

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-AS-59-2022

Date of Decision: 26.04.2022

M/S NCUBATE INDIA SERVICE PVT. LTD.

...APPELLANT

VERSUS

M/S FAST TRACK COMMUNICATION AND ANR.

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Diwakar Singh, Advocate &
Mr. Abhishek Vats, Advocate
for the appellant.

VINOD S. BHARDWAJ, J.

1. The instant appeal raises a challenge to the judgment dated 01.10.2019, passed by the Judicial Magistrate Ist Class, Gurugram in a criminal complaint titled 'M/s Ncube India Service Pvt. Ltd. Vs. M/s Fast Track Communication and another' bearing case No.158 of 01.02.2017 under Section 138/142 of the Negotiable Instruments Act, 1881, whereby the Magistrate has dismissed the abovementioned complaint and acquitted the respondents-accused of the notice of accusation served upon him.

2. Briefly summarized, the allegations as set out from the perusal of the documents available on the records, show that the appellant-complainant company claims to be engaged in the business of distribution of RO and water purifiers. It is contended that the respondents-accused had purchased RO from the appellant-complainant company and as per the books of account of the appellant-complainant, an amount of Rs.2,40,865/- was outstanding against the said purchase made by the respondents-accused.

2.1 It is claimed that in discharge of the said liability, a cheque bearing no.068126 dated 24.11.2016 drawn on State Bank of India for a sum of Rs.2,40,865/- was issued by the respondent No.2-accused, proprietor of respondent No.1-company. However, on presentation of the said cheque, the same was dishonoured vide memo dated 29.11.2016 with the remarks “funds insufficient”. A statutory notice was issued on 15.12.2016 calling upon the respondent-accused to clear the cheque amount and upon his failure to do the needful, the complaint in question was instituted.

2.2 Upon the appearance of the respondent-accused, notice of accusation was served upon him. The appellant-complainant tendered his affidavit in evidence and also placed on record the following documents to prove his case:

Sr. No.	Exhibit	Document
1.	Ex.CW1	Authority letter.
2.	Ex.CW2	Cheque.
3.	Ex.CW3	Return Memo
4.	Ex.CW4	Legal Notice
5.	Ex.CW5	Postal Receipt
6.	Ex.CW6	Postal delivery report.
7.	Ex.CW7	Dealership agreement.

2.3 Thereafter, CW2- Santosh Kumar Singh was also examined, who placed on record the following documents:

Sr. No.	Exhibit	Document
1.	Ex.CW2/1	Ledger account.
2.	Ex.CW2/2	Tax Invoices.
3.	Ex.CW2/3	Certificate under Section 65-B of the Indian Evidence Act, 1872.

2.4 Per contra, the respondent-accused had, in his statement under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘the Cr.P.C.’), denied the incriminating material put to him and stated that the cheque in question was handed over by him to one Ritesh (employee of the appellant-complainant company) as security against a proper receipt and that no amount was ever due to him.

2.5 It is further the case set up that no delivery of any goods against the claimed invoices was effected upon the respondent-accused. Evidence in defence was also led by the respondent-accused. The details of the documents so produced are as under:

Sr. No.	Exhibit	Document
1.	Ex.DW1/A	Receipt.
2.	Ex.DW1/B	Cheque photocopy.
3.	Mark-A	Account summary.

As many as three witnesses appeared in defence to corroborate the instance of the respondent-complainant.

2.6 Upon consideration of the evidence adduced by the parties and the rival arguments advanced, the trial Court found that the appellant-complainant could not establish the guilt of the respondent-accused beyond a shadow of reasonable doubt and thus, acquitted the respondent-accused of the notice of accusation.

3. Aggrieved thereof, the instant appeal had been preferred.

ARGUMENTS:

4. Learned counsel appearing on behalf of the appellant-complainant has argued that the trial Court had committed an error in not appreciating the evidence adduced on record. He contends that the judgments suffered illegality and perversity and that the relevant evidence has not been taken into

consideration. He places much reliance on the fact that the issuance of the cheque in question or the signature thereupon have not been not disputed by the respondent-accused and resultantly, the presumption under Section 139 read with Section 118 of the Negotiable Instruments Act, 1881 shall be drawn against the respondent-accused. It is further pointed that the invoice which is Ex.CW2 (appended as Annexures A-10 and A-11 with the instant appeal) clearly establish that there was an outstanding liability and that the cheque in question had been issued in discharge of a legally enforceable debt and an existing liability. He further refers to the alleged discrepancies in the statements of the defence witnesses to contend that the respondent-accused has failed to establish that the material so dispatched through the transport was actually returned back to the company. It is also submitted that the goods having been delivered to the respondent-accused, he was under obligation to pay the amount in respect thereof. He, thus, refers to the deposition of DW3 (Annexure A-16), which is reproduced as under:

“.....I made the payment in advance and against that goods were delivered to me. The cheque which I had given to them is on file which is Ex.CW2. I had given this check in blank and without any date. I had signed the said cheque. Ritesh had given me receiving of the same which is Ex.DW1/B. Ritesh had called me in January 2016 when I was out of station, and informed me about the arrival of my goods. I had asked from him how you have sent these goods without any order of mine then I refuse to take the delivery of the goods. Thereafter, Ritesh informed me that he had returned the goods to the company through Vikas roadways in January 2016. Copy of builty is Ex.DW1/A.

Thereafter, I had no contact with Ritesh and I had also winded up my work therefore, I had no contact with the company also. I became aware of this case when I received the summon from this court. Company had no outstanding against me

because goods had already been returned. Except this, I had no transaction with the company.”

4.1 He thus vehemently contends that in the absence of the respondent-accused failing to establish that the goods in question had been returned to the appellant-complainant company, the liability stood established and the issuance of cheque was the acknowledgement of the existing liability. Accordingly, the respondent-accused was liable to make the payment and his failure to repay the said amount would entail consequences under the Negotiable Instruments Act, 1881.

4.2. He further points out that the payment in question was towards the running account and that the ledger in this regard has been produced on record as Ex.CW2/1 (Annexure A-9).

5. I have heard the learned counsel for the appellant and have gone through the evidence adduced by the appellant-complainant as well as judgment passed by the Court below.

ANALYSIS

8. It is evident from the perusal of the judgment passed by the Court below that it was noticed by the Judicial Magistrate Ist Class, Gurugram that the delivery of the goods in lieu of the invoice Annexure A-10 (Ex.CW2/2) dated 31.12.2015 was not established. It was also noticed that the stand adopted by the respondent-accused was to the effect that the cheque in question was given as a security cheque and was so endorsed. The said fact has also been admitted by DW-1, Ritesh, who is the previous Area Manager of the appellant-complainant company. It was further noticed by the Judicial Magistrate that the said witness also acknowledged that the 16 pieces of RO were returned vide bulity dated 22.01.2016 at the Patna Office of the complainant through Sanjay Parida. On a pointed query posed to the counsel

appearing on behalf of the appellant-complainant, he did not dispute the fact that the Sanjay Parida was an employee of the appellant-complainant company. It is also not disputed by him that insofar as the invoice (Annexure A-10) is concerned, there is no receipt by the respondent-accused to the said consignment and as such, it cannot be assumed that the delivery of the invoiced goods was actually effected. Moreover, even the purchase order with relation to the said goods is not on record. Reference is also made to the relevant extract of the examination in chief of the witnesses who have stepped into the defence:

**“DW1 Ritesh Kr. S/o Krishna Mishra R/o Bangla
Basebagh, Bihar.**

On SA

In December 2015 Luminous Water technology was there at Udyog Vihar. I was being an area manager looking after entire Kosi area from Bhagalpur Distt. I have raised bill of M/s Fast Track in December 2015. I have raised bill for 16 pieces of R.O for M/s fast track Commn. When I had book 16 piece of R.O at that time I had talked to Mr Anshuman Aggarwal on phone, thereafter, I have dispatched 16 piece of R.O through company's vehicle at the office of M/s Fast Track Commn. But Mr Anshuman Agrawal informed me that he is winding up his business and he do not need these 16 piece of R.O. then I have Kept these 16 piece of R.O at one of our distributor at Purnia (Bihar). Thereafter, I returned these 16 piece of R.O through Vikas roadways transport Co. to sell Depot, Patna (Bihar). Bill invoice dated 22.01.2016 is DW1/A. Which has been received at our sale depot and I had confirmed this from our sale depot. Thereafter, I left this company in July 16. I dispatched both the builty Ex.DW1/A and letter dated 20.01.2016 which is Mark-A here to Sanjay Parida, head of Patna sale depot.

While I was in service I had taken cheque no.068126 Ex.CW2, from M/s Fast Track as security and the name of payee “Ncube Indian services Pvt Ltd” was only filled in, and Mr

Anshuman Agrawal had signed on it as proprietor and the rest of the columns were blank and I had written "received cheque as security deposit" on the photocopy of the cheque and signed which is at point "A" and photocopy of the blank cheque which is Ex.DW1/B. I am identifying my signature at point A which I have done on 22.4.15. Chief deferred to lunch.

ROAC

12.09.18

Sd/-

Ritesh

(recalled for chief examination after lunch)

On SA

Till I was in company there was no outstanding of M/s Fast Tract Commn. Towards M/s Ncube because I had resigned from the company after six months from the return of the goods. If there would have been any outstanding company would have called me for recovery.

***DW2 Dimple Kr. S/O Nawal Kishore Singh, Manager,
Vikas Roadways C/O Old TV Station Barihat Rd.
Purnia Bihar.***

On SA

Stated that Ex.DW/1A which is built Dt.22.01.16, Sh. Ritesh Kr has booked 16 pieces of R.O for Ncube services Pvt. Ltd. The said goods had been delivered at the company address and Sh. Sanjay Parida had received the goods on behalf of company.

***DW3 Anshuman Aggarwal S/O Manoj Kr. R/o Barish, PS
Khat District Purnia Bihar***

On SA

Stated that in April 2015 Ritesh came in my contact. He was area sales manager in Livpure. He informed me that he is looking for distributor of water purifiers, if you are interested then you can do this distributorship. We had 2-3 meetings. Thereafter, I gave my acceptance for the distributorship in April 2015. They had informed me that company had certain criteria,

you have to give security cheques and have to sign an agreement. I agree on that and they got the agreement executed from me and they have also collected a security cheques from me. I had worked for 4-5 months with them. I made the payment in advance and against that goods were delivered to me. The cheque which I had given to them is on file which is Ex.CW2. I had given this check in blank and without any date. I had signed the said cheque. Ritesh had given me receiving of the same which is Ex.DW1/B. Ritesh had called me in January 2016 when I was out of station, and informed me about the arrival of my goods. I had asked from him how you have sent these goods without any order of mine then I refuse to take the delivery of the goods. Thereafter, Ritesh informed me that he had returned the goods to the company through Vikas roadways in January 2016. Copy of builty is Ex.DW1/A.

Thereafter, I had no contact with Ritesh and I had also winded up my work therefore, I had no contact with the company also. I became aware of this case when I received the summon from this court. Company had no outstanding against me because goods had already been returned. Except this, I had no transaction with the company. Company has misuse the cheque which was a security cheque.”

9. A reading of the aforesaid evidence clearly shows that the Manager of Transport Company has specifically deposed that the delivery of goods was returned back to the company and was handed over to Sanjay Parida, who is undisputedly an employee of the appellant-complainant. Besides, the receipt of the invoiced goods by the respondent-accused could not be established. A perusal of the running account/ledger produced by the appellant-complainant as Annexure A-9 would show that total outstanding reflected in the ledger balance was Rs.2,40,865/- i.e. the amount of the cheque. In the absence of the appellant-complainant having failed to establish the liability owed by the respondent-accused to the appellant-complainant for the

said sum of money, there was no occasion for the respondent-accused to have executed a cheque in this regard. Furthermore, the previous Area Manager of the appellant-complainant has himself acknowledged that the cheque in question was issued as a security cheque and an endorsement to that effect was also made thereupon. Thus, a reasonable suspicion with respect to the pre-existing liability has been created by the respondent-accused. The burden would thus shift upon the appellant-complainant company to establish existence of a pre-existing liability and a legally enforceable debt, in lieu whereof the cheque in question is claimed to have been issued by the respondent-accused. The burden would thus, lay upon the appellant-complainant and he cannot be deemed to have discharged his burden by mere operation of presumption under Section 139 read with Section 118 of the Negotiable Instruments Act, 1881.

Legal Position Regarding Presumption under Negotiable Instruments Act:

9. The presumption enshrined under Section 139 of the Negotiable Instruments Act is not absolute and is rather a rebuttable presumption. The accused would be discharged of the presumption, the moment an accused raises reasonable suspicion with respect to the due execution of the cheque. It is not incumbent upon an accused to lead evidence and even subjecting the complainant to cross-examination on such aspects can be taken as sufficient grounds to shift the burden upon the complainant to establish that the debt in question was duly advanced to the drawer of the cheque. Once such suspicion is created by an accused, the burden of proof would thereafter shift upon the complainant to prove that the cheque had been executed in discharge of a pre-existing liability/legally enforceable debt. Existence of legally enforceable debt is a pre-requisite for issuance of a cheque.

10. It is a settled proposition of law that presumption under Section 139 of the Negotiable Instruments Act is a presumption of law, as distinguished from a presumption of fact, such a presumption is a rebuttable presumption and the drawer of the cheque may dispel the same. The aforesaid position in law stands settled in the judgment of the Hon'ble Supreme Court in the matter of **Hiten P. Dalal Vs. Bratindranath Banerjee (2001) 6 SCC 16.** While dealing with the aspect of presumption in terms of Section 139 of the Negotiable Instruments Act, the Hon'ble Supreme Court observed as under:-

'21.The appellant's submission that the cheques were not drawn for the 'discharge in whole or in part of any debt or other liability' is answered by the third presumption available to the Bank under Section 139 of the Negotiable Instruments Act. This section provides that "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". The effect of these presumptions is to place the evidential burden on the appellant of proving that the cheque was not received by the Bank towards the discharge of any liability.

*22. Because both Sections 138 and 139 require that the Court "shall presume" the liability of the drawer of the cheques for the amounts for which the cheques are drawn, as noted in State of Madras vs. A. Vaidyanatha Iyer AIR 1958 SC 61, it is **obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established.** "It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused" (ibid). Such a presumption is a presumption of law, as distinguished from a presumption of fact which describes provisions by which the court "may presume" a certain state of affairs. Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter all that is meant is that the prosecution is obliged to prove the case*

*against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact **unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.***

23. *In other words, provided the facts required to form the basis of a presumption of law exists, no discretion is left with the Court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when, "after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists" . **Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the Court in support of the defence that the Court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the 'prudent man'.***

24. *Judicial statements have differed as to the quantum of rebutting evidence required. In **Kundan Lal Rallaram vs Custodian, Evacuee Property, Bombay AIR 1961 SC 1316**, this Court held that the presumption of law under Section 118 of Negotiable Instruments Act could be rebutted, in certain circumstances, by a presumption of fact raised under Section 114 of the Evidence Act. The decision must be limited to the facts of that case. The more authoritative view has been laid down in the subsequent decision of the **Constitution Bench in Dhanvantrai Balwantrai Desai vs State of Maharashtra AIR 1964 SC 575**, where this Court reiterated the principle enunciated in **State of Madras vs Vaidyanath Iyer (Supra)** and clarified that the distinction between the two kinds of presumption lay not only in the mandate to the Court, but also in the nature of evidence required to rebut the two. In the case of a discretionary presumption the presumption if drawn may be rebutted by an explanation which "might reasonably be*

*true and which is consistent with the innocence" of the accused. On the other hand in the case of a mandatory presumption "the burden resting on the accused person in such a case would not be as light as it is **where a presumption is raised under S.114 of the Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The words 'unless the contrary is proved' which occur in this provision make it clear that the presumption has to be rebutted by 'proof' and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted....."***

(Emphasis supplied)

It was, thus, held that the obligation on the prosecution may be discharged with the help of presumption of law or fact, unless, the accused adduces evidence showing reasonable possibility of the non-existence of the presumed fact. Thus, if the facts required to form the basis of a presumption of law exist, there is no discretion left with the Court but to draw the statutory conclusion; but the same does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. The rebuttal does not have to be conclusively established, but such evidence must be adduced in support of the defence that the Court must either believe the defence to exist or consider its existence to be reasonably probable; the standard of reasonability being that of a 'prudent man'.

11. Reference is also necessary to be made to the judgment of the Hon'ble Supreme Court in the matter of **Kumar Exports Vs. Sharma Carpets**

(2009) 2 SCC 513 . The relevant extract of the same is as under:-

'13. In a significant departure from the general rule applicable to contracts, Section 118 of the Act provides certain presumptions to be raised. This Section lays down some special rules of evidence relating to presumptions. The reason for these presumptions is that, negotiable instrument passes from hand to hand on endorsement and it would make trading very difficult and negotiability of the instrument impossible, unless certain presumptions are made. The presumption, therefore, is a matter of principle to facilitate negotiability as well as trade. Section 118 of the Act provides presumptions to be raised until the contrary is proved (i) as to consideration, (ii) as to date of instrument, (iii) as to time of acceptance, (iv) as to time of transfer, (v) as to order of indorsements, (vi) as to appropriate stamp and (vii) as to holder being a holder in due course.

14. Section 139 of the Act provides that 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. 15. Presumptions are devices by use of which the courts are enabled and entitled to pronounce on an issue notwithstanding that there is no evidence or insufficient evidence. Under the Indian Evidence Act all presumptions must come under one or the other class of the three classes mentioned in the Act, namely, (1) "may presume" (rebuttable), (2) "shall presume" (rebuttable) and (3) "conclusive presumptions" (irrebuttable). The term 'presumption' is used to designate an inference, affirmative or disaffirmative of the existence a fact, conveniently called the "presumed fact" drawn by a judicial tribunal, by a process of probable reasoning from some matter of fact, either judicially noticed or admitted or established by legal evidence to the satisfaction of the tribunal. Presumption literally means "taking as true without examination or proof".

.....

16. Section 4 of the Evidence Act inter-alia defines the words 'may presume' and 'shall presume' as follows: -

"(a) 'may presume' - Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it.

(b) 'shall presume' - Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved."

In the former case the Court has an option to raise the presumption or not, but in the latter case, the Court must necessarily raise the presumption. If in a case the Court has an option to raise the presumption and raises the presumption, the distinction between the two categories of presumptions ceases and the fact is presumed, unless and until it is disproved.

17. Section 118 of the Act inter alia directs that it shall be presumed, until the contrary is proved, that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that unless the contrary is proved, it shall be presumed, that the holder of the cheque received the cheque, for the discharge of, whole or part of any debt or liability.

18. Applying the definition of the word 'proved' in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only

makes a prima facie case for a party for whose benefit it exists.

19. 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.

20. 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.

21. 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.'

(Emphasis supplied)

12. The law is thus well settled that in order to rebut the statutory presumption, 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. 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, bare denial of the passing of the consideration and existence of debt would

not serve the purpose of the accused. To disprove the presumption, an 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 that 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.

13. In the matter of **Rangappa Vs. Sri Mohan (2010) 11 SCC 441**, the Hon'ble Supreme Court observed on the matter of presumption cast under Section 139 of the Negotiable Instruments Act and held as under:-

"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 (supra) 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 accused/defendant 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.'

14. In the matter of **John K. Abraham Vs. Simon C. Abraham And Another (2014) 2 SCC 236**, the Hon'ble Supreme Court observed that in order to draw presumption under Section 118 read with Section 139 of the Negotiable Instruments Act, burden lies on the complainant to show, (i) that he had the requisite funds for advancing the sum of money/loan in question to the accused, (ii) that the issuance of cheque by accused in support of repayment of money advanced was true and, (iii) that the accused was bound to make payment as had been agreed while issuing cheque in favour of the complainant. Taking note of the fact that the complainant was not aware of the date when the substantial amount was advanced by him to the accused and his failure to produce relevant documents in support of the alleged source for advancing money to an accused, the judgment convicting the accused was set aside by holding the same to be perverse. The relevant facts noticed from the aforesaid judgment are extracted as

'6. When we examine the case of the respondent-complainant as projected before the learned Chief Judicial Magistrate and the material evidence placed before the trial Court, we find that the trial Court had noted certain vital defects in the case of the respondent-complainant. Such defects noted by the learned Chief Judicial Magistrate were as under:

*a) **Though the respondent as PW-1 deposed that the accused received the money at his house also stated that he did not remember the date when the said sum of Rs.1,50,000/- was paid to him.***

*b) As regards the source for advancing the sum of Rs.1,50,000/-, the respondent claimed that the same was from and out of the sale consideration of his share in the family property, apart from a sum of Rs.50,000/-, which he availed by way of loan from the co-operative society of the college where he was employed. **Though the respondent stated before the Court below that he would be in a position to produce the documents in support of the said stand, it was noted that no documents were placed before the Court below.***

c) In the course of cross-examination, the respondent stated that the cheque was signed on the date when the payment was made, nevertheless he stated that he was not aware of the date when he paid the sum of Rs.1,50,000/-.

d) According to the respondent, the cheque was in the handwriting of the accused himself and the very next moment he made a contradictory statement that the cheque was not in the handwriting of the appellant and that he (complainant) wrote the same.

e) The respondent also stated that the amount in words was written by him.

f) The trial Court has also noted that it was not the case of the respondent that the writing in the cheque and filling up of the figures were with the consent of the accused appellant.

.....

9. It has to be stated that in order to draw the presumption under Section 118 read along with 139 of the Negotiable Instruments Act, the burden was heavily upon the

complainant to have shown that he had required funds for having advanced the money to the accused; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant.

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.

11. 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.'

(Emphasis supplied)

15. In the matter of **Basalingappa Vs. Mudibasappa (2019) 5 SCC 418,** while dealing with the standard of proof and the presumption drawn under the Negotiable Instruments Act, the Hon'ble Supreme Court has observed as under:-

'14. Justice S.B. Sinha in M.S. Narayana Menon Alias Mani Vs. State of Kerala and Another, (2006) 6 SCC 39 had considered Sections 118(a), 138 and 139 of the Act, 1881. It was held that presumptions both under Sections 118(a) and 139 are rebuttable in nature. Explaining the expressions "may presume" and "shall presume" referring to an earlier judgment, following was held in paragraph No.28:-

"28. What would be the effect of the expressions "may presume", 'shall presume"and "conclusive proof" has been considered by this Court in Union of India v. Pramod Gupta, (2005) 12 SCC 1, in the following terms: (SCC pp. 30-31, para 52)

"It is true that the legislature used two different phraseologies 'shall be presumed' and 'may be presumed' in Section 42 of the Punjab Land Revenue Act and furthermore although provided for the mode and manner of rebuttal of such presumption as regards the right to mines and minerals said to be vested in the Government vis-à-vis the absence thereof in relation to the lands presumed to be retained by the landowners but the same would not mean that the words 'shall presume' would be conclusive. The meaning of the expressions 'may presume' and 'shall presume' have been explained in Section 4of the Evidence Act, 1872, from a perusal whereof it would be evident that whenever it is directed that the court shall presume a fact it shall regard such fact as proved unless disproved. In terms of the said provision, thus, the expression 'shall presume' cannot be held to be synonymous with 'conclusive proof'."

15. It was noted that the expression "shall presume" cannot be held to be synonymous with conclusive proof. Referring to definition of words "proved" and "disproved" under Section 3 of the Evidence Act, following was laid down in paragraph No.30:

*“30. Applying the said definitions of “proved” or “disproved” to the principle behind Section 118(a) of the Act, the court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, **it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist.** For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon.”*

16. This Court held that what is needed is to raise a probable defence, for which it is not necessary for the accused to disprove the existence of consideration by way of direct evidence and even the evidence adduced on behalf of the complainant can be relied upon. Dealing with standard of proof, following was observed in paragraph No.32:-

“32. The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which he relies.”

17. In Krishna Janardhan Bhat Vs. Dattatraya G. Hegde, (2008) 4 SCC 54, this Court held that an accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. Following was laid down in Paragraph No.32:-

“32. An accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. An accused has a constitutional right to maintain silence. Standard of proof on the part of an accused and that of the prosecution in a criminal case is different.”

18. This Court again reiterated that whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the

standard of proof so as to prove a defence on the part of an accused is “preponderance of probabilities”. In paragraph No.34, following was laid down:-

“34. Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is “preponderance of probabilities”. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which he relies.”

25. We having noticed the ratio laid down by this Court in above cases on Sections 118(a) and 139, we now summarize the principles enumerated by this Court in following manner:-

(i) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

*(ii) **The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.***

*(iii) **To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. 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.***

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

26. Applying the preposition of law as noted above, in facts of the present case, it is clear that signature on cheque having been admitted, a presumption shall be raised under Section 139 that cheque was issued in discharge of debt or liability. The question to be looked into is as to whether any probable defence was raised by the accused. In cross-examination of the PW1, when the specific question was put that cheque was

issued in relation to loan of Rs.25,000/- taken by the accused, the PW1 said that he does not remember. PW1 in his evidence admitted that he retired in 1997 on which date he received monetary benefit of Rs. 8 lakhs, which was encashed by the complainant. It was also brought in the evidence that in the year 2010, the complainant entered into a sale agreement for which he paid an amount of Rs.4,50,000/- to Balana Gouda towards sale consideration. Payment of Rs.4,50,000/- being admitted in the year 2010 and further payment of loan of Rs.50,000/- with regard to which complaint No.119 of 2012 was filed by the complainant, copy of which complaint was also filed as Ex.D2, there was burden on the complainant to prove his financial capacity. In the year 2010-2011, as per own case of the complainant, he made payment of Rs.18 lakhs. During his cross-examination, when financial capacity to pay Rs.6 lakhs to the accused was questioned, there was no satisfactory reply given by the complainant. The evidence on record, thus, is a probable defence on behalf of the accused, which shifted the burden on the complainant to prove his financial capacity and other facts.'

(Emphasis supplied)

A perusal of the same shows that the failure of the complainant to display his financial capacity to advance the amount alleged to have been lent would shift the burden on the complainant to prove his financial capacity to lend the money as well as the other circumstances to establish existence of consideration for issuance of cheque. After noticing that there was no evidence led before the Court to indicate the financial capacity of the complainant to lend the money in question, the Hon'ble Supreme Court held that the judgment of conviction suffered perversity and was thus, liable to be set aside. It was observed that the accused had raised a probable defence and that the complainant failed to prove his financial capacity on the basis of evidence led by him and thus, ordered acquittal of the accused.

LEGAL POSITION IN APPEAL AGAINST ACQUITTAL

16. The same now leads to the scope of interference by the Court while hearing appeal against acquittal. The Hon'ble Supreme Court has held in the matter of **M. G. Aggarwal versus State of Maharashtra, AIR 1963 SC 200**, the relevant part is extracted as under:

“(16) Section 423(1) prescribes the powers of the appellate Court in disposing of appeals preferred before it and clauses (a) and (b) deal with appeals against acquittals and appeals against convictions respectively. There is no doubt that the power conferred by clause (a) which deals with an appeal against an order of acquittal is as wide as the power conferred by clause (b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction. That is one aspect of the question. The other aspect of the question centres round the approach which the High Court adopts in dealing with appeals against orders of acquittal. In dealing with such appeals, the High Court; naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial Court and so, the fact that the accused person is entitled to the benefit of a reasonable doubt will always be present in the mind of the High Court when it deals with the merits of the case. As an appellate Court the High Court is generally slow in disturbing the finding of fact recorded by the trial Court, particularly when the said finding is based on an appreciation of oral evidence because the trial Court has the advantage of watching the demeanour of the witnesses who have given evidence. Thus, though the powers of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence. Sometimes, the width- of the power

*is emphasized, while on other occasions, the necessity to adopt a cautious approach in dealing with appeals against acquittals is emphasized, and the emphasis is expressed in different words or phrases used from time to time. But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused. This position has been clarified by the Privy Council in **Sheo Swarup v. The King Emperor and Nur Mohammad v. Emperor AIR 1945 PC 151.***

(17) Some of the earlier decisions of this Court, however, in emphasizing the importance of adopting a cautious approach in dealing with appeals against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so, "the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons": vide Surajpal Singh V. The State Similarly in Ajmer Singh V. State of Punjab, it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are "very substantial and compelling reasons to do so.") In some other decisions, it has been stated that an order of acquittal can be reversed only for "good and sufficiently cogent reasons" or for "strong reasons". In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended- to introduce an additional condition in clause (a) of Section 423 (1) of the Code. All that the said observations are intended to emphasize is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in the case of Sheo Swarup, the presumption of innocence in favour

of the accused "is not certainly weakened by the fact that he has been acquitted at his trial." Therefore, the test suggested by the expression "substantial and compelling reasons" should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in Sanwat Singh v. State of Rajasthan and Harbans Singh v. The State of Punjab; and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterize the findings recorded therein as perverse. Therefore, the question which we have to ask ourselves in the present appeals is whether on the material produced by the prosecution, the High Court was justified in reaching the conclusion that the prosecution case against the appellants had been proved beyond a reasonable doubt, and that the contrary view taken by the trial Court was, erroneous. In answering this question, we would, no doubt, consider the salient and broad features of the evidence in order to appreciate the grievance made by the appellants against the conclusions of the High Court. But under Article 136 we would ordinarily be reluctant to interfere with the finding of fact recorded by the High Court particularly where the said findings are based on appreciation of oral evidence.

17. Further, the Hon'ble Supreme Court has held in the matter of **Nagbhushan vs. State of Karnataka, (2021) 5 SCC 212**, as under:

“7.2 Before considering the appeal on merits, the law on the appeal against acquittal and the scope and ambit of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal is required to be considered.

7.2.1 In the case of Babu v. State of Kerala (2010) 9 SCC 189, this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C. In paragraphs 12 to 19, it is observed and held as under:

12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial Court. The appellate court should not ordinarily set

aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P (1975) 3 SCC 219, Shambhoo Missir v. State of Bihar (1990) 4 SCC 17, Shailendra Pratap v. State of U.P (2003) 1 SCC 761, Narendra Singh v. State of M.P (2004) 10 SCC 699, Budh Singh v. State of U.P (2006) 9 SCC 731, State of U.P. v. Ram Veer Singh (2007) 13 SCC 102, S. Rama v. S. Rami Reddy (2008) 5 SCC 535, Aruvelu v. State (2009) 10 SCC 206, Perla Somasekhara Reddy v. State of A.P. (2009) 16 SCC 98 and Ram Singh v. State of H.P. (2010) 2 SCC 445)

13. In Sheo Swarup v. King Emperor AIR 1934 PC 227, the Privy Council observed as under: (IA p. 404) "... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."

14. The aforesaid principle of law has consistently been followed by this Court. (See Tulsiram Kanu v. State AIR

1954 SC 1, Balbir Singh v. State of Punjab AIR 1957 SC 216, M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200, Khedu Mohton v. State of Bihar (1970) 2 SCC 450, Sambasivan v. State of Kerala (1998) 5 SCC 412, Bhagwan Singh v. State of M.P (2002) 4 SCC 85 and State of Goa v. Sanjay Thakran (2007) 3 SCC 755)

15. In Chandrappa v. State of Karnataka (2007) 4 SCC 415, this Court reiterated the legal position as under:

(SCC p. 432, para 42) “(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, ‘substantial and compelling reasons’, ‘good and sufficient grounds’, ‘very strong circumstances’, ‘distorted conclusions’, ‘glaring mistakes’, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of ‘flourishes of language’ to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial Court.”

16. In Ghurey Lal v. State of U.P (2008) 10 SCC 450, this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial Courts have acquitted the accused, should bear in mind that the trial Court’s acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial Court as the trial Court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20) “20. ... an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused.”

18. In State of U.P. v. Banne (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include: (SCC p. 286, para 28) (i) The High Court’s decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court’s conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court’s judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) *This Court must always give proper weight and consideration to the findings of the High Court;*

(vi) *This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.” A similar view has been reiterated by this Court in Dhanpal v. State (2009) 10 SCC 401.*

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court’s acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.” (emphasis supplied)

7.2.2 *When the findings of fact recorded by a court can be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under:*

“20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is “against the weight of evidence”, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn (1984) 4 SCC 635, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons 1992 Supp (2) SCC 312, Triveni Rubber & Plastics v. CCE 1994 Supp. (3) SCC 665, Gaya Din v. Hanuman Prasad (2001) 1 SCC 501, Aruvelu v.State (2009) 10 SCC 206 and Gamini Bala Koteswara Rao v. State of A.P.(2009) 10 SCC 636).” *(emphasis supplied)*

7.2.3 It is further observed, after following the decision of this Court in the case of Kuldeep Singh v. Commissioner of Police (1999) 2 SCC 10, that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.

7.3 In the case of Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436, this Court again had an occasion to consider the scope of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal. This Court considered catena of decisions of this Court right from 1952 onwards. In paragraph 31, it is observed and held as under:

“31. An identical question came to be considered before this Court in Umedbhai Jadavbhai (1978) 1 SCC 228. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial Court on re-appreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial Court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under: (SCC p. 233)

“10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to re-appreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case.”

31.1 In Sambasivan v. State of Karala (1998) 5 SCC 412, the High Court reversed the order of acquittal passed by the learned trial Court and held the accused guilty on re-appreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial Court, after being satisfied that the order of acquittal passed by the learned trial Court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court. While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under: (SCC p. 416) “

8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Ramesh Babula Doshi v. State of Gujarat (1996) 9 SCC 225 viz. first recording its conclusion on the question whether the approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial Court, should be to satisfy itself if the approach of the trial Court in

dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial Court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial Court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial Court in this case."

31.2. In K. Ramakrishnan Unnithan v. State of Karala (1999) 3 SCC 309, after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to re-appreciate the evidence and record its own conclusion. This Court scrutinized the evidence of the eyewitnesses and opined that reasons adduced by the trial Court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial Court was manifestly erroneous and therefore it was the duty of the High

Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. In Atley v. State of U.P. AIR 1955 SC 807, in para 5, this Court observed and held as under: (AIR pp. 809-10)

“5. It has been argued by the learned counsel for the appellant that the judgment of the trial Court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 Cr.PC came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well- established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial Court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial Court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial Court which recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, Surajpal Singh v. State AIR 1952 SC 52; Wilayat Khan v. State of

U.P. AIR 1953 SC 122) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.

31.4. In K.Gopal Reddy v. State of A.P. (1979) 1 SCC 355, this Court has observed that where the trial Court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule.”

(emphasis supplied)

18. Thus, the position which emerges from a perusal of the law as settled by the Hon'ble Supreme Court through its catena of judgments in matters pertaining to appeals against acquittal can be summarized as under:-

- a) Powers of High Court in dealing with criminal appeals are equally wide whether the appeals are against conviction or acquittal.
- b) In dealing with appeal against acquittal, the High Court bears in mind that the presumption of innocence is strengthened.
- c) As an appellate Court, the High Court is generally slow in disturbing the finding of fact recorded by the trial Court, particularly when the said finding is based on an appreciation of oral evidence because the trial Court has the advantage of watching the demeanour of the witnesses who have given evidence.
- d) That the interference of the High Court in an appeal against the order of acquittal would be justified only if there are "very substantial and compelling reasons to do so".
- e) The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, even though the view of the appellate court may be the more probable one.

f) Various expressions, such as, ‘substantial and compelling reasons’, ‘good and sufficient grounds’, ‘very strong circumstances’, ‘distorted conclusions’, ‘glaring mistakes’, etc. are not intended to curtail the extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of ‘flourishes of language’ to emphasize the reluctance of an appellate court to interfere with acquittal, than to curtail the power of the court to review the evidence and to come to its own conclusion.

g) The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is “against the weight of evidence”, or if the finding so outrageously defies logic as to suffer from the vice of irrationality.

CONCLUSION

19. Furthermore, in a judgment of acquittal, the presumption of innocence is further strengthened by returning of a finding of acquittal against an accused. The case of the appellant-complainant cannot be said to be established by a mere inference of presumption, especially when such presumption is rebuttable and it was incumbent upon the appellant-complainant to lead affirmative evidence to establish his allegations. It would not lie on the appellant-complainant to say that deficiencies in the evidence of the defence should be read to the advantage of prosecution/complainant. Such suspicion, howsoever, created would not substitute for want of proof. The obligation incumbent upon the appellant-complainant having not been satisfactorily discharged and the said fact having been noticed by the trial Court, there is nothing on record to establish that the finding recorded by the trial Court is

perverse, illegal or is unsustainable in the eyes of law. Once the finding so recorded by the Court is a possible finding and the opinion so formulated is a sustainable opinion on the basis of evidence adduced, such view is not to be substituted by the Court while sitting in an appellate jurisdiction merely because any other view is also possible in law. I find no illegality, perversity, impropriety or misappreciation of the evidence by the Trial Court.

The appeal is dismissed being devoid of any merit and the judgment dated 01.10.2019 passed by the Trial Court is upheld.

(VINOD S. BHARDWAJ)
JUDGE

April 26, 2022
rajender

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>