

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 558 of 2011

Amarnath Banerjee

Applicants

Versus

Ravindra Singh Bedi & Another

Respondents

Post for pronouncement of the Order on 16.12.2019

JUDGE

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on : 19.09.2019****Order delivered on : 16.12.2019****CRR No. 558 of 2011**

- Amarnath Banerjee S/o Lt. Ramnath Banerjee, Through Pradeep Kirana Store, Kalimata Ward, Saraswati Nagar, Pandri, Raipur, C.G.

---- Applicant**Versus**

- Ravindra Singh Bedi, S/o. Late Pritam Singh Bedi, R/o. New Shanti Nagar, Lane No.5, PS Civil Lines, Raipur
- State of Chhattisgarh, Through District Magistrate Raipur, C.G.

---- Respondents

For Applicant	: Shri Keshav Dewangan, on behalf of Shri Prafull Bharat, Advocate
For Respondent No.1	: Shri Shivendu Pandya, Advocate
For Respondent No.2/State	: Shri Wasim Miyan, PL

Hon'ble Smt. Justice Rajani Dubey**C A V Order****16/12/2019**

Present revision arises out of impugned judgment of conviction and order of sentence dated 15.09.2011 passed by the Fifth Additional Sessions Judge, Raipur in Cr.A. No. 105/2011, whereby the learned appellate court below has confirmed the conviction and sentence of the accused/applicant as awarded by the learned Judicial Magistrate First Class. Raipur in Complaint Case No. 1423/2007 vide its judgment dated 30.06.2011 convicting him under Section 138 of the Negotiable Instrument Act and sentenced him to undergo SI for six months with

compensation of Rs. 50,000/- within one month.

2. Brief facts of the case are that respondent No.1 filed a criminal complaint against the applicant for the offence under Section 138 of the Negotiable Instrument Act on the ground that he had given a loan of Rs. 50,000/- and in lieu of the aforesaid loan the applicant had handed over the cheque of Rs. 50,000/- dated 11.10.06 to the complainant (respondent No.1). It is alleged that when the complainant presented the cheque for encashment on 12.10.06, it was returned with an endorsement that account of the applicant has been closed. The complainant issued notice to the applicant which was refused by the applicant and ultimately within a statutory period the complainant (respondent No.1) filed a complaint case against the applicant before the trial court.

3. So as to prove the guilt of the accused, prosecution has examined as many as three witnesses. Statement of the accused was also recorded under Section 313 Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing counsel for the parties, learned trial court by the impugned judgment of conviction and order dated 30.06.2011 has convicted the applicant under Section 138 of the Negotiable Instrument Act and sentenced to undergo SI for six months and to pay compensation of Rs. 50,000/- within one month. This order was appealed by the applicant and in appeal the learned appellate court confirmed the conviction and sentence. Hence, this revision.

5. Counsel for the applicant submits that the courts below have erred in law in convicting the applicant. The court below ought to have seen and held that the notice issued by the complainant was never served upon the applicant. The alleged notice was written with an endorsement refused, therefore impliedly notice was served upon the applicant. There is no signature of any witness before whom the accused refused to take notice. The complainant has also not examined the postman who went to deliver the said letter therefore it cannot be concluded that the alleged notice was served upon the applicant. Learned court below ought to have considered the said fact that since no reason has been assigned for dishonour of the cheque , the offence under Section 138 of the N.I. Act is not made out. The conclusion and findings arrived by the courts below is based on misreading of evidence and non consideration of important and vital issues. The complainant has utterly failed to prove the offence against the applicant.

6. Learned counsel for the respondent No.1 and State supported the impugned order and submits that the same is in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record.

8. Before the trial court complainant examined himself as witness No.1, Subash Ekka (PW-2) and Anand Manthri as (PW-3). In his statement, applicant has denied the question No.1 that he gave the cheque (Ex.P-1) to the complainant but he admitted in question No.14 that the said cheque was of their bank and issued from their Bank only.

After looking to the facts of the case and the evidence on the record, we need to note the legal principles regarding nature of presumptions to be drawn under Section 139 of the Act and the manner in which it can be rebutted by the accused. The accused had not led any evidence to rebut the aforesaid presumption. It was also stated that in the event the accused is able to raise a probable defence which creates doubt with regard to the existence of a debt or liability, the presumption may fail. [Section 139](#) lays down:-

“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.”

9. The complainant being holder of cheque and the signature on the cheque having not been denied by the accused, presumption shall be drawn that cheque was issued for the discharge of any debt or other liability. The presumption under Section 139 is a rebuttable presumption. It is relevant to notice the general principles pertaining to burden of proof on an accused especially in a case where some statutory presumption regarding guilt of the accused has to be drawn.

“Presumption u/ Section 139 of NI Act– While referring to the case of **Kumar Exports vs. Sharma Carpets**, the Supreme Court held that the accused may adduce evidence to rebut the presumption, but mere denial regarding

existence of debt shall not serve any purpose.”

10. With reference to the facts of the present case, the Court noted that the trial court as well as the Appellate Court having found that cheque contained the signature of the applicant and it was given to the complainant (respondent No.1) to present in the Bank of the presumption under Section 139 was rightly raised which was not rebutted by the accused. The accused had not led any evidence to rebut the aforesaid presumption. After issuing the cheque drawn on an account maintained, a person, if he closes that account apart from the fact that it may amount to another offence, it would certainly be an offence under Section 138 as there was insufficient or no fund to honour the cheque in that account. Further, cheque is to be drawn by a person for payment of any amount of money due to him on an account maintained by him with a banker and only on that account cheque should be drawn.

11. Section 138 of the Negotiable Instruments Act is a penal provision wherein if a person draws a cheque on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part of any debt or other liability, is returned by the bank unpaid, on the ground either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence.

In the matter of **Rohitbhai Jivanlal Patel Vs. State of Gujarat**

& Another reported in SCI Cr.A. No. 508 of 2019, it has been stated thus :

The High Court observed that the presumption under [Sections 118](#) and [139](#) of the NI Act was required to be drawn that the cheques were issued for consideration and until contrary was proved, such presumption would hold good; that the complainant had proved legally enforceable debt in the oral as also documentary evidence, including the written acknowledgment by the accused on stamp paper; and that except bare denial, nothing was brought on record by the accused to dislodge the proof adduced by the complainant.

Further it has held that

14. So far the question of existence of basic ingredients for drawing of presumption under [Sections 118](#) and [139](#) the NI Act is concerned, the accused-appellant could not deny his signature on the cheques in question that had been drawn in favour of the complainant on a bank account maintained by the accused for a sum of Rs. 3 lakhs each. The said cheques were presented to the Bank concerned within the period of their validity and were returned unpaid for the reason of either the balance being insufficient or the account being closed. All the basic ingredients of [Section 138](#) as also of [Sections 118](#) and [139](#) are apparent on the face of the record. The Trial Court had also consciously taken note of these facts and had drawn the requisite presumption. Therefore, it is required to be presumed that the cheques in question were drawn for consideration and the holder of the cheques i.e., the complainant received the same in discharge of an existing debt. The onus, therefore, shifts on the accused-appellant to establish a probable defence so as to rebut such a presumption.

12. In Rangappa Vs. Sri Mohan : (2010) 11 SCC 441, it has been reiterated and summarized with regard to the principles relating to presumptions under [Sections 118](#) and [139](#) of the NI Act and rebuttal thereof in the following:-

"26. In the 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 is based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttal 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.

Thus, it has been held in the matter of Rohitbhai Jivanlal Patel (supra) that [Section 139](#) of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While [Section 138](#) of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under [Section 139](#) is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by [Section 138](#) can be better described as a regulatory offence since the

bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard of proof.

13. Hence, when the cheque is returned by a bank with an endorsement account closed, it would amount to returning the cheque unpaid because the amount of money standing to the credit of that account is insufficient to honour the cheque as envisaged in Section 138 of the Act. In the present case, when the complainant presented the cheque for encashment, it was returned unpaid with an endorsement that account of the applicant has been closed. The complainant issued notice to the applicant which was refused by the applicant and ultimately a complaint case was filed in which the applicant was convicted and sentenced to pay compensation for a sum of Rs. 50,000/- which was confirmed by the judgment of the appellate court.

14. Thus, in view of what has been stated above, this Court does not find even any illegality or perversity in the orders passed by the Courts below. Hence, the present petition is, otherwise also, not maintainable. In the result, the revision stands dismissed.

Sd/-

(Rajani Dubey)
Judge