burden, it shifts to the complainant.

37. Four cheques, according to the accused, appear to have been drawn on the same day. The counterfoil of the chequebook, according to the appellant, was in the handwriting of R.G. Bhat wherein it was shown that apart from other payments, a sum of Rs 1500 was withdrawn on a self-drawn cheque. The courts below proceeded to hold that the defence raised by the appellant has not been proved, which, in our opinion, is not correct. He did not know that the said cheque had not been encashed. He replied to the notice thinking that one of the cheques has been misused. There is nothing on record to show that he knew that one of the cheques was still with R.G. Bhat.

38. Disputes and differences between him and R.G. Bhat stood established by admission of the respondent himself. Similar industry was being run by R.G. Bhat although he was acting as the constituted attorney of the appellant. According to the appellant, R.G. Bhat had cheated him. The counterfoil showed that not more than Rs 20,000 had ever been withdrawn from that Bank at a time. The courts were required to draw an inference as to the probability of the complainant's advancing a sum of Rs 1.5 lakhs on mere asking and that too without keeping any documentary proof. Even there was no witness. The purported story that the appellant would himself come forward to return the amount by a cheque knowing fully well that he did not have any sufficient funds is difficult to believe.

39. *In K. Prakashan v. P.K. Surenderan [(2008) 1 SCC 258 : (2008) 1 SCC (Cri) 200 : (2007) 12 Scale 96] this Court following M.S. Narayana Menon [(1999) 3 SCC 35] opined: (K. Prakashan case [(2006) 6 SCC 39 : (2006) 3 SCC (Cri) 30] , SCC p. 263, paras 13-14)*

“13[12]. The Act raises two presumptions: firstly, in regard to the passing of consideration as contained in Section 118(a) therein and, secondly, a presumption that the holder of cheque receiving the same of the nature referred to in Section 139 discharged in whole or in part any debt or other liability. Presumptions both under Sections 118(a) and 139 are rebuttable in nature. Having regard to the definition of terms ‘proved’ and ‘disproved’ as contained in Section 3 of the Evidence Act as also the nature of the said burden upon the prosecution vis-à-vis an accused it is not necessary that the accused must step into the witness box to discharge the burden of proof in terms of the aforementioned provision.

14[13]. It is furthermore not in doubt or dispute that whereas the standard of proof so far as the prosecution is concerned is proof of guilt beyond all reasonable doubt; the one on the accused is only mere preponderance of probability.”

40. *In John K. John v. Tom Varghese [(2007) 12 SCC 714 : JT (2007) 13 SC 222] this Court held: (SCC p. 717, para 11)*

“11[10]. ... The High Court was entitled to take notice of the conduct of the parties. It has been found by the High Court as of fact that the complainant did not approach the Court with

clean hands. His conduct was not that of a prudent man. Why no instrument was executed although a huge sum of money was allegedly paid to the respondent was a relevant question which could be posed in the matter. It was open to the High Court to draw its own conclusion therein. Not only had no document been executed, even no interest had been charged. It would be absurd to form an opinion that despite knowing that the respondent was not even in a position to discharge his burden to pay instalments in respect of the prized amount, an advance would be made to him and that too even after institution of three civil suits. The amount advanced even did not carry any interest. If in a situation of this nature, the High Court has arrived at a finding that the respondent has discharged his burden of proof cast on him under Section 139 of the Act, no exception thereto can be taken.”

41. *Mr Bhat relied upon a decision of this Court in Hiten P. Dalal v. Bratindranath Banerjee [(2001) 6 SCC 16 : 2001 SCC (Cri) 960] wherein this Court held: (SCC pp. 24-25, paras 22-23)*

“22. ... Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter, all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.

23. In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when, 'after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists'.

Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the 'prudent man'."

(See also K.N. Beena v. Muniyappan [(2001) 8 SCC 458 : 2002 SCC (Cri) 14] .)

42. We assume that the law laid down therein is correct. The views we have taken are not inconsistent therewith."

31. After espousing the law in this regard, the Supreme Court also took note of certain other aspects namely, presumption of innocence being a human right and the requirement of a cautious approach in determining the compatibility between the concepts of reverse burden and presumption of innocence. The above noted elucidation is as follows:

"44. The presumption of innocence is a human right. (See Narendra Singh v. State of M.P. [(2004) 10 SCC 699 : 2004 SCC (Cri) 1893] , Ranjitsing Brahmajeetsing

Sharma v. State of Maharashtra [(2005) 5 SCC 294 : 2005 SCC (Cri) 1057] and Rajesh Ranjan Yadav v. CBI [(2007) 1 SCC 70 : (2007) 1 SCC (Cri) 254] .) Article 6(2) of the European Convention on Human Rights provides: "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law." Although India is not bound by the aforementioned Convention and as such it may not be necessary like the countries forming European countries to bring common law into land with the Convention, a balancing of the accused's rights and the interest of the society is required to be taken into consideration. In India, however, subject to the statutory interdicts, the said principle forms the basis of criminal jurisprudence. For the aforementioned purpose the nature of the offence, seriousness as also gravity thereof may be taken into consideration. The courts must be on guard to see that merely on the application of presumption as contemplated under Section 139 of the Negotiable Instruments Act, the same may not lead to injustice or mistaken conviction. It is for the aforementioned reasons that we have taken into consideration the decisions operating in the field where the difficulty of proving a negative has been emphasised. It is not suggested that a negative can never be proved but there are cases where such difficulties are faced by the accused e.g. honest and reasonable mistake of fact. In a recent article The Presumption of Innocence and Reverse Burdens: A Balancing Duty published in 2007 CLJ (March Part) 142 it has been stated:

"In determining whether a reverse burden is compatible with the presumption of innocence regard should also be had to the pragmatics of proof. How difficult would it be for the prosecution to prove guilt without the reverse burden? How easily could an innocent

defendant discharge the reverse burden? But courts will not allow these pragmatic considerations to override the legitimate rights of the defendant. Pragmatism will have greater sway where the reverse burden would not pose the risk of great injustice—where the offence is not too serious or the reverse burden only concerns a matter incidental to guilt. And greater weight will be given to prosecutorial efficiency in the regulatory environment.”

45. We are not oblivious of the fact that the said provision has been inserted to regulate the growing business, trade, commerce and industrial activities of the country and the strict liability to promote greater vigilance in financial matters and to safeguard the faith of the creditor in the drawer of the cheque which is essential to the economic life of a developing country like India. This, however, shall not mean that the courts shall put a blind eye to the ground realities. Statute mandates raising of presumption but it stops at that. It does not say how presumption drawn should be held to have rebutted. Other important principles of legal jurisprudence, namely, presumption of innocence as human rights and the doctrine of reverse burden introduced by Section 139 should be delicately balanced. Such balancing acts, indisputably would largely depend upon the factual matrix of each case, the materials brought on record and having regard to legal principles governing the same.”

32. Section 271(d) of the Income Tax Act, 1961, specifically provides that if a person takes or accepts any loan or deposit in any contravention of the provision of Section 269-SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of loan or deposit so taken or accepted.

33. Since the entire amount of Rs.14 lacs is said to have been paid in cash to the respondent no.2, the Trial Court disbelieved such an assertion of the petitioner. That apart, the source, through which such huge amount of money was garnered by the petitioner, was not disclosed in the claim petition. As stated earlier, only in the cross examination, the petitioner talked about his having arranged money through three persons who were never examined by him. Curiously, those persons were examined as defence witnesses. In the Income Tax Return of none of them, was there any reference of any loan having been advanced to the petitioner which the petitioner claims to have lent to the respondent no.2.

34. The Trial Court, though disbelieved the assertion of the respondent no.2, that on his instruction, the petitioner obtained money from the market and for that purpose, blank signed cheques and pro-notes were obtained by the petitioner from him, nonetheless, did not accept the version of the petitioner that either the loan of Rs.14 lacs was given to the respondent no.2.

35. Learned counsel for the petitioner drew reference to the provision of Section 118 of the Act and submitted that until the contrary is proved, it would be presumed that such negotiable instrument was made or drawn for consideration and the same was accepted for consideration.

36. Section 118 of the Act reads as under:

"118 Presumptions as to negotiable instruments. —Until the contrary is proved, the following presumptions shall be made:—

- a. *of consideration —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;*
- b. *as to date —that every negotiable instrument bearing a date was made or drawn on such date;*
- c. *as to time of acceptance —that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;*
- d. *as to time of transfer —that every transfer of a negotiable instrument was made before its maturity;*
- e. *as to order of endorsements —that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;*
- f. *as to stamps —that a lost promissory note, bill of exchange or cheque was duly stamped;*
- g. *that holder is a holder in due course —that the holder of a negotiable instrument is a holder in due course:*

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

37. It has been held by a line of decisions that under Sections 139, 118(a) and 138 of the Negotiable Instrument Act, 1881, the existence of debt or other liabilities has to be proved in the first instance by the complainant and only thereafter the burden of proving to the contrary shifts on the accused.

38. Indisputably, the initial burden could not be discharged by the petitioner/complainant. The grave weaknesses in the case of the petitioner namely all transactions in cash; no explanation/disclosure of the source from where such huge amount of Rs.14 lacs was collected and in the absence of any details with respect to date on which the loan was advanced as well as absence of documentary evidence to show that such loan transaction had indeed taken place between the petitioner and the respondent no.2, make the case of the petitioner/complainant highly doubtful.

39. Super added to all these are the testimonies of DW.1, DW.2 & DW.3, who though claimed to be Income Tax assessee and made statement regarding advancing of loan to the petitioner for the purpose of re-transferring it to the respondent no.2 but without their being any reference of such loan in their Income Tax Returns of the respective years.

40. The non-examination of the aforesaid defence witnesses at the instance of the petitioner assumes huge significance in the present case. It gives rise to an inference that their non-examination at his (petitioner) instance was deliberate and the story propounded by the petitioner of having advanced loan to the respondent no.2 is false.

41. Learned counsel for the petitioner submitted that at the stage of Section 251 of the Code of Criminal Procedure, while the substance of accusation was being explained to the respondent no.2, he made a statement that he had issued the cheques in question but no loan was

released to him. This, it is argued, tantamounts to an admission and, therefore, the initial burden of the petitioner/complainant was discharged. It would be necessary to reproduce the response of the respondent no.2 to properly appreciate as to under which circumstances such a statement was made by him. The questions and answers are reproduced below:

"Q. Did you issue the aforesaid cheque to the complainant?"

Ans. I had issued the said cheque as advance towards repayment of loan but no loan was released to me.

Q. Is it correct that the aforesaid cheque got dishonoured with remarks "Funds Insufficient"?

Ans. It is matter of record.

Q. Is it correct that the legal notice dated 13.11.2006 was served upon you?

Ans. Yes.

Q. Is it correct that you did not pay the cheque amount despite service of legal notice?

Ans. I was not liable to pay any such amount as no loan was disbursed to me by complainant.

Q. Do you plead guilty or claim trial?

Ans. I plead not guilty and claim trial."

42. From the reading of the answers to the questions put by the Trial Court, it would become very clear that the respondent no.2 was only denying his liability of issuing any cheque as there was no legally

enforceable debt and that he claimed to be tried. Nothing else could be read into such a statement.

43. In the event of the petitioner having failed to discharge the initial burden, his case must fail.

44. The Trial Court has rightly acquitted the respondent no.2.

45. In view of the aforesaid discussion, I do not deem it to be a fit case where leave to appeal could be granted to the petitioner.

46. Accordingly, leave to appeal is dismissed.

ASHUTOSH KUMAR, J

AUGUST 12, 2015

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