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HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 146 of 2017****Order reserved on 16.09.2021****Order delivered on 08.10.2021**

M/s Cholamandalam Investment & Finance Company Ltd.,
 {A Company Incorporated under the Companies Act, 1956 having its
 corporate Officer at Chennai and one of its Branch at Shriram
 Heights }, Gandhi Udyan, Bhagat Singh Chowk, Raipur

---- Appellant/Complainant**Versus**

Bheekam Sahu, S/o Shri Tejram Sahu, Aged about 34 years, C/o.
 H.No. 2, Village : Bakma, P.S. Bagbehra, Distt: Mahasamund (C.G.)

----Respondent

For Appellant	: Mr. Sunil Pillai, Advocate.
For Respondent	: None present.

Hon'ble Shri Justice N.K. Chandravanshi**ORDER [C.A.V.]**

(1) This Acquittal Appeal is directed against the judgment of acquittal dated 25th March, 2014 passed by Judicial Magistrate, First Class, Raipur (C.G) in Criminal Complaint Case No. 642/2013, whereby the said Court acquitted the respondent/accused of the charge under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "Act, 1881).

(2) As per the case of the appellant/Complainant, respondent had entered into a loan agreement to get finance for a vehicle and as per the agreement he had to pay the loan amount in monthly installments but he did not pay several installments and outstanding dues hence accumulated. The respondent has issued cheque bearing No. 574684 dated 14.12.2012 amounting to ₹ 4,72,366/-

of Punjab National Bank against the partial payment of the loan amount. The complainant deposited the aforesaid cheque in their Bank, ICICI Bank for its clearance but the said cheque was returned dishonoured stating that "Fund Insufficient" in the account of drawer. On 20.12.2012, complainant received the intimation from their Bankers in this regard. Thereafter, appellant/complainant served legal notice under Section 138 of the Act, 1881 on 2.1.2013 calling upon the respondent/accused to pay the said sum in lieu of the dishonoured cheque within 15 days from the date of receipt of the said notice thereof. The notice was sent to the respondent/accused through registered post on his correct address, which he presumed to have received on 05.01.2013, but he did not reply to the same or repay the said amount. Thereafter, complaint under Section 138 of the Act, 1881 was filed before the trial Magistrate, which after due process of trial, resulted into acquittal.

(3) Learned counsel appearing on behalf of the appellant/complainant would submit that learned trial Court has not appreciated and / or considered the case properly and overlooking presumption in favour of the appellant/complainant under Section 139 of the Act, 1881 and consequently erred materially by acquitting the respondent/accused of the charge levelled against him. It is next submitted that the respondent/accused had never replied the legal notice nor entered into the witness box to deny the charges levelled against him or to deny the fact that the alleged cheque was issued by him in favour of complainant, therefore, there is a presumption under Section 139 of the Act, 1881 in favour of the complainant and thereafter onus would be upon the respondent/accused to

rebut the presumption but he has not laid any evidence to that effect. He would also submit that presumption mandated by Section 139 of the Act, 1881 includes a presumption that there exists a legally enforceable debt or liability as has been held by Hon'ble Supreme Court in the matter of **Rangappa v. Sri Mohan**, reported in **(2010) 11 SCC 441**, despite that learned court below while shifting the burden upon appellant/complainant has held that detail of loan and its repayment, detail of interest and default amount has not been proved by the appellant/complainant, which is against the aforesaid legal presumption and also against the principles of law laid down by the Supreme Court in the aforesaid case i.e. **Rangappa (Supra)**, therefore, revision petition may be allowed by setting aside the order of acquittal passed by trial Magistrate.

(4) Earlier respondent/accused was represented by his counsel but later on he did not appear and remained absent.

(5) I have heard learned counsel appearing for the appellant/complainant and perused the material available on record with utmost circumspection.

(6) In the instnat case on behalf of appellant/complainant, Mahendra Kumar Sahu (PW-1) has made statement to prove the case of complainant. He is working C.L. Coordinator of the Complainant-Firm and also Power of Attorney (Ex.P-1C) holder to represent the case on behalf of complainant whereas neither respondent/accused has entered into witness box to examine himself nor has examined any other witnesses in his behalf.

(7) Mahendra Kumar Sahu (PW-1) has deposed in his deposition that

respondent/accused has taken vehicle loan from the complainant, which had to be deposited in different monthly installments but he defaulted many installments and for repayment of loan amount, he had issued Cheque bearing No. 574684 (Ex.P-1) dated 14.12.2012 amounting to ₹ 4,72,366/- of Punjab National Bank, which was deposited by Complainant in ICICI Bank for its clearance but the same was dishonoured by the Bank stating that “Insufficient Fund” in the account of drawar. In this regard, complainant received intimation (Ex.P-3) on 20.12.2012, thereafter, he sent legal notice (Ex.P-4) to respondent/accused through registered post for payment of amount of alleged cheque within 15 days from the date of receipt of said notice, Ex.P-5 is a postal receipt and Ex.P-6 is acknowledgment for the same. The said legal notice was received by respondent/accused on 5.1.2013, despite that he did not pay the cheque amount. His statement is well supported by aforesaid documents.

(8) Mahendra Kumar Sahu (PW-1) has been cross-examined by counsel of respondent/accused. Although he has admitted some suggestion and has denied some suggestion of counsel of the respondent/accused but no such suggestion has been taken that cheque (Ex.P-2) has not been issued by respondent/accused in favour of appellant/complainant or the same is not bearing signature of respondent/accused. Suggestion taken from him by counsel of accused has no worth in this case in respect of legal presumption envisaged under Section 139 of the Act, 1881.

(9) In the matter of **Rangappa (Supra)**, their Lordships of the Supreme Court

held as under :-

“26..... presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt of liability. To that extent, the impugned observations in ***Krishna Janardhan Bhat v. Dattatraya G. Hegde***¹ may not be correct.”

(10) Thus, it is quite clear that presumption under Section 139 of the Act, 1881 covers legally enforceable debt or liability, in other words the law of aforesaid presumption as it stands now after the judgment of Supreme Court in the matter of **Rangappa** (supra) is that once the issuance of the cheque is admitted or proved, the trial Court is duty bound to raise presumption that the dishonoured cheque placed before it was indeed issued in discharge of legally enforceable debt or liability of the amount mentioned therein, although the presumption in this regard is a rebuttable one.

(11) The aforesaid presumption has also been reiterated by Hon'ble Supreme Court in the case of **Sumeti Vij v. M/s Paramount Tech Fab Industries**².

(12) Looking to the provisions contained in Section 139 of the Act, 1881 and aforesaid judicial pronouncements of the Apex Court, learned trial Magistrate ought to have presumed that cheque (Ex.P-2) was issued by respondent/accused for the discharge of loan amount / legally enforceable debt as has been stated by Mahendra Kumar Sahu (PW-1) because the accused has not examined himself or adduce any evidence to rebut the aforesaid

¹ (2008) 4 SCC 54

² AIR 2021 SC 1281

presumption. Although, in the statement recorded under Section 313 of the CrPC, respondent / accused has stated that he has not given any cheque to the complainant but the statement of the accused recorded under Section 313 of the CrPC is not a substantive evidence of defence, but only an opportunity to the accused to explain the incriminating circumstances appearing in the prosecution case of the accused as has been held by the the Apex Court in the case of ***Sumeti Vij (Supra)***. Therefore, there is no evidence to rebut presumption that the cheque was issued to discharge the loan amount. Learned court below without considering the provisions contained in Sections 139 & 118 of the Act, 1881 in its proper perspective unnecessarily travelled on those facts, which were not at all ought to have taken into consideration in this caes i.e. with regard to details of loan, its repayment, interest etc.

(13) As has been stated above, Mahendra Kumar Sahu (PW-1) has proved in this case that cheque (Ex.P-2) amounting of Rs. 4,72,366/- had been issued by the respondent/accused in favour of appellant/complainant, which was dishonoured and after receiving intimation (Ex.P-3) in this regard, notice (Ex.P-4) was sent to the accused for payment of cheque amount but despite service of notice, respondent/accused did not pay the cheque amount to the complainant and thereby complainant has complied with the necessary provisions of Section 138 of the Act, 1881, which is well supported by aforesaid documents also, therefore, on the basis of legal presumption under Sections 139 and 118 of the Act, 1881 and the aforesaid judicial pronouncement of the Apex Court, it is proved that the cheque was issued by the respondent/accused to discharge

loan amount / legally enforceable debt.

(14) In view of the aforesaid discussion, I am of the opinion that finding arrived at by the trial Magistrate is unsustainable in law. The appellant/complainant is entitled to get the cheque amount of ₹ 4,72,366/- and in addition to that since the transaction is of the year, 2012, he is entitled to get ₹ 2 lakhs more on account of expenses and interest.

(15) Accordingly, the appeal is allowed reversing the acquittal. The respondent/accused is convicted for offence under Section 138 of the Negotiable Instruments Act, 1881 and awarded sentence of fine to the tune of ₹ 6,72,366/- [*Cheque amount of ₹ 4,72,366/- and ₹ 2,00,000/- on account of expenses and interest*], in default thereof, to undergo simple imprisonment of four months.

(16) The trial Court shall make all the endeavour for recovery. The respondent/accused is directed to deposit the aforesaid amount before the trial Court within a period of three months from the date of passing of this order. Upon depositing the aforesaid amount, the whole amount shall be paid to the appellant/complainant against the liability of the respondent/accused.

Sd/-
(N.K. Chandravanshi)
Judge

D/-