Bail Slip

The Petitioner/Accused Viz., G.Balasubramanian was directed to be released on bail as per order of this Court dated 15.12.2008 and made in Crl.MP Nos.1 of 2008 in Crl Rc.Nos.1561, 1564 & 1607 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.Nos.1564, 1607 and 1561 of 2008

G.Balasubramanian ... Petitioner/Accused

Vs

Padma Kumar, Proprietor,
Industrial Steel Company,
88, Race Course, Coimbatore. ... Respondent/Complainant

PRAYER:- These Criminal Revision Petitions are filed, under Sections 397 read with 401 of Cr.PC to set aside the common Judgment, dated 22.09.2008, made in CA.Nos.48, 49 and 50 of 1999, by the I Additional District and Sessions Court, Coimbatore, confirming the judgements, dated 29.01.1999, made in STC.Nos.172, 173 and 174 of 1996, by the Judicial Magistrate No.V, Coimbatore.

For Petitioner : M/s.C.Deivasigamani

For Respondent : Mr.P.Srinivasan, Amicus Curie

COMMON ORDER

1. These Criminal Revision Petitions are filed, against the common Judgment, dated 22.09.2008, made in CA.Nos.48, 49 and 50 of 1999, by the I Additional District and Sessions Court, Coimbatore, confirming the judgements, dated 29.01.1999, made in STC.Nos.172, 173 and 174 of 1996, by the Judicial Magistrate No.V, Coimbatore, finding the Petitioner/ accused guilty for the offence under Section 138 of the Negotiable Instruments Act and convicting and sentencing him to undergo three months Rigorous Imprisonment for each of the cases and to pay a fine of Rs.2,000/-, each, in default, to undergo one month Rigorous Imprisonment for each of the cases.

2. Since the Petitioner herein and the Respondent herein, in all the present three cases, are one and the same persons, for the sake of convenience, they shall be hereinafter referred to as the Petitioner/ accused and the Respondent/ complainant, respectively and these Criminal Revision Petitions are being disposed of by this common order.

3. The respective cases had arisen on the basis of the Private Complaints, filed by the complainant, namely Padma Kumar, Proprietor of Industrial Steel Company, Coimbatore, who is the Respondent herein against Balasubramanian, Proprietor, Shri.Lakshmi Engineering, Salem, who is the Petitioner herein, for the offence under Section 138 of the Negotiable Instruments Act.

4. The case of the Respondent/ complainant, in sequence of all the three cases, in the chronological order in STC.Nos.172 to 174 of 1996, respectively is that as per the Invoice Nos.213, 210 and 212, dated 03.11.1995, 01.11.1995 and 02.11.1995, respectively, the Respondent/ complainant had supplied stainless steel plates worth Rs.2,14,582/-, Rs.2,00,800/- and Rs.2,44,975/- respectively, to the Petitioner/ accused, for which, the Petitioner/ accused had issued three cheques, dated, 03.11.1995, 01.11.1995 and 02.11.1995, bearing Nos.619362, 619359 and 619360, for the said respective amounts. When the said three cheques were presented for encashment, on 8.11.1995, 4.11.1995 and 4.11.1995, the same were returned, with an endorsement, "Account Closed". Hence, the Respondent/ complainant had sent a legal notice, dated 27.11.1995 to the Petitioner/ accused and the Respondent/ complainant had sent a reply, dated 13.12.1995 and a rejoinder, dated 18.12.1995 was also sent by the Respondent/ complainant. Even thereafter, since the Petitioner/ accused did not choose either to reply or to pay the cheque amounts, three private complaints had been filed.

5. The private complaints were taken on file in STC.Nos.172, 173 and 174 of 1996, by the Judicial Magistrate V, Coimbatore and after issuance of summons and appearance of the accused, necessary charges were framed. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the complainant examined PW.1 and PW.2 and also marked Exs.P1 to P11.

6. On completion of the evidence on the side of the complainant, the accused was questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused had come with the version of total denial and had denied the issuance of cheques, existence of legally enforceable debt and the circumstances,

under which the cheques were handed over to the complainant. To substantiate his defence, DW.1 to DW.7 were examined and Ex.D1 to Ex.D22 were marked.

7.The Trial Court, after hearing the arguments advanced on either side and also looking into the materials available on record, found the Petitioner/ accused guilty for the offence under Section 138 of the Negotiable Instruments Act and awarded punishments, as referred to above, by its separate judgements, dated 29.02.1999, which were challenged before the lower appellate court, in CA.Nos.48, 49 and 50 of 1999, wherein, by a common judgement dated, 22.09.2009, confirmed the judgements of the Trial Court. As against the same, these criminal revisions have been filed by the accused.

8.When the matters are taken up today, the learned counsel for the Petitioner/ accused is present. Earlier, private notice had been taken by learned counsel for the Petitioner/ accused to the respondent/complainant's, address stated in the complaint, but the notice had been returned with an endorsement "addressee has left" and the notice sent through Court was also not served.

9.On 27.06.2018, this Court had appointed Mr.P.Srinivasan, Advocate as Amicus Curie to assist the Court to represent on behalf of the respondent/complainant. This Court on 18.02.2019 had directed the Amicus Curie to take notice for the respondent/complainant to the address mentioned in the complaint and the notice taken by him had been returned, stating that "no such person" in the above door number. It is seen that the Amicus Curie had taken notice to the correct address of the respondent/complainant mentioned in the complaint.

10.This court heard the submissions of the learned counsel on either side.

11.The learned counsel for the Petitioner/ accused would submit that both the courts below have erred in convicting the Petitioner/ accused, on wrong presumption of law and facts and that though as per Sections 118 and 139 of the Negotiable Instruments Act, the burden is cast on the accused to rebut the presumption and to prove his case, once the burden is discharged by the accused, the onus to prove the case shifts on the complainant. He would further submit that once the execution of a cheque is admitted, Section 139 of the Negotiable Instruments Act mandates a presumption that the cheque was issued for the discharge of any debt or any liability and that the presumption under Section 139 is a rebuttable one and that initially the onus is on the accused to raise a probable defence and that the standard of proof for rebutting such a presumption is that of the preponderance of probabilities.

12. The learned counsel for the Petitioner would further submit that the accused may adduce a direct evidence to prove that the instrument in question was not supported by a consideration and that there was no debt or liability to be discharged by him and that as per law, the Court should not insist that in every case, the accused should disprove the non existence of the consideration and debt, by leading direct evidence because the existence of the negative evidence is neither contemplated nor possible. He would further submit that in this case, the Petitioner/ accused has not given a bare denial in respect of the debt or liability or passing of consideration.

13. The learned counsel for the Petitioner/ accused would further submit that in this case, the Petitioner/ accused, in order to prove that the cheques were not issued for any consideration, as claimed by the Respondent/ complainant, had examined six witnesses as DW.1 to DW.6 and marked 22 documents, Ex.R1 to Ex.R22, to disprove the case of the Respondent/ complainant that the cheques were issued for a legally enforceable debt and that when the Petitioner/ accused, not only by preponderance of probabilities, but also by letting in cogent oral and documentary evidence, had disproved the case of the Respondent/ complainant that the cheques were issued in respect of the supply of the goods and that the Petitioner/ accused, not only denied passing off/supply of the goods, but also by letting in evidence had proved that he was not present at Coimbatore on the date when the cheques were claimed to have been issued afer receipt of goods and when such being so, the court below failed to shift the burden on the accused that the cheques in question were issued towards the payment for the goods supplied on the particular day.

14. The learned counsel for the Petitioner/ accused would further submit that Section 139 of the Negotiable Instruments Act is an example of reverse onus and the test of the proportionality should guide the construction and interpretation of reverse onus and the Petitioner cannot be expected to discharge an unduly high standard of proof and that when the Petitioner/ accused had proved his case, creating a doubt with regard to the exsitence of the debt or liability and when the complainant had failed prove the fundamental facts relating to supply of goods, the Trial Court ought to have acquitted the Petitioner/ accused. He would further submit that both the courts below had, on wrong assumptions and presumptions regarding the provisions of the Act, wrongly convicted the Petitioner/ accused.

15.To sum up his arguments, the learned counsel for the Petitioner/ accused would submit that once the execution of a cheque is admitted, Section 139 of the Negotiable Instruments Act mandates a presumption that the cheque was issued for discharge of a debt or liability and the presumption under Section 139 of the Act is a rebuttable presumption and the onus is on the accused to raise a probable defence and the standard of proof for rebutting the presumption is that of preponderance of probabilities and that 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 and that 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.

16.The learned counsel for the Petitioner would further submit that in all the three cases, the claim of the complainant was that he had supplied stainless steel materials to the accused and that towards the payment for supply of the goods, the Petitioner had issued the cheques and that the Petitioner/ accused took delivery of the goods at the complainant's business premises at Coimbatore and in evidence thereof, the Petitioner/ accused had signed the delivery challans and on taking delivery, the Petitioner/ accused had issued the cheques in question. He would further submit that the Petitioner/ accused, by a detailed reply, dated 13.12.1995, had denied such supplies being made and that he was not at Coimbatore on 1.11.1995 or 2.11.1995 or 3.11.1995 and that the averments were totally false and would also explain the circumstances under which the cheques had gone into the hands of the complainant and that despite the Petitioner/ accused having denied the supply of the goods having taken, no documents were filed by the complainant to show that the stainless steel plates were supplied and no steps were taken by the Respondent/ complainant to prove his claim by production of accounts books or other details regarding payment of sales tax and that when the accused had denied the signature in the delivery challans, no steps were taken by the complainant to prove that the signature in the delivery challan and the signature in the cheques belonged to one and the same person.

17.In support of his contentions, the learned counsel for the Petitioner/ accused would rely on the decisions of the Honourable Supreme Court, reported in 2006 6 SCC 39 (M.S.Narayana Menon Vs. State of Kerala), 2007 5 SCC 264 (Kamala Vs. Vidyadharan), 2013 1 SCC 327 (Reverend Mother Marykutty), Bharat Barrel and Drum Mfg. Co. Vs. Amin Chand Payrelal (1999 3 SCC 35) and 2010 11 SCC 441 (Rangappa Vs. Sri Mohan).

18.On the other hand, the learned Amicus Curie for the Respondent/ complainant would submit that both the court below, taking into consideration the materials available on record, found the Petitioner/ accused guilty of the offence under Section 138 of the Negotiable Instruments Act and accordingly, convicted the Appellant/ accused.

19. In reply to the said submissions of the learned Amicus Curie, the learned counsel for the Petitioner/ accused would further submit that when both the court below had not applied the correct position of law, this Court has got powers to interfere with the impugned judgement of the court below, by way of revision.

20. I have given my careful and anxious consideration to the contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction and sentence.

21. Now, what is to be seen is as to whether the Respondent/ complainant has proved his case and whether both the courts below have analysed the entire evidence and the provisions of law, in correct perspective of law.

22. In order to appreciate the correctness or otherwise of the impugned judgements of both the court below, it will be worthwhile to refer to the facts in short and to scrutinise the materials on record and accordingly, a detailed scrutiny is done as under.

23. To recapitulate the facts of all the three cases again, the Respondent/ complainant was running a steel business for ten years and that as per the Invoice Nos.213, 210 and 212, dated 03.11.1995, 01.11.1995 and 02.11.1995, respectively, the Respondent/ complainant had supplied stainless steel plates worth Rs.2,14,582/-, Rs.2,00,800/- and Rs.2,44,975/- respectively, to the Petitioner/ accused, for which, the Petitioner/ accused had issued three cheques, bearing Nos.619362, 619359 and 619360, for the said respective amounts, on the respecive dates. When the said three cheques were presented for encashment, on 8.11.1995, 4.11.1995 and 4.11.1995, the same were returned, with an endorsement, "Account Closed". Hence, the Respondent/ complainant had sent a legal notice, dated 27.11.1995 to the Petitioner/ accused and the Respondent/ complainant had sent a reply, dated 13.12.1995. A rejoinder, dated 18.12.1995 was also sent by the Respondent/ complainant. Since the Petitioner/ accused did not choose either to reply or to pay the cheque amount, three private complaints had been filed.

24. In STC.Nos.172 to 174 of 1996, documents were produced and marked separately. Three invoices Nos.213, 210 and 212, dated 3.11.1995, 1.11.1995 and 2.11.1995 were marked as Ex.P1 in STC.Nos.172 to 174 of 1996, respectively. Three cheques in question, dated 3.11.1995, 1.11.1995 and 2.11.1995 were marked as Ex.P2 in STC.Nos.172 to 174 of 1996, respectively. Three delivery challans were marked as Ex.P3 in all the three cases and three intimation memos of the Bank, were marked as Ex.P4 in respective cases. Ex.P5 is the debit advice and Ex.P6 is the

registered post for having sent the debit advice. Ex.P7 is the legal notice and Ex.P8 is the acknowledgement. Ex.P9 is the reply sent by the accused. Ex.P10 is the rejoinder given by the complainant. Ex.P11 is the acknowledgement. In all the three cases, on the side of the complainant, the Respondent/ complainant was examined as PW.1 and one Vijayakumar, who is an Official of the Bank, was examined as PW.2.

25.On the side of the Petitioner/ accused, the accused was examined as DW.1. DW.2, Chandrasekar, is the Manager, IOB, Salem. DW.3, Chandramohan, is the Manager, Lakshmi Vilas Bank, Coimbatore. DW.4, Shaji Xavier, is the Manager, South Indian Bank. DW.5 is Sivakumar. DW.6, Raman Venkataraman and DW.7 is Narayanan. In all the three cases, DW.1 to DW.7 are one and the same persons. Similarly, Ex.D1 to D22 marked in all the three cases are one and the same.

26.Ex.D1, dated 30.10.1995 is the Rail Ticket. Ex.D2 is the letter sent by the accused to the Railways. Ex.D3 is the letter from the Palakkad Railway Station. Ex.D4 is the letter dated, 23.4.1996, for the accused having travelled in the Train. Ex.D5 is the letter to the complainant to show that the accused came back from Hyderabad. Ex.D6 is the letter given by the Railways Department to confirm the travel by the accused. Ex.D7 (series) are the letters, regarding the persons met by the accused at Hyderabad. Ex.D8 is the letter dated, 18.1.1996, given to the Manager, South Indian Bank.

27.Ex.D9 is the reply sent by the South Indian Bank. Ex.D10 is the letter sent to the Bank, regarding settlement of loans. Ex.D11 is the letter sent to the Lakshmi Vilas Bank. Ex.D12 is the reminder letter dated 30.1.1996, sent to the Lakshmi Vilas Bank. Ex.D13 is the reply received from the Lakshmi Vilas Bank. Ex.D14 is the further reply dated 4.3.1996, given by the Lakshmi Vilas Bank. Ex.D15 is the accounts statement of Lakshmi Engineering Works. Ex.D16 is the letter given by the accused to the Bank, before closing the accounts. Ex.D17 is the copy of the cheques given by the Bank to the accused. Ex.D18 is the letter written by the accused to close the accounts. Ex.D19 is the authorisation letter given to settle the accounts. Ex.D20 is the authorisation letter, dated 25.10.1995. Ex.D21 is letter given to PW.7. Ex.D22 is the notarised copy to prove that the accused had attended the Office.

28. The complainant was examined as PW.1 and he deposed that the accused had purchased stainless steel plates, under three invoice Nos.213, 210 and 212, Ex.P1, dated 3.11.1995, 1.11.1995 and 2.11.1995 for Rs.2,14,582/-, Rs.2,00,800/- and Rs.2,44,975/- respectively. Towards discharge of the liability, the accused had issued three cheques, Ex.P2, dated 3.11.1995, 1.11.1995 and 2.11.1995, all drawn on Indian Overseas Bank, Fairlands Branch, Salem. The accused had taken delivery of the goods and the delivery challans, in which the accused had

signed were marked as Ex.P3.

29.When all the cheques were presented for collection through the Bank of the complainant, State Bank of Travancore, Oppanakaraveedi Branch, they were returned and dishonoured, stating "account closed" and the return memos were marked as Ex.P4. The debit advise was marked as Ex.P5. The Registered Post regarding the debit advice were marked as Ex.P6. The complainant had sent a notice to the accused on 27.11.1995, which was marked as Ex.P7. The acknowledgement of receipt of notice, dated 29.11.199 was marked as Ex.P8. The accused had sent a reply on 13.2.1995, which was marked as Ex.P9. After receipt of the reply, the complainant had sent a rejoinder, which was marked as Ex.P10. The rejoinder was received on 18.12.1995, which was marked as Ex.P11.

30.The complainant, as PW.1, had deposed that the accused had issued the three cheques in question, knowing fully well that there was no fund in his account and thereby, committed the offence under Section 138 of the Negotiable Instruments Act.

31.PW.2 was the Assistant Manager of the State Bank of Trivancore, Coimbatore and he had deposed that PW.1 was having account in his Branch and that the cheques were presented for collection through his Bank and were sent to IOB, the bank of the accused and that he had returned the cheques, stating reason "account closed".

32.The accused examined himself as DW.1 and he had deposed that he is a resident of Salem and that he got acquainted with the complainant and his brother, while he was working in the State Bank of Hyderabad, Coimbatore Branch. He had further deposed that the complainant and his brother were having accounts in the Branch, where he was working and that the complainant and his brother were running a Firm and having an account in their Branch, in the name of Sudharshan Steel and further, the complainant and his brother were running about seven to eight Firms either as Proprietorship Firm or Partnership Firm and in some of the Firms, the complainant and his sister in law, Geetha were Partners. He had further deposed that during 1988, he was removed from services by the Bank, based on disciplinary action and that he was without job for about one year and at that time, the accused and his brother had employed him in the Steel Complex run by his brother and at that time, the accused used to go to several places and that he used to do lot of work for the Firm and also used to get lot of orders from several customers. The complainant and his brother were engaged in the business of manufacturing stainless steel and they have to register themselves before the tax authorities.

33.DW.1 had further deposed that at no point of time, he had engaged himself in iron business and that the complainant and his brother were having accounts in Lakshmi Vilas Bank, Gandhipuram and also in several other Banks and that based on their request, he had opened an account in Salem and he had cheque discounting facility and that the signed cheques books were handed over to the complainant and his brother and that they had been using the cheques of the accused for cheque discounting facilities and that the complainant used to create bills as if the goods were supplied to the accused and for using the Bank facility they used to send the bills to the Salem Branch and later they used to send money to the accused to clear the dues of the Salem Bank. That was the reason for handing over the cheque book and in fact, no goods were actually supplied. He had further deposed that on the dates mentioned in the cheques, he was in Hyderabad and that he had left Salem on 30.10.1995. The train ticket was marked as Ex.D1. He had, to prove that he had travelled, had written a letter to the Divisional Officer, Palakkad and a copy of the said letter was marked as Ex.D2. The Railways had sent a reply, confirming his travel and the reply was marked as Ex.D3. Another letter dated, 23.4.196, confirming his travel was marked as Ex.D4. In the letter sent to the complainant Bank, marked as Ex.D5, it was stated that he had come back from Hyderabad.

34.DW.1 had further deposed that the Southern Railways had sent a letter, confirming his travel back from Hyderabad and the same was marked as Ex.D6 and that during his stay at Hyderabad, between 1.11.1995 to 3.11.1995, he had met an Advocate, one Venkataraman and the said Advocate Venkataraman had given a letter, stating that the accused was at Hyderabad for three days and the said letter of the Advocate was marked as Ex.D7 (Series) under objection. He had further deposed that the name and the amount in the cheque were filled up by the complainant himself and that during 1988, the accused's wife had given one of her property as surety in favour of the brother of the complainant in the Punjab National Bank and the property was given as surety for bill discounting for a sum of Rs.15 lakhs for the complainant's brother and since the complainant's brother did not pay the loans availed from the Punjab National Bank, the Officials of the Punjab National Bank, had contacted the accused, saying that if the loan is not discharged, the property will be attached and thereby, the accused had requested Radhakrishnan, the brother of the complainant to settle the dues. The complainant's brother neither settled the loan nor returned the documents and thereafter, based on the cheque, they had filed the complaint by fabricating documents as if goods were delivered.

35.DW.1 had further deposed that the cheques were not given towards the supply of the goods and that the complainant had borrowed loans from the Lakshmi Vilas Bank and the South Indian Bank in the name of the accused by pledging his jewels and thereafter, in order to redeem his jewels, the complainant had created a fabricated letter, as if the accused had given an authorisation to redeem the jewels and since the accused came to know about that, he had sent a letter dated, 18.1.1996 to the Manager, South Indian Bank and the said letter was marked as Ex.D8. He had further deposed that the South Indian Bank had sent a reply and the said reply was marked as Ex.D9 and that in Ex.D9, the South Indian Bank had stated that the entire loan was settled and thereafter, the accused had sent a letter to the Bank, seeking copies of the letter and that letter was marked as Ex.D11 and that since there was no reply from the Bank, he had sent a reminder on 13.1.1996, which was marked as Ex.D10 and even then, there was no reply and the accused had sent another letter to the Lakshmi Vilas Bank and the copy of the said letter was marked as Ex.D11. Once again, he had sent a letter, dated 13.9.1996 and the same was marked as Ex.D12. On 1.2.1996, the Bank had sent a reply, which was marked as Ex.D13 and thereafter, another reply was sent on 4.3.1996 and the same was marked as Ex.D14.

36.DW.1 had further deposed that excepting that the cheques were given for discounting facilities, there was no other business transaction between him and the complainant and that on the dates, on which the Petitioner was said to have taken delivery of the goods, at Coimbatore, after signing the delivery challans, he was at Hyderabad and he had denied being in Coimbatore on the dates when he was stated to have taken the delivery of the goods, after signing the delivery challans.

37.PW.2 is the Manager of the Indian Oversees Bank, in which the accused was having an account. PW.2 had deposed that previously, there was an account in the name of Sree Lakshmi Engineering and that the account had been closed and that Ex.P2 Cheques (in all cases) were issued from his Bank and that the statement of accounts of Sree Lakshmi Engineering Works was marked as Ex.D4 and it related to the date of opening of the account and the date of closing the account and on 30.6.1995 the account had been started after depositing Rs.500/- and thereafter, on four occasions, the cheques had been presented for collection in that account and apart from that four transactions, no other cheques had come into his account and the letter sent by the accused to close the account was marked as Ex.D16 and that at the time of closing the account, the accused had not surrendered the balance cheque leaves and in that letter, the accused had informed that since the cheque books were with M/s.Steel Complex, he was unable to return the cheque leaves and the details regarding the four cheques were marked as Ex.D17 and thereby showing that even prior to the alleged dates mentioned in the cheques and alleged date of supplies, the Petitioner/ accused had given a letter, Ex.D16 to his Banker, stating that the cheques were in the custody of the Respondent/ complainant and that he was unable to return it back to the Bank.

38.DW.3 is the Manager of the Lakshmi Vilas Bank, Ramanathapuram Branch, Coimbatore. DW.3 had deposed that on perusal of the records, it is found that the accused had taken jewel loans from the Bank and that his address was shown as No.12, Krishnasamy Layout, Saibaba Colony, Coimbatore and that on

13.10.1995, the accused had closed the loan and that the complainant had closed on behalf of the accused and the complainant had closed the account and the account had been closed based on the authorisation letter given by the accused to him and the said letter of authorisation issued to the complainant by the accused was marked as Ex.D19.

39.DW.4 is the Manager of the South Indian Bank, Coimbatore, Saibaba Colony and he had deposed that the accused had taken jewel loan from his Bank on 18.9.1995 and the address was given at 46, Bharathi Park Cross Road, Coimbatore and that the jewel loan was closed and that the complainant Padmakumar had closed the account based on the authorisation letter, dated 25.10.1995 given by the accused and the authorisation letter was marked as Ex.D20. He had further deposed that there was an account in the name of Steel Complex in his Bank and that the complainant, Padmakumar, was dealing with that account.

40.DW.5 is Sivakumar and he had deposed that he knows the accused since they are in the same area in Salem and that on 13.9.1995, he had travelled to Hyderabad by Train and that the accused travelled with him to Hyderabad and that they reached Hyderabad at 13.10.1995 at 11.30 a.m.

41.DW.6 is Raman Venkataraman and he had deposed that he is an Advocate, practising at Secunderabad and that he knows the accused and that during the period between 31.10.1995 to 4.11.1995, the accused met him at Hyderabad personally with regard to disposal of his father's property, which was situated in front of his Office and that he had issued a letter to the accused with respect to the above facts and the letter given by him was marked as Ex.D7.

42.On analysing the entire evidence, it is found that the Petitioner/ accused right from the beginning denied that the cheques in question were issued towards discharge of debt or liability and denied that the goods were supplied.

43.The complainant had stated that the cheques in question were issued respectively, on 03.01.1995, 01.11.1995 and 02.11.1995, by the accused and that the cheques were issued towards the discharge of the liability for supply of stainless steel plates under the invoices, which were marked as Ex.P1 in all the cases. In support of his claim, the complainant has also marked the delivery challans as Ex.P3 in all the cases, based on which, the accused was said to have taken delivery of the goods.

44.It is the specific denial of the accused that no supply was made. He had further stated that he was not at Coimbatore between 1.11.1995 to 30.11.1995, having left from Salem, on the evening of 30.10.1995 and thereby he had denied receiving the goods and denied taking delivery of the goods. He had further taken a plea in the reply notice that he knows the complainant and his brother, Radhakrishnan and the Members of the family for the last 15 years and that he was working in M/s.Steel Complex, Coimbatore, owned by the brother of the complainant, namely, P.Radhakrishnan and that he was representing all the sister Concerns owned by the brother of the complainant, complainant and the complainant's sister in law. He had further deposed that he was paid salary from the account of one of the sister Concerns run by the complainant, namely, Sree Krishna Traders and as per the records, the complainant's brother was the Sole Proprietor.

45. A further plea was taken that the accused had stopped working in the Concern of the complainant and his brother from the year 1994 and while he was working along with the complainant and his brother, he was asked to open an account in the name of Sree Lakshmi Engineering, Salem at the IOB, Salem. Since he was working under the complainant and his brother, he had opened the account and that the complainant and his brother were operating for running discounting facilities and he had stated that consequent to the opening of the account at IOB, Salem, 25 cheque eaves, bearing S.Nos.619351 to 619375, were issued to him and believing the complainant and his brother, he had handed over the signed cheques to them for using it for cheque discounting facilities. Due to some misunderstanding, he had left the services of the complainant and his brother and his cheques had been misused.

46.When there is a specific denial that the goods were not supplied to him under the invoices mentioned above and when the signatures in the delivery challans had been denied and when the accused had, by letting in evidence, raised a probable defence, the burden shifts on the complainant to prove that the goods were actually supplied and that the accused had signed the delivery challans and taken delivery of the goods. Not alone barely denying the supply of goods, valid consideration, legally enforceable debt and issuance of the cheques, the accused had let in cogent evidence to prove that he was not in Coimbatore between 1.11.1995 to 3.11.1995. He had let in evidence by marking letters issued by the Railways to prove his travel from Salem to Hyderabad and return from Hyderabad to Salem.

47.The reasoning given by the Trial Court to disbelieve Ex.D1 to Ex.D7 that the railway ticket and the letters were issued in the name of one GPS Mani and that it does not belong to the accused. Whereas it is the statement of the accused that GBS Mani and G.Balasubramanian are one and the same person. Further, the accused, by letting in evidence, has spoken about the close relationship between him and the complainant and also proved about the jewel loans taken in the South Indian Bank and the Lakshmi Vilas Bank and that the complainant had by preparing the authorisation letters as if given by him, had taken back the jewels from the Bank and further he had examined the Official of the IOB, Salem and he had stated that at the time of closure of the account he had disclosed that the remaining cheque leaves are with the Steel Complex, which belong to the brother of the complainant. Further, he had also examined DW.5, a co-passenger in the Train and also examined DW.6, Advocate, to whom he consulted in Hyderabad for selling his property.

48.Apart from this evidence, this Court had also verified the signatures in the cheques and the signatures in the delivery challans. A bare perusal of the same would disclose that the signatures in the cheques vary from the signatures in the delivery challans. This Court is of the opinion that the defence taken by the accused is a probable defence.

49.In (1999) 3 SCC 35 (Barrel & Drum Mfg. Co. v. Amin Chand Payrelal), it was held thus:-

> "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. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a

prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist."

50. In the decision of the Honourable Supreme Court reported in 2010 11 SCC 441 (Rangappa Vs. Sri Mohan), a Three Judges Bench had held 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 [(2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166] may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.

27. 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 or proof.

28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can

fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.

51.The crux of the decisions of the Honourable Supreme Court cited supra are that if the accused is able to raise a probable defence, which creates doubts with regard to the existence of a debt or liability, the Prosecution may fail and that the presumption mandated by Section 139 of the Act, though included the existence of a legally enforceable debt or liability, is of course in the nature of a rebutable presumption. Section 139 of the Act is an example of reverse onus and the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused cannot be expected to discharge an unduly high standard of proof. A bare denial cannot appear to be a defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the complainant. To disprove the presumption, the accused has to bring on record such facts and circumstances, upon consideration of which the Court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist.

52. In this case, not alone raising a probable defence, the Petitioner/ accused has, by cogent evidence, proved his case, by examining the witnesses to prove (a) the close relationship between him and the complainant, (2) the circumstances under which the cheques have gone into the hands of the complainant, (3) non delivery of goods, (4) non-existence of a legally enforceable debt and (5) that he was not available on the particular days at Coimbatore when the goods were said to have been delivered to him and the cheques in question were said to have been issued by him.

53.Bearing in mind the above principles and on perusal of the entire evidence and the relevant provisions of law and also taking into consideration the above decisions of the Honourable Supreme Court cited supra, this Court is of the considered view that the Petitioner/ accused, by letting in cogent evidence, has proved his case and disproved the case of the complainant. Further, this Court has also compared with naked eyes the signatures in the delivery challans and the signatures in the cheques. On such a comparison, this Court finds that both the signatures are different and that the strokes in the cheques and the strokes in the delivery challans do not tally with each other and that they have not been signed by the same person and thereby, belying the stand of the Respondent/ complainant that the Petitioner/ accused took delivery of the goods, after signing the delivery challans. Apart from these documents, the complainant has not produced any other document to prove that such a business transaction took place between him and the Petitioner/ accused. On the other hand, the Petitioner/ accused had, by cogent evidence, rebutted the presumption against him. This Court is of the view that both the court below have not properly analysed the evidence placed before them and thereby, rendered the impugned judgements erroneously.

54.In the result, these Criminal Revision Petitions are allowed and the impugned judgements of both the court below are set aside. The Petitioner/ accused is acquitted of the charges levelled against him and the bail bond, if any executed by him, shall stand cancelled and the fine amount, if any paid by him, shall be refunded to him.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssi/Srcm

To:

1. The Judicial Magistrate No.V,
   Coimbatore.

2. The I Additional District and Sessions Judge,
   Coimbatore.

3. The Public Prosecutor,
   High Court, Madras.

4. The Chief Judicial Magistrate,
   Coimbatore.

Copy To:

The Section Officer,
High Court,
Madras.

+1cc to Mr.C.Deivasigamani, Advocate, S.R.No.21719

Crl.R.C.Nos.1564, 1607 and
1561 of 2008

MP(CO)

RRS(27/08/2019)