

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRA 307 of 2017

DIPAK KUMAR SHAW
VS
STATE OF WEST BENGAL & ANR.

For the Appellant : Mr. Shataroop Purkayastha, Adv.

For the O.P. No. 2 : Mr. Debabrata Ray, Adv.
Mr. Sudip Sarkar, Adv.
Ms. Sarbani Mukhopadhyay, Adv.
Mr. Soumitra Mondal, Adv.

Hearing concluded on : 18th May, 2023

Judgement on : 19th May, 2023

Siddhartha Roy Chowdhury, J.:

1. This criminal appeal challenges the judgement and order passed by learned 9th Court of Judicial Magistrate, Alipore, 24-Parganas (South) in connection with the Complaint Case No. C 2532 of 2003, corresponding to TR No.730 of 2003. By the impugned judgement learned Trial Court recorded an order of acquittal in a proceeding under Section 138 of the NI Act.
2. Mr. Shataroop Purkayastha, learned counsel for the appellant assailing the impugned judgement submits that learned Trial Court failed to appreciate the evidence on record in its proper perspective and the judgement is the outcome of absolute misreading of evidence. It is contended by Mr. Purkayastha that Sri Soumen De and Smt.

Paramita De, took a sum of Rs.8,60,000/- from the Appellant as loan. Soumen De issued a cheque vide No.612517 dated 2nd January, 2003 drawn on State Bank of India, Esplanade Branch in discharge of their liability to repay the same. The cheque was presented to the State Bank of Hyderabad, Sarat Bose Road Branch which was returned dishonoured for insufficient fund. Statutory notice was given to the drawer of the cheque under Section 138 (b) of the NI Act, by the holder of the cheque, the Appellant herein, calling upon the drawer to pay the said money, but it was not adhered to. Hence, the petition of complaint was filed under Section 138 of the NI Act.

3. Learned trial court after complying with the provision of section 200 of the code of criminal procedure, issued process upon the accused persons who surrendered to the jurisdiction of learned trial court. Accused Soumen De stood the trial pleading his innocence
4. The complainant adduced evidence as PW-1 and he stood the test of cross-examination. In course of cross-examination he produced three documents admitted as exhibits-A, B and C. Those three documents substantiate the claim of the complainant that a sum of Rs.8,60,000/- was taken by the accused persons from time to time by executing those three documents.
5. It is further contended by learned counsel for the appellant as the cheque was issued by the drawer there is a presumption that the cheque was issued in discharge of the liability incurred by the drawer of the cheque, though the loan was taken by both the husband and the wife. The drawer of the cheque had the obligation to rebut the presumption of Section 139 of the NI Act by making out a probable

defence. The drawer of the cheque Sri Soumen De adduced evidence as DW-1. He has admitted the signature appearing on the cheque exhibit-2. During cross-examination he stated that he did not give any reply to the statutory notice issued by Dipak Kumar Shaw, the complainant as he had no liability to repay the amount. His ex-wife told him that she would take care of the loan.

6. According to Mr.Purkayastha, in view of the aforesaid statement of DW-1, learned Trial Court ought to have considered that the accused person, SaumenDey failed to discharge his onus to rebut the presumption as laid down under Section 139 of the NI Act. Learned Trial Court ought to have recorded an order of conviction.

On the contrary, learned Trial Court refused to accept the testimony of complainant that he lent money, as a sense of suspicion was injected as to the capacity of the complainant to lend the money.

7. Refuting the contention of Mr. Purkayastha, Mr. Debabrata Ray, learned counsel for the respondent no.2 submits that learned Trial Court did not examine the accused persons properly in the light of Section 251 of the Code of Criminal Procedure.
8. According to Mr. Roy, the accusation of offence was never read over and explained to the accused person and thus, he was seriously prejudiced. The accused persons stood the trial without being informed about the accusation of offence.
9. My attention is drawn to the order dated 24th August, 2011 which runs as follows:-

"Both sides are present.

Accds are examine in u/s 251 CrPC. Punishable offence u/s 138 NI Act.

The contents of Plea read over and explained to the acd are in Bengali which he pleaded not guilty by saying "nirdos" and claims to be trail. Fix 14/11/11 for evidence."

10. It is further submitted that proceeding under Section 138 of the NI Act is to be conducted in the light of Section 260 of the Code of Criminal Procedure. Learned Trial Judge did not follow the procedure as laid down under the Code of Criminal Proceeding. The omissions and infractions, as aforesaid, vitiates the trial.
11. According to Mr. Roy, learned trial court was justified in recording an order of acquittal for the simple reason that the complainant failed to establish that he had sufficient fund to give a sum of Rs.8,60,000/- to the accused person. As he failed to prove the source money, adverse presumption was the natural consequence and learned Trial Court was absolutely justified in passing the judgement impugned.
12. To buttress his point, Mr. Roy places reliance upon the judgement of Hon'ble Apex Court pronounced in **BASALINGAPPA VS. MUDIBASAPPA** reported in **2019 (5) SCC 418** wherein it is held:-

"23. We having noticed the ratio laid down by this Court in the above cases on [Section 118\(a\)](#) and [139](#), we now summarise the principles enumerated by this Court in the 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 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 the 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.*
- (v) It is not necessary for the accused to come in the witness box to support his defence.*

24. 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 PWI said that he does not remember. PWI 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.”

13. According to Mr. Roy, the accused person was not even examined under Section 313 of the Code of Criminal Procedure properly and for that reason also prejudice was caused to him as he did not have the opportunity to explain the incriminating circumstances.
14. True it is the learned Trial Court failed to exercise the jurisdiction vested upon the Court properly when the accused person was examined under Section 251 of the Code of Criminal Procedure. In this regard, it is pertinent to point out that by the order dated 20th April, 2011, the case was filed against Paramita De for the present as requisites for warrant of arrest was not filed. On 24th August, 2011 learned Magistrate, as it appears from the order sheet itself, examined accused persons and in the judgement learned Trial Court indicated that case was filed against Paramita De. The object of Section 251 is to make the accused person understand why he is being prosecuted. Under Section 251 of the Cr.P.C. the accused person should be made to understand the accusation of offence. In this case learned Trial Court was under the obligation to narrate the substance of accusation brought against the accused person while examining the accused person under Section 251 of the Code of Criminal Procedure.

But the accused person since claimed to be innocent it may be presumed that judicial act was done properly.

15. According to Mr. Purkayastha, it is mere irregularity and 6sec 55 curable under Section 464 of the Code of Criminal Procedure. To buttress his point Mr. Purkayastha relied upon the judgement of Hon'ble Apex Court pronounced in the case of State of **A.P. VS. THAKKIDIRAM REDDY & ORS.** reported in **(1998) 6 SCC 554** wherein it is held:-

“10. Sub-Section (1) of [Section 464](#) of the Code of Criminal Procedure, 1973 ('Code' for short) expressly provides that no finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact (emphasis supplied) been occasioned thereby. Sub-section (2) of the said section lays down the procedure that the Court of appeal, confirmation or revision has to follow in case it is of the opinion that a failure of justice has in fact been occasioned. The other section relevant for our purposes is [Section 465](#) of the Code; and it lays down that no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the proceedings, unless in the opinion of that Court, a failure of justice has in fact been occasioned. It further proves, inter alia, that in determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact

whether the objection could and should have been raised at an earlier stage in the proceedings.

11. This Court in [Willis \(William\) Slaney v. The State of Madhya Pradesh](#) [1995 (2) SCR 1140] elaborately discussed the applicability of [Sections 535](#) and [537](#) of the Code of Criminal Procedure 1898, which correspond respectively to [Section 464](#) and [465](#) of the Code, and held that in judging a question of prejudice, as of guilt, courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself. Viewed in the context of the above observations of this Court we are unable to hold that the accused persons were in any way prejudiced due to the errors and omissions in the charges pointed out by Mr.Arunachalam. Apart from the fact that this point was not agitated in either of the Courts below, from the fact that the material prosecution witnesses (who narrated the entire incident) were cross examined at length from all possible angles and the suggestions that were put forward to the eye witnesses we are fully satisfied that the accused persons were not in any way prejudiced in their defence. While on this point we may also mention that in their examination under [Section 313](#) of the Code, the accused persons were specifically told of their having committed offences (besides others) under [Sections 148](#) and [302/149](#) IPC. For all these reasons we reject the threshold contention of Mr.Arunachalam.”

16. It is apparent from the order dated 24th August, 2011 that accusation of offence was not narrated to the accused person, the way it should have been done. But the accused person stood the trial and adduced evidence. Conduct of accused person during trial rules out the remote possibility of him being prejudiced. Under such circumstances, I am not inclined to invoke the provision of sub-section (2) of Section 464 of the Code of Criminal Procedure.
17. In my opinion, the learned Trial Court had no reason to hold that the accused person had no liability to issue the cheque as he did not incur any liability by taking loan from the complainant. It was the wife of the accused person who took the loan. It is further observed by learned Trial Court that there was no evidence to show that the accused had the capacity to lend money. He did not have any licence to lend money as well.
18. I have perused the evidence on record as well as the order sheets of the learned trial court. It is the specific case of the complainant that he lent money to the wife of accused person, Paramita Dey as well as the accused Soumen De. Soumen De in discharge of such liability issued the cheque bearing no. 612517 for a sum of ₹ 8 60000.00. This fact stands admitted. When it is admitted by Soumen De that the cheque was issued by him, it is to be presumed that he issued the cheque in order to repay the loan incurred by him and his wife. The onus was shifted upon the drawer of the cheque, to rebut such presumption. In his bid to discharge his onus Soumen De, respondent no.2 took two specific defence. According to the respondent, the money was never received by him as loan other than

a sum of Rs.20,000/-. The loan was of taken by his wife and during subsistence of their marriage. His wife told him that she would take care of the loan. The other defence of the accused person is that the complainant did not have the capacity to extend a sum of Rs.8,60,000/- as loan.

In his testimony as DW1, Soumen De stated: – “I have not taken any loan of ₹ 8,60,000.00 from Dipak Shaw. I had no liability towards him.” During cross examination he admitted his signature appearing on the cheque, admitted as Exhibit 2. He further stated: – “.... Fact that after receiving notice I have not replied because I had no liability to repay the amount in the alleged cheque. My ex wife said that she will take care of the matter.” It is further evidence which he voluntarily stated during cross-examination “Some blank stamp papers and cheque signed by me were kept in custody of my ex-wife. It is fact that all documents cheques etc. that were used, were in the year 2003. I have not lodged any complaint/diary before the local police station stating that blank cheques and stamp papers bearing my signature have been used by my wife. It is fact that I have not prayed for issuing any such warrant before this court for recovery of said blank cheques and stamp papers bearing my signature that where in the custody of my ex-wife.(Voluntarily says) This is because my ex-wife stated that she will look after the matter.”

The stand taken by the accused person, in my humble opinion, appear to be mutually contradictory. If the loan is taken by his wife and his wife assured him that she would take care of the issue of repayment of loan, it indicates that the complainant had the capacity

to accommodate the accused person or his wife and to pay a sum of Rs.8,60,000/- towards loan, as claimed by the complainant. Therefore, in my humble opinion, the accused person failed to raise a probable defence to rebut the presumption under Section 139 of the NI Act.

19. In my view, the capacity of the complainant cannot be considered to be a valid ground to dismiss a proceeding under Section 138 of the NI Act when admittedly the cheque was issued for an amount When the equivalent to the amount of money taken as loan.

20. Provision of Section 138 of the N.I. Act, 1881 are extracted herein below:-

“138. Dishonour of cheque for insufficiency, etc. of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, ‘debt or other liability’ means a legally enforceable debt or other liability.”

21. From a reading of the said section, it is very clear that in order to attract the provisions of Section 138 of the N.I. Act, a cheque which is dishonoured, will have to be drawn by a person on an account maintained by him with the banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part of any debt or other liability. It is only such a cheque which is dishonoured would attract the provisions of Section 138 of the above Act against the drawer of the cheque.

22. The accused person tried to disown his liability by taking the plea that since it was his ex-wife who took the loan and assured him that she would take care of the loan, the cheque under his signature is of no consequence. This proposition is utterly contrary to the well settled principle of law. In this regard we can profitably use the judgement of Hon’ble Apex Court pronounced in the case of **Aparna A. Shah v. Sheth Developers (P) Ltd., (2013) 8 SCC 71, P.J. Agro Tech Ltd. v. Water Base Ltd., (2010) 12 SCC 146.**

23. In order to constitute an offence under Section 138 of the NI Act, Hon'ble Apex Court in **JUGESHSEHGAL V. SHAMSHER SINGH GOGI** reported in **(2009) 14 SCC 683** noted the following ingredients which are required to be fulfilled: (SCC pp. 687-88, para 13)

"13.(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;

(ii) the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier;

(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(v) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

Being cumulative, it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act."

Considering the language used in Section 138 of the NI ACT, it can be said that it is only the “drawer” of the cheque who can be made liable for the penal action under the provisions of the NI Act. It is settled law that strict interpretation is required to be given to penal statutes.

24. When drawer of the cheque issued the cheque and failed to rebut the presumption, there is hardly any reason to dismiss the petition of complaint on the ground that the loan was not taken by the drawer of the cheque. In fact, as the cheque was not issued by Paramita De, learned Trial Court had no reason to issue process against her in the proceeding under Section 138 of the N.I. Act, though she may be liable to legal action in other forum.
25. Mr. Roy learned counsel for the respondent vehemently argued that the appellant/ complainant failed to prove that he had sufficient means to lend a sum of Rs. 8,60,000.00/-. Therefore dismissal of his petition of complaint was fait accompli. From the trend of cross-examination of the complainant, PW1 and from the testimony of DW1 it appears that the accused person wanted to create a doubt in the mind of learned trial court and I have no hesitation to say that it was done quite successfully. The impugned judgement demonstrates that the learned trial court decided the issue as if the complainant/appellant had the obligation to prove his case beyond reasonable doubt. This approach of the learned trial court was absolutely erroneous.
26. Hon’ble Apex Court in **ROHITBHAIJIVANLAL PATEL V. STATE OF GUJARAT**, reported in **(2019) 18 SCC 106** held:-

“21. On perusing the order of the trial court, it is noticed that the trial court proceeded to pass the order of acquittal on the mere ground of “creation of doubt”. We are of the considered view that the trial court appears to have proceeded on a misplaced assumption that by mere denial or mere creation of doubt, the appellant had successfully rebutted the presumption as envisaged by Section 139 of the NI Act. In the scheme of the NI Act, mere creation of doubt is not sufficient.”

27. It is trite to say that an accused in a trial under section 138 of the NI Act has only two options. He can show that consideration or debt did not exist or the non-existence of any consideration or debt is so probable that any man of ordinary prudence would hold that no consideration or debt existed. It goes without saying however, that the standard of proof is that of preponderance of probability. If the accused is able to raise a probable defence which creates a doubt as to the existence of any legally enforceable debt or liability, the prosecution shall fail.

28. Having admitted the fact that the cheque Exhibit 2 contains his signature, the accused person has incurred the liability to pay the money and also he has made himself culpable for the offence within the meaning of section 138 of the NI Act. By several judicial pronouncement, apart from the statutory provision as laid down under section 138 of the NI Act, it has become settled principle of law that the person who issues the cheque drawn on an account maintained by him for payment of any amount to another person, from out of that account for the discharge, in whole or in part of any debt or liability, in case of dishonour of the cheque shall have to face

the consequences. The plea that the loan was incurred by someone else and not by the drawer of the cheque, shall not absolve him from the statutory liability, unless a probable defence, as discussed hereinbefore is made out by the drawer of the cheque. In this regard we can profitably use the judgement of Hon'ble Apex Court in **P.J. Agro Tech Ltd. v. Water Base Ltd., (2010) 12 SCC 146; from Aparna A. Shah v. Sheth Developers (P) Ltd., (2013) 8 SCC 71.**

29. Mr. Roy, learned counsel for the respondent submits that this Court has no reason to unsettle the finding of the learned court below, merely on the ground that learned trial court could have taken a different view based on the evidence on record. But I cannot inspire myself to be agreement with the view catered by Mr. Roy. True it is an order of acquittal should not be normally interfered with unless it is found upon marshalling of the evidence on record that the judgement passed by learned trial court is either wholly unsustainable in law or manifestly perverse.

30. Hon'ble Supreme Court in the case of **GHUREY LAL VS. STATE OF U.P.** reported in **(2008) 10 SCC 450** held:-

"68. *In Chandrappa & Others v. State of Karnataka* (2007) 4 SCC 415, this Court held:

"(1) *An appellate court has full power to review, reappraise 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 emphasise 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."

69. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under [sections 378](#) and [386](#) of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappraise the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty.

The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong."

31. Hon'ble Apex Court in the case of **SATYAVIR SINGH VS STATE OF U.P** reported in **(2010) 3 SCC 174** held:-

"18. Before the appellate court, where the judgment of acquittal is recorded, two important aspects emerge from such judgment. Firstly, there is presumption of innocence of the accused person in our criminal jurisprudence and secondly, the concerned court has recorded the finding in favour of the accused and disbelieved the prosecution and has founded as a matter of fact that the prosecution has failed to prove its case beyond reasonable doubt, thus giving benefit to the accused. Both these presumptions - jurisprudential and in regard to the factual matrix must be kept in mind and unless the conclusions reached by the court were palpably erroneous or contrary to law or it is likely to result in injustice, the High Court may be reluctant in interfering with the judgment of acquittal. Reference in this regard can also be made to the case of [Khedu Mohton & Ors. v. State of Bihar](#) : 1970 (2) SCC 450.

20. In a very recent judgment a Bench of this Court in the case of [Arulvelu & Anr. v. State](#) represented by the Public Prosecutor & Anr. : 2009 (10) SCC 2006, while referring with approval the judgment of another equal (Division) Bench in the case of [Ghurey Lal v. State of U. P.](#) : 2008 (10) SCC 450 and

relying upon various judgments of the court stated the following principles :

"34 *In Ghurey Lal v. State of Uttar Pradesh* [(2008) 10 SCC 450] a two Judge Bench of this Court of which one of us (Bhandari, J.) was a member had an occasion to deal with most of the cases referred in this judgment. This Court provided guidelines for the Appellate Court in dealing with the cases in which the trial courts have acquitted the accused. The following principles emerge from the cases above:

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.
 2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.
 3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.
 4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.
 5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.
21. In addition to the above re-statement of principles, the court also referred to what findings could be termed as 'perverse' so as to call for interference by the higher court hearing the appeal against judgment of acquittal. 'perverse'

was stated to be a behaviour which most of the people would take wrong, unacceptable, unreasonable and a 'perverse' verdict may probably be defined as one that is not only against the weight of the evidence but is altogether against the evidence. Besides, a finding being 'perverse', it could also suffer from the infirmity of distorted conclusions and glaring mistakes. In addition thereto there can be cases where for substantial and compelling reasons, good and sufficient grounds, very strong circumstances and to avoid the ends of justice being defeated, the higher courts have to interfere with the judgment of acquittal recorded by the lower court.

22. From the above enunciated principles it is clear that judgment of acquittal can be interfered by the appellate court. However, exercise of judicial discretion would be guided by these principles. It is neither permissible nor possible to enunciate any straightjacket formula which can universally be applied to all the cases. The court will have to exercise its discretion keeping in view the facts and circumstances of a given case. The court within the stated parameters will well be within its jurisdiction to interfere with the judgment of acquittal. Thus, we will have to examine the matter from the point of view whether in the facts of the present case and evidence on record, High Court was justified in reversing the judgment of acquittal and convicting the accused of an offence under [Section 307](#) of the Code. conviction - the High Courts/appellate courts must rule in favour of the accused."

32. It goes without saying that an accused person is presumed to be innocent unless proved guilty and an order of acquittal strengthens such presumption in favour of the accused person but the same rule cannot be made applicable with same rigour while dealing with an offence under section 138 of the NI Act, where a presumption is

available that the holder of the cheque received the cheque for the discharge of any debt or liability either wholly or in part. This presumption is rebuttable. The accused person has failed to rebut such presumption.

33. As I have discussed hereinbefore, learned trial court committed grave mistake in recording an order of acquittal, upon absolute misreading of not only the evidence on record but also upon erroneous understanding of statutory provision of law as laid down under section 138 of the NI Act. Learned Trial Court even after drawing up presumption, proceeded with the view that the complainant was to prove the case beyond reasonable doubt. It was but a fundamental error committed by learned Trial Court. The impugned judgement, in my humble opinion, therefore, is not sustainable in law and should be set aside, which I accordingly do.

34. The appeal is, thus, allowed on contest but without costs in the following terms: – the respondent/accused person Soumen De is found guilty to the charge under Section 138 of the Negotiable Instruments Act, 1881 for dishonour of cheque of Rs. 8,60,000.00/- as drawn by him in favour of the appellant/complainant. The respondent shall pay fine to the extent of double the amount of cheque i.e. Rs. 17,20,000.00/- within 3 months from date with the stipulation that in case of default of payment of fine, the respondent accused shall undergo imprisonment for a period of 2 years. On recovery of amount of fine of Rs. 16,00,000/- shall be given to the appellant as compensation.

35. The copy of judgement along with the lower court record be sent down to learned Trial Court for information and necessary compliance.
36. Urgent photostat certified copy of this judgement, if applied for, be given to the learned advocates for the parties on usual undertaking.

SIDDHARTHA
ROYCHOWDHURY

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(SIDDHARTHA ROY CHOWDHURY, J.)