

IN THE HIGH COURT OF BOMBAY AT GOA.**Criminal Appeal No.28/2013**

Mr. Shaikh Jalal,
r/o H.No.70, Muslimwada,
Bicholim-Goa
(Since deceased) Through L/RS.

- a) Mrs. Raziya Begum Shaikh Jalal,
major of age
w/o Sheikh Jalal Kasam,
r/o H.No.1116, Muslimwada
Bicholim-Goa.
- b) Mr. Shaikh Mohammad Rafique (son)
major of age
r/o H.No.1116,
Muslimwada
Bicholim-Goa.
- c) Mr. Shaikh Adam Abbas (son in law)
major of age
- d) Mrs. Muneera Abbas Shaikh
(daughter), major of age
w/o Mr. Shaikh Adam Abbas,
both resident of Dattawadi,
Sanquelim Goa House no.not known.
- e) Mrs. Ruksana Ejaj Sayyed (daughter)
major of age
- f) Mr. Ejaj Anwar Sayyed,
(son-in-law), major of age

Both resident of Bandarwada,
Bicholim -Goa.
House no. not known.
- g) Mrs. Shobana alias Shabana Vijay Babani
(daughter)
- h) Mr. Vijay Ashok Babani
(Son-in-law)

Both resident of house no.not known

Doublestory Ramtakoli,
Mandsor, Madhya-Pradesh.

Appellants

Versus

1. State of Goa
through Public Prosecutor
Panaji Goa.
2. Mr. Hirachand Bafna,
Off:A-21, Vikrant Byuilding,
Near Crunet Ice Factory,
Ground Floor,
Margao-Goa.
3. Mrs. Hina Rafiq Shaikh
(daughter in law)
w/o Shaikh Mohammad Rafique
r/o H.No.1116,
Muslimwada Bicholim-Goa.

Respondents

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Shri Gaurish Agni with Ms.Eshan Usapkar, Advocate for
the appellants.

None for respondent no.1.

Shri S.M.Singbal, Advocate for respondent no.2.

**CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON :14/08/2017.
PRONOUNCED ON :01/09/2017.**

JUDGMENT:

1. This appeal is directed against the impugned judgment and order of acquittal of respondent no.2 of the offence punishable under Section 138 of the Negotiable Instruments Act dated 21.6.2012 passed by JMFC Bicholim in Criminal Case No.27/0A/138/2005/C.

2. Facts germane for the decision of the appeal, can be summarised as under:-

The parties shall be referred to as "complainant" and the "accused" as per their original status, for the sake of convenience.

The accused approached the complainant to purchase some scrap material. The complainant agreed to sell the scrap material to the accused for a consideration of Rs.10 lakhs. The accused, therefore, issued two cheques for Rs.5,00,000/- each bearing Nos.256787 and 256788 dated 10.12.2004 drawn on ICICI Bank, Panaji Branch, in part discharge of his liability. However, the cheques were dishonoured when presented on 13.12.2004 and returned with remarks "payment stopped by drawer". The complainant, therefore, issued a legal notice dated 22.12.2004 to the accused. The said notice was replied by the accused on 14.1.2005. Thereafter, the complainant preferred a complaint in the Court of JMFC, Bicholim on 31.1.2005. The learned JMFC, after recording the evidence and after hearing the respective parties, by the impugned judgment and order acquitted the accused and, therefore, the aggrieved complainant has approached this Court.

3. I heard Shri Agni, learned counsel for the complainant and Shri Singbal, learned counsel for the accused.

4. It is the contention of Shri Agni that the learned trial Judge has failed to apply presumption, as provided under Section 139 of N.I. Act as well as misread the averments in the complaint and arrived at an erroneous finding to the effect that the complainant had failed to show that business transaction was completed in respect of which the disputed cheques were issued. He submits that the learned Judge failed to appreciate that once the accused admits the issuance of cheques, burden to prove the defence taken in reply to the statutory notice was upon the accused, who had failed to substantiate the same. The learned counsel took me through the evidence of the witnesses.

5. On the other hand, Shri Singbal, learned counsel appearing for the accused, vehemently argued that if two views are possible and there are no grounds for interference in the judgment of acquittal, the Court should not lightly interfere with the judgment of acquittal. According to the learned counsel, there is no existence of contract to purchase the goods. As per Sale of Goods Act, there cannot be any legal liability. He further submits that there is no evidence on record in order to substantiate the fact that 62 tonnes 500 kgs of scraps were

loaded in how many trucks and what was the load of each truck transporting the scrap material. He too took me through the evidence of the witnesses of either side and urged for maintaining the impugned judgment and order of acquittal.

6. The complainant claims to be a scrap dealer and Proprietor of M/s Muneera Scarp Traders, who deals in business of scrap materials under licence No.548/01/-2 issued by Bicholim Municipal Council. According to the complainant, the accused approached him for purchase of scrap material worth Rs.10 lakhs. The complainant agreed to sell the scrap material to the accused. However, the complaint is silent as to day or date when the accused had approached him for purchase of scrap material. There was no written agreement on record with the complainant, except his bare words that there was an Agreement of Sale of scrap material worth Rs.10 lakhs. There is no whisper in the complaint that goods (scrap) was, in fact, delivered to the accused. The complaint further states that the accused had issued two cheques of Rs.5 lakhs each, for the said consideration. The complaint is silent as regard to the first cheque for Rs.5 lakhs as to whether it was honoured or otherwise. The second cheque bearing no.256788 drawn on ICICI Bank, Panaji Branch to the tune of Rs.5 lakhs, according to the complainant, when presented by him in the Bicholim Urban

Co-operative Bank Ltd. in due course, it was returned with the memo dated 13.12.2004 by stating "payment stopped by drawer". There is no dispute that legal notice dated 22.12.2004 came to be issued by the complainant by Registered Post A.D. to the accused, which was duly received and acknowledged by the accused and replied thereto on 14.1.2005. The accused denied of having any transaction of sale of scrap by the complainant. In reply, the accused had stated that there was no occasion of any transaction of scrap material with the complainant and, therefore, there was no question of owing any amount to the complainant. According to the accused, he did issue the cheque in question one month prior to its due date i.e. 10.12.2004. It was issued as an advance to the complainant who undertook that he would bring his machinery for cutting the plant purchased by accused from M/s Chowgule and Company at Pale Mines. The cheque came to be issued as an advance. Since the complainant failed to bring his machinery for the said work in the stipulated time, he instructed his banker not to make payment of the said cheque. Thus, according to him, there was no legally enforceable debt or liability existed and, therefore, there can be no question of committing any offence punishable under Section 138 of the NIA.

7. It would be interesting to go through the evidence

on record, more particularly, cross examination of the complainant - Sheikh Dalal. As already stated herein above, the complaint itself is a *de hors* of material particulars required for initiating a complaint against the accused, in the sense that, despite having indulged into sale and purchase of scrap material worth Rs.10 lakhs, there is not a single document placed on record by the complainant nor had he spelt out the date and the manner in which the alleged scrap material was delivered to the accused.

8. In his cross examination, the complainant admits that he does not know the nature of the business of the accused and that the accused had been to his scrap-yard just two days prior to supply of material. It appears that merely because a cheque was taken in advance, the complainant did not insist for any written order from the accused. However, he had unequivocally admitted that the cheque was taken in advance which necessarily means that there was no existence of any liability on the date of issuance of the cheque. The complainant further states in his cross examination that the cheque in question was issued on 10.4.2004; whereas the cheque at Exh.32 as well as the reply to the notice by the accused indicate that the cheque was issued on 10.12.2004. If the scrap material, according to the complainant, was agreed to be sold in

the month of April 2004 how come he accepted a post-dated cheque of 10.12.2004. It is not the case of the complainant that the accused is his friend or they were closely associated due to the business. His cross-examination further reveals that the accused himself had arranged for his own trucks for transporting the said scrap material of which the complainant does not know anything in particular, such as in how many trucks the scrap material were transported. He does not know the details of the trucks or their registration numbers. He states that he had supplied six trucks load material to the accused but did not prepare delivery challan and, in the next breath, he admits that he prepares bills in respect of scrap supplied to any party from his scrap-yard but he had not prepared the bills in respect of scrap material supplied to the accused which sound quite strange and points out the falsity of his case at the core. He further submits that the material supplied to the accused was weighed in the weigh-bridge but does not possess any document or proof to show about the receipt or document issued by weighing-bridge. According to the complainant, he had supplied 62 tones and 500 kgs of scarp material to the accused but he failed to produce any proof that 62 tonnes and 500 kgs of scrap material was, in fact, supplied to the accused by him. He admits that he did not have any delivery challan to show that he had supplied the said material to the accused. He further admits that he had

not shown the transaction of supply of scrap material worth Rs.10 lakhs either in the Sale Tax or Income Tax returns in the respective years. All these factors, indeed points towards the fact that the complainant had not approached the Court with clean hands. No person dealing in the business in such a huge quantity and the amount would not keep any documentary evidence either in the form of Income Tax returns or Sales Tax returns or Books of Accounts kept by any prudent man in the regular course of his day to day business. It is apparent that there was no legally enforceable liability or debt against the accused in the absence of any trustworthy evidence of delivery of scrap materiel to the accused and other things as stated herein above. This is significant in the light of the fact that the complainant did admit in his cross-examination that he is an Income Tax payee and had paid Income Tax prior to 2003 but, conveniently says that after 2003 he had not paid the Income Tax. When his attention was drawn to another Criminal Case No.303/2004/D, wherein he stated that he had produced Income Tax and Sales Tax returns in respect of his business before the Court and he states that he cannot say, as to for which year that refers to. He further unequivocally admits that he does not possess any document or record to show that he had supplied any scrap material to the accused in the year 2004. What else is required to be shown to indicate the falsity of the

complainant's case.

9. As already stated herein above, the defence of the accused from his notice reply dated 14.1.2015 vis-a-vis evidence of the accused is that in the month of May 2004 i.e. six months prior to issuance of the cheques, he had entered into contract with M/s Chowgule & Company Limited for cutting and shifting of old machinery for which the complainant approached him. The fact that the accused had dealing with M/s. Chowgule & Company, to whom he had issued a cheque for Rs.10 lakhs bearing cheque no.256789 dated 17.7.2004 is evident from the statement of transactions in the Saving Account. When the accused realised that the complainant did not possess requisite machinery or labour to accomplish the work of cutting and lifting machinery, he had entrusted the work to one Ramchandra Jainwala. As per the request of the complainant, the job work of cutting and lifting old machinery was agreed to be done at the cost of Rs.14.50 lakhs, out of which Rs.4,50,000/- was paid to one Hasham Baig, at the request of the complainant by a cheque no.256776 dated 13.5.2004 drawn on ICICI Bank, which was duly honoured and realised. This fact is corroborated from the statement of account of the complainant bearing no.001501505056. As per the request of the complainant, he (accused) again issued two post-dated cheques for balance

amount of Rs.10 lakhs. Since the complainant could not complete the work and as he failed to bring the required equipments and labour, the accused asked its banker to stop the payment. There is no doubt that the accused had taken one more inconsistent defence so as to say that behind his back, the complainant had been to his office and induced his employee one Mr. Uttam Jain to issue two cheques of Rs.5 lakhs each. This inconsistent defence would not be of any assistance to the complainant to establish his case beyond all reasonable doubts. In criminal trial, accused can raise inconsistent defences. It is apparent from the cross-examination of PW 1 and the evidence of the accused that the disputed cheques were issued by the accused, as an advance, for the purpose of cutting and lifting the old machinery by the complainant as the accused had contracted with M/s Chowgule and Company for cutting and lifting the same within a stipulated time. The disputed cheque, therefore, cannot be held to have drawn for an existing debt or liability. The explanation appended to Section 138 of N.I.Act explains the meaning of the expression "debt or other liability". Section 138 of the N.I.Act treats dishonoured cheque as an offence if the cheque is issued in discharge of any debt or other liability. It clearly means that in order to attract an offence under Section 138 of the Act, there should be legally enforceable debt or other liability subsisting on the date of drawal of the

cheque. The drawal of the cheque in discharge of existing or past adjudicated liability is sine qua non for bringing an offence under Section 138 of the Act. Here is the case, where the cheque was issued as an advance for shifting and cutting the machinery which could not be accomplished by the complainant and, therefore, it cannot be held that there was an existing debt or liability. The learned counsel appearing for the accused has, therefore, rightly placed a useful reliance on a judgment of the Hon'ble Supreme Court reported in **2014 (2) DCR 417 (M/s Indus Airways Pvt. Ltd. & Ors. Vs. M/s. Magnum Aviation Pvt. Ltd. And Anr.)**.

10. Para 13 of the said judgment, which can be reproduced for advantage, which reads thus:-

*"13. The explanation appended to [Section 138](#) explains the meaning of the expression '**debt** or other liability' for the purpose of [Section 138](#). This expression means a legally enforceable debt or other liability. [Section 138](#) treats dishonoured cheque as an offence, if the cheque has been issued in discharge of any debt or other liability. The explanation leaves no manner of doubt that to attract an offence under [Section 138](#), there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque. In other*

*words, drawal of the cheque in discharge of existing or past adjudicated liability is sine qua non for bringing an offence under [Section 138](#). If a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise, and material or goods for which purchase order was placed is not supplied, in our considered view, the cheque cannot be held to have been drawn for an exiting **debt** or liability. The payment by cheque in the nature of advance payment indicates that at the time of drawal of cheque, there was no existing liability”.*

11. Statutory presumptions under Sections 118 and 139 of the N.I.Act, have been duly rebutted by the accused herein not only by bringing out vital admissions during cross-examination of PW 1, but also by stepping into witness box that the cheque was not issued for any alleged debt or liability, as discussed above. The accused herein, in order to disprove the presumption has sufficiently brought on record the facts and circumstances, upon consideration of the same one has to believe that the consideration and the debt did not exist or their non-existence is so probable that a prudent man would under the circumstances of the case act upon the plea that it did not exist. The complainant has failed to bring on record any

evidence in the form either Books of Accounts as he has been carrying the business of scrap or returns of Sales Tax or Income Tax in order to substantiate his contention that he had, in fact, delivered scrap worth Rs.10 lakhs to the accused. The learned trial Court has, therefore, rightly observed that it is highly unbelievable that a businessman or a trader would supply the material of Rs.10 lakhs without recording any entries in his Books of Accounts and if he is doing so, he is suppressing his dealings from the Government Authorities. He even could not furnish the details of transportation or weighing machinery where the goods alleged to have been weighed. Rather, he improved his version subsequently by giving name of weighing bridge without producing any document to that effect. It is difficult to believe that no receipts were issued after the truck loads are weighed at the weighing machine.

12. In the case of **M/s Kumar Exports Vs. M/s. Sharma Carpets** in **Criminal Appeal No.2045 of 2008 (arising out of Special Leave Petition (Criminal) No.955 of 2007)**, the Hon'ble Supreme Court has discussed the scope of Sections 139 and 118 of the N.I.Act in paragraphs 11 and 12, which can be reproduced as follows:-

"11. 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. 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. The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and

exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, thereafter, the presumptions under [Sections 118 and 139](#) of the Act will not again come to the complainant's rescue.

12. The defence of the appellant was that he had agreed to purchase woolen carpets from the respondent and had issued the cheques by way of advance and that the respondent did not supply the carpets. It is the specific case of the respondent that he had sold woolen carpets to the appellant on 6.8.1994 and in discharge of the said liability the appellant had issued two cheques, which were ultimately dishonoured. In support of his case the respondent produced the carbon copy of the bill. A perusal of the bill makes it evident that there is no endorsement made by the respondent accepting the correctness of the contents of the bill. The bill is neither signed by the appellant. On the contrary, the appellant examined one official from the Sales

Tax Department, who positively asserted before the Court that the respondent had filed sales tax return for the Assessment Year 1994-95 indicating that no sale of woolen carpets had taken place during the said Assessment Year and, therefore, sales tax was not paid. The said witness also produced the affidavit sworn by the respondent indicating that during the year 1994-95 there was no sale of woolen carpets by the respondent. Though the complainant was given sufficient opportunity to cross-examine the said witness, nothing could be elicited during his cross-examination so as to create doubt about his assertion that no transaction of sale of woolen carpets was effected by the respondent during the year 1994-95. Once the testimony of the official of the Sales Tax Department is accepted, it becomes evident that no transaction of sale of woolen carpets had taken place between the respondent and the appellant, as alleged by the respondent. When sale of woolen carpets had not taken place, there was no existing debt in discharge of which, the appellant was expected to issue cheques to the respondent. Thus the accused has discharged the onus of proving that the cheques were not received by the holder for discharge of a debt or liability. Under the circumstances the defence of the appellant that blank cheques were obtained by the respondent as advance payment also becomes

probable and the onus of burden would shift on the complainant. The complainant did not produce any books of account or stock register maintained by him in the course of his regular business or any acknowledgement for delivery of goods, to establish that as a matter of fact woolen carpets were sold by him to the appellant on August 6, 1994 for a sum of Rs.1,90,348.39. Having regard to the materials on record, this Court is of the opinion that the respondent failed to establish his case under Section 138 of the Act as required by law and, therefore, the impugned judgment of the High Court is liable to be set aside”.

13. The ratio therein is squarely applicable to the present set of facts. In the case at hand the accused has rightly rebutted the presumptions on the basis of complaint, reply to the notice as well as from the cross-examination of the complainant. After having rebutted the presumption, which is acceptable in all the circumstances of the case and on preponderance of probabilities, the burden shifted back to the complainant, which he failed to discharge and there is no question of presumption again under Sections 118 and 139 of N.I. Act, coming to the rescue of the complainant.

14. The Hon'ble Supreme Court in **Rangappa Vs. Sri**

Mohan [(2010) 11 SCC 441] in paragraph 26 overruled the ratio of the Hon'ble Supreme Court in the case of **Krishna Janardhan Bhat Vs. Dattatraya G. Hegde [(2008) 4 SCC 54]** to a very limited extent. Paragraph 26 in **Rangappa's** case (supra) observed thus:-

"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 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".

15. In **Rangappa's** case (supra), the Hon'ble Supreme Court held that the presumption under Section 139 includes the presumption that there exists legally enforceable debt or liability. Nevertheless, such presumption is rebuttable in nature and it

depends on the facts and circumstances of each case. As such, there is no doubt that there is an initial presumption which always favours the complainant.

16. In the case of **Krishna Janardhan Bhat** (supra), the Hon'ble Supreme Court in paragraph 40 observed thus:-

"40. [In John K. John v. Tom Varghese & Anr. \[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 no document had been executed, even no interest had been charged. It would be absurd to form an opinion that despite knowing that the respondent even was not in a position to discharge his burden to pay installments 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.

17. In **John K. John V. Tom Varghese** (supra), the complainant did not approach the Court with clean hands. His conduct was not that of a prudent man. 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. In such case, it was open for the High Court to draw its own conclusion therein.

18. As already discussed above, the complainant had not executed any instrument or any documents. In paragraph 44 of the said judgment, which is about presumption of innocence as a human right. Paragraph 44, reads thus:-

"44. The presumption of innocence is a human right. [See Narender Singh & Anr. v. State of M.P. (2004) 10 SCC 699, [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra and Anr.](#) (2005) 5 SCC 294 and [Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director](#) (2007) 1 SCC 70] [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 line with the Convention, a balancing of the accused 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 emphasized. 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] C.L.J. (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.”

19. The learned counsel for the complainant has cited several authorities, which are mostly on facts, however, there can be no doubt about the ratio laid down in those authorities.

20. **Karanam Visweswara Rao Vs. State of A.P. & Anr. (2008 ALL MR (Cri) Journal 32)** is on the point of Section 139 of the N.I. Act. In short, it is held by the Andhra Pradesh High Court that it is for drawer of cheque to rebut said presumption by showing circumstances under which said cheque went into hands of complainant, which is a question of fact and therefore, the learned Single Judge declined to quash the proceedings under Section 482 of the Cr.P.C. On similar point,

the learned counsel for the complainant, has placed reliance on the following authorities:

- i. **2005 (1) ALL MR 261 : Madhukar Rahunath Bhave Vs. M/s. Wyawahare & Sons and Ors.**
- ii. **2010 ALL MR (Cri) 1441 : Nitin s/o Bapurao Mankar Vs. Shri Vyankatesh Housing Agency and Anr.**
- iii. **2008 ALL MR (Cri) 157 : Shri Anant Dhargalkar VS. Shri Digambar Korgaonkar.**

21. In **Madhukar Bhave's** case (supra), it was held that as per Section 118 of Negotiable Instruments Act, burden of rebuttal proof was on the defendant which he could not discharge.

22. In **Nitin Mankar's** case (supra), similar is the ratio as regards the presumption under Section 139 of the N.I.Act about which the observations made by the Hon'ble Supreme Court in **M/s. Kumar Exports** cited supra is a good law.

23. The learned trial Court has thus, considered all the aspects of the case and rightly reached a conclusion that the complainant has failed to prove the case under Section 138 of the N.I.Act and thereby rightly acquitted the accused. The acquittal passed by the trial Court, therefore, cannot be set

aside without any sound and sufficient ground. It is a settled law that if two views are possible, then a view which supports acquittal of the accused should not be interfered with lightly. The learned counsel for the accused has, therefore, placed a reliance in the case of **John K. Abraham Vs. Simon C. Abraham & another [2014 (1) DCR 9]**. Paragraph 10 of the said judgment, reads thus:-

"10. Keeping the said statutory requirements in mind, when we examine the facts as admitted by the respondent-complainant, as rightly concluded by the learned trial Judge, the respondent was not even aware of the date when substantial amount of Rs.1,50,000/- was advanced by him to the appellant, that he was not sure as to who wrote the cheque, that he was not even aware when exactly and where exactly the transaction took place for which the cheque came to be issued by the appellant. Apart from the said serious lacuna in the evidence of the complainant, he further admitted as PW.1 by stating once in the course of the cross- examination that the cheque was in the handwriting of the accused and the very next moment taking a diametrically opposite stand that it is not in the handwriting of the accused and that it was written by the complainant himself, by further reiterating that the amount in words was written by him. We find that the

various defects in the evidence of respondent, as noted by the trial Court, which we have set out in paragraph 7 of the judgment, were simply brushed aside by the High Court without assigning any valid reason. Such a serious lacuna in the evidence of the complainant, which strikes at the root of a complaint under [Section 138](#), having been noted by the learned trial Judge, which factor was failed to be examined by the High Court while reversing the judgment of the trial Court, in our considered opinion would vitiate the ultimate conclusion reached by it. In effect, the conclusion of the learned Judge of the High Court would amount to a perverse one and, therefore, the said judgment of the High Court cannot be sustained.”

24. For the reasons aforementioned, there is no substance in the appeal. The impugned judgment does not call for any interference and, therefore, the appeal stands dismissed.

PRITHVIRAJ K. CHAVAN, J.

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