IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3322 of 2013

Subhankar Mukherjee
-Vs-
M/s. Sundaram Enclaves Pvt. Ltd. & Anr.

For the Petitioner : Mr. Partha Sarathi Bhattacharya
Mr. Bhaskar Seth
Ms. Sukla Das Chandra

For the Opposite Party : Mr. Kallol Mondal

Heard on : 28.06.2023, 18.07.2023, 20.07.2023, 09.08.2023, 09.01.2024

Judgment on : 21.03.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application is directed against the judgment and order dated 21.01.2013 passed by the Learned Metropolitan Magistrate, 12th Court, Calcutta in connection with Case No. C-1099/2005 (T.R. 1079/2005), thereby convicting the accused under Section 138 of the Negotiable Instrument Act, 1881 and accordingly sentenced him to pay compensation to the tune of Rs.18,00,000/- (Rupees Eighteen Lakhs) in default to suffer simple imprisonment for 6 months.

2. Sometimes in the year 2005 one Ajoy Kumar Nandi, the then Manager of M/s. Sundaram Enclaves Pvt. Ltd. submitted a petition of complaint on behalf of the said Company against the petitioner. The said Ajoy Kumar

Nandi died on 05.02.2007 and after his demise Sarajit Samanta, one of the Directors of the said M/s. Sundaram Enclaves Pvt. Ltd., have been authorized to represent the said Company in the said proceeding.

3. Brief fact of the prosecution case, in short was that the opposite party no. 1 extended an accommodation loan to the petitioner of Rs.14,00,000/- (Rupees Fourteen Lakhs) against a letter dated 30.03.2005 written by him and a post-dated Cheque of same amount being no. 384184 dated 15.05.2005 on United Bank of India, Shyambazar Market (Extn.) Branch on 11.11.2005. The Cheque was deposited in the same Branch for transfer but was dishonoured with an endorsement 'Account Closed'. Notice dated 16.11.2005 was sent and served on the petitioner on 18.11.2005 but remain unpaid. Consequently, the opposite party no. 1 instituted this case.
4. Sarajit Samanta was examined and cross-examined as PW-1 and Ajoy Kumar Nandy but the petitioner did not get any opportunity to cross-examine this witness as he expired. PW-1 deposed for the opposite party no. 1 proved the cheque, return memo, letter written by the petitioner, notice and A/D Card and those were marked as Exhibits serially.
5. The petitioner examined himself as DW-1 and proved his document, beside others, i.e. letter dated 09.05.2005 (Ext. B), certificate of posting notice under Section 66 of Evidence Act (Ext. A) to prove that no legal liability arose out of the impugned cheque.
6. After perusing the evidence-on-record and hearing of argument of both the sides, Learned Metropolitan Magistrate, 12th Court, Calcutta by her judgment and order dated 21.01.2013, was pleased to find the petitioner is

guilty for commission of offence punishable under Section 138 of the Negotiable Instrument Act and convicted him accordingly under Section 255(2) of Cr.P.C. and the petitioner was sentenced to pay compensation to the tune of Rs.18,00,000/- (Eighteen Lakhs) to the opposite party no. 1 in default to suffer simple imprisonment for 6 months and such amount of compensation should be paid with 30 days from the date of this order and the amount, if realized would be handed over to the complainant/opposite party no. 1.

7. The Learned Advocate for the petitioner submitted that:-

   i. The Trial Court based its decisions on the following points:

      a) The accused admitted the acknowledgement of loan and the letter dated 30.03.2005 issued by the accused in favour of the complainant viz. Exhibit-2 duly proved. However, the Learned Trial Court failed to appreciate that the complainant did not mention anywhere how and when the loan amount was transmitted to the accused as no document has been produced to Court to show that the said amount was transferred to accused by the complainant.

      b) Exhibit-B, is a copy of the letter dated 09.05.2005 issued by the accused in favour of the complainant. Though the Learned Trial Court has expressed its dubiousness as to whether the original copy of it, was actually sent to the complainant or not.

      c) The Learned Court proceeded as per principle envisaged under Section 58 of the Evidence Act, fact admitted need not be proved and was of the opinion that the accused failed to rebut the mandatory presumption under Section 139 of the N.I. Act, 1881.

8. It was further submitted by the Learned Advocate for the petitioner as follows:-

a) Exhibit-2, a letter dated 30.03.2005 was a precondition of granting the loan which was never granted. Exhibit-B, a letter dated 09.05.2005, by which the petitioner intimidated the complainant as to sudden demise of his father and the loan was not required. The said letter also mentioned the petitioner did not receive any loan from the complainant till date and also the cheque in question was not issued in as a precondition of loan which was never granted and such cheque was not issued in order to discharge any liability of the petitioner towards the complainant.

b) A letter dated 01.11.2011 was issued by the Learned Advocate of the accused to the complainant giving notice to produce the letter dated 09.05.2005 in original. Such letter was exhibited as Exhibit-C. The service of the said letter was effective. The complainant company became aware of such letter at the time of exhibiting the same during the course of trial. Nevertheless, such original letter dated 09.05.2002 was not produced by the complainant. Therefore, the fact attracted the provision under Section 114 (g) of the Indian Evidence Act.

c) In the decision reported in AIR 2008 SC 278 in case of John K John Versus Tom Verghees and Anr., it is held that the presumption under Section 139 of the Negotiable Instruments Act could be raised in respect of some consideration and burden is on the complainant to show that he had paid the amount shown in the cheque. Whenever there is huge amount shown in the cheque, despite the burden to rebut on the accused, it is equally necessary to know how the complainant advanced such a huge amount.

d) Partially differing with the case of Krishna Janardhan Bhat (AIR 2008 SC 1325), in the case Rangappa Versus Mohan reported in AIR 2010 SC 1898 the Hon'ble Supreme Court is of the opinion that the presumption mandated by Section 139 of the Negotiable Instruments Act did indeed include the existence of legally enforceable debt or liability. It was further held that there could be no doubt that there was an initial presumption which favoured the complainant. Section 139 of the said Act was an example of a reverse onus clause that had been included in furtherance of legislative objective of improving the credibility of negotiable instruments. While Section 138 of the said Act specifies a strong criminal remedy in relation to the dishonour of cheque, the rebuttal of presumption under Section 139 of the said Act was a device to prevent undue delay in course of litigation. The offence made punishable under Section 138 of the Act could be better described as a regulatory offence since the dishonour of a cheque was largely in the nature of civil wrong with an impact 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 clause and the accused could not be expected to discharge an unduly high standard of proof. In the absence of compelling justification, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Accordingly, it is a settled position that when an accused has to rebut the presumption under Section 139 of the said Act, the standard of proof for doing so is that of 'preponderance of probabilities'.

e) Regard to rebuttal of presumption and extent of evidence required to rebut the presumption and the settled proposition of law, the following decisions of the Apex Court may be taken in to account:

1) In *Vijay Vs. Laxman reported in (2013)3SCC 86*, it has been observed by the Hon'ble Apex Court that it is undoubtedly true that when a cheque is issued by a person who has signed on the cheque and the complainant reasonably discharges the burden that the cheque had been issued towards a lawful payment, it is

for the accused to discharge the burden under Section 118 and 139 of the N.I. Act that the cheque had not been issued towards discharge of a legal debt but was issued by way of security or any other reason on account of some business transaction or was obtained unlawfully.

2) In *Basalingappa Vs. Mudibasappa reported in (2019)5 SCC 418,* it has been observed by the Hon'ble Apex Court 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". 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. Thereafter, in the light of those authorities above, it is submitted that the accused/petitioner has succeeded in rebutting the presumption under Section 139 of the N.I. Act so far the question of legally enforceable debt or liability allegedly involved in the case. On the other hand, the complainant miserably failed to prove that any loan was provided to the accused.

9. The Learned Advocate for the opposite party stated that the accused petitioner admitted his signature on the cheque and the burden upon him to prove that the cheque was not issued in discharge of legally enforceable debt or liability which the accused had failed to rebut the mandatory presumption under Section 139 of the N.I. Act. It was further submitted that the present accused being a bank employee was aware of the salient feature of a negotiable instrument and when he wrote a letter acknowledging the norm it can be presumed that he issued the same knowing its consequences and the reason for such issuance and cannot retract or abdicate his responsibility in discharging his legally enforceable debt and relied on the following decisions:-

10. The Hon'ble Supreme Court in ***APS Forex Services (P) Ltd. v. Shakti International Fashion Linkers,***[1] held the following:-

> **"7.** *We have heard the learned counsel appearing on behalf of the respective parties at great length.*
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> ***7.1.*** *We have considered minutely the evidence on record, both oral as well documentary. We have also considered and gone through the judgment and order passed by the courts below acquitting the respondent-accused for the offence under Section 138 of the NI Act.*
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> *1.* ***7.2.*** *What is emerging from the material on record is that the issuance of cheque by the accused and the signature of the accused on the said cheque are not disputed by the accused. The accused has also not disputed that there were transactions between the parties. Even as per the statement of the accused, which was recorded at the time of the framing of the charge, he has admitted that some amount was due and payable. However, it was the case on behalf of the accused that the cheque was given by way of security and the same has been misused by the complainant.*

[1](2020) 12 SCC 724

However, nothing is on record that in the reply to the statutory notice it was the case on behalf of the accused that the cheque was given by way of security. Be that as it may, however, it is required to be noted that earlier the accused issued cheques which came to be dishonoured on the ground of "insufficient funds" and thereafter a fresh consolidated cheque of Rs 9,55,574 was given which has been returned unpaid on the ground of "STOP PAYMENT". Therefore, the cheque in question was issued for the second time. Therefore, once the accused has admitted the issuance of cheque which bears his signature, there is presumption that there exists a legally enforceable debt or liability under Section 139 of the NI Act. However, such a presumption is rebuttable in nature and the accused is required to lead the evidence to rebut such presumption. The accused was required to lead evidence that the entire amount due and payable to the complainant was paid.

8. *On the presumption under Section 139 of the NI Act, few decisions of this Court are required to be referred to and considered.*

8.1. *In K.N. Beena v. Muniyappan [K.N. Beena v. Muniyappan, (2001) 8 SCC 458 : 2002 SCC (Cri) 14] , it is observed and held by this Court that under Section 118 of the NI Act, unless the contrary is proved, it is to be presumed that the negotiable instruments (including a cheque) had been made or drawn for consideration. It is further observed and held that under Section 139, the Court has to presume, unless the contrary is proved, that the holder of the cheque received the cheque for discharge, in whole or in part, of a debt or liability. It is further observed that thus, in complaints under Section 138, the Court has to presume that the cheque had been issued for a debt or liability. This presumption is rebuttable. However, the burden of proving that the cheque has not been issued for a debt or liability is on the accused.*

8.2. *In Rangappa [Rangappa v. Sri Mohan, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184] again, this Court* *had an occasion to consider the presumption of existence of a legally enforceable debt or liability under Section 139 of the NI Act. In the aforesaid decision, after considering other decisions of this Court on Sections 118(a) and 139 of the NI Act, it is observed and held that there exists a presumption which favours the complainant. It is further observed that the presumption under Section 139 of the NI Act is in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein there is existence of legally enforceable debt or liability can be contested. In para 27, this Court observed and has held as under : (SCC pp. 453-54)*

"27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard of proof."

8.3. *In Kishan Rao [Kishan Rao v. Shankargouda, (2018) 8 SCC 165 : (2018) 4 SCC (Civ) 37 : (2018) 3 SCC (Cri) 544] after considering the decision of this Court in Kumar Exports v. Sharma Carpets [Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513 : (2009) 1 SCC (Civ) 629 : (2009) 1 SCC (Cri) 823] , it is observed and held that the accused may adduce evidence to rebut the presumption, but mere denial regarding existence of debt shall not serve any purpose. This Court in para 19 of that judgment considered paras 14, 15, 18 and*

19 of the decision in Kumar Exports [Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513 : (2009) 1 SCC (Civ) 629 : (2009) 1 SCC (Cri) 823] as under : (Kishan Rao case [Kishan Rao v. Shankargouda, (2018) 8 SCC 165 : (2018) 4 SCC (Civ) 37 : (2018) 3 SCC (Cri) 544] , SCC pp. 171-72)

19. This Court in Kumar Exports v. Sharma Carpets [Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513 : (2009) 1 SCC (Civ) 629 : (2009) 1 SCC (Cri) 823] , had considered the provisions of the Negotiable Instruments Act as well the Evidence Act. Referring to Section 139, this Court laid down the following in paras 14, 15, 18 and 19 : (SCC pp. 519-20)

'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 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 of 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".

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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.'"

8.4. *Now so far as the reliance is placed by the learned counsel appearing on behalf of the accused on the decision of this Court in Basalingappa [Basalingappa v. Mudibasappa, (2019) 5 SCC 418 : (2019) 2 SCC (Cri) 571] , on going through the said decision, we are of the opinion that the said decision shall not be applicable to the facts of the case on hand and/or the same shall not be of any assistance to the accused. In that case, before this Court, the defence by the accused was that the cheque amount was given by the complainant to the accused by way of loan. When the* *proceedings were initiated under Section 138 of the NI Act, the accused denied the debt liability and the accused raised the defence and questioned the financial capacity of the complainant. To that, the complainant failed to prove and establish his financial capacity. Therefore, this Court was satisfied that the accused had a probable defence and consequently, in absence of the complainant having failed to prove his financial capacity, this Court acquitted the accused. In the present case, the accused never questioned the financial capacity of the complainant. We are of the view that whenever the accused has questioned the financial capacity of the complainant in support of his probable defence, despite the presumption under Section 139 of the NI Act about the presumption of legally enforceable debt and such presumption is rebuttable, thereafter, the onus shifts again on the complainant to prove his financial capacity and at that stage, the complainant is required to lead the evidence to prove his financial capacity, more particularly when it is a case of giving loan by cash and thereafter issuance of a cheque. That is not the case here.*

***9.** Coming back to the facts in the present case and considering the fact that the accused has admitted the issuance of the cheques and his signature on the cheque and that the cheque in question was issued for the second time, after the earlier cheques were dishonoured and that even according to the accused some amount was due and payable, there is a presumption under Section 139 of the NI Act that there exists a legally enforceable debt or liability. Of course such presumption is rebuttable in nature. However, to rebut the presumption, the accused was required to lead the evidence that full amount due and payable to the complainant has been paid. In the present case, no such evidence has been led by the accused. The story put forward by the accused that the cheques were given by way of security is not believable in absence of further evidence to rebut the presumption and more particularly the cheque in question* *was issued for the second time, after the earlier cheques were dishonoured. Therefore, both the courts below have materially erred in not properly appreciating and considering the presumption in favour of the complainant that there exists legally enforceable debt or liability as per Section 139 of the NI Act. It appears that both, the learned trial court as well as the High Court, have committed error in shifting the burden upon the complainant to prove the debt or liability, without appreciating the presumption under Section 139 of the NI Act. As observed above, Section 139 of the Act is an example of reverse onus clause and therefore, once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter, it is for the accused to rebut such presumption by leading evidence.*

10. *In view of the reasons stated above, the impugned judgment and order [APS Forex Services (P) Ltd. v. Shakti International Fashion Linkers, 2018 SCC OnLine Del 8546] passed by the High Court and that of the Metropolitan Magistrate acquitting the original respondent-accused herein for the offence under Section 138 of the NI Act cannot be sustained and the same deserves to be quashed and set aside and are accordingly quashed and set aside. The original respondent-accused herein are held guilty for the offence under Section 138 of the NI Act. All the original respondent-accused herein are therefore, convicted under Section 138 of the NI Act. Original Accused 2 to 4-Respondents 2 to 4 herein are sentenced to undergo three months' simple imprisonment with a fine of Rs 10,000 each and in default thereof to undergo further one month's simple imprisonment. The original respondent-accused herein are also directed to pay a sum of Rs 19,11,148 to the original complainant by way of compensation to be paid within a period of eight weeks from today.*

11. *The present appeal is accordingly allowed.*

Criminal Appeal No. 272 of 2020

12. *Now so far as this appeal arising out of the impugned judgment and order [APS Forex Services (P) Ltd. v. Shakti International Fashion Linkers, 2018 SCC OnLine Del 8547] passed by the High Court in Crl. LP No. 259 of 2018 arising out of the judgment and order passed by the learned trial court in Criminal Complaint No. 62/15 (new No. 613738/16) acquitting the original accused for the offence under Section 138 of the NI Act is concerned, the only difference is with respect to the cheques amount. In the present case, four cheques each of Rs 1,00,000 were issued which came to be dishonoured. Except the cheques amount, there is no difference.*

13. *For the reasons stated in Criminal Appeal No. 271 of 2020 which has been allowed [Set out in paras 3 to 11, above.] today, this appeal is also allowed. The impugned judgment and order passed by the High Court as well as that of the trial court acquitting the original respondent-accused herein for the offence under Section 138 of the NI Act cannot be sustained and the same deserves to be quashed and set aside and are accordingly quashed and set aside. The original respondent-accused herein are held guilty for the offence under Section 138 of the NI Act. All the original respondent-accused herein are therefore, convicted under Section 138 of the NI Act. Original Accused 2 to 4, Respondents 2 to 4 herein are sentenced to undergo three months' simple imprisonment with a fine of Rs 10,000 each and in default thereof, to undergo further one month's simple imprisonment. The original accused, respondents herein are also directed to pay a sum of Rs 8,00,000 to the original complainant by way of compensation to be paid within a period of eight weeks from today."*

11. In ***Rohitbhai Jivanlal Patel v. State of Gujarat*[2],** the Hon'ble Supreme Court held the following:-

> ***"15.*** *So far the question of existence of basic ingredients for drawing of presumption under Sections 118 and 139 of the NI Act is concerned, apparent it is that the appellant-accused could not deny his signatures on the cheques in question that had been drawn in favour of the complainant on a bank account maintained by the accused for a sum of Rs 3 lakhs each. The said cheques were presented to the bank concerned within the period of their validity and were returned unpaid for the reason of either the balance being insufficient or the account being closed. All the basic ingredients of Section 138 as also of Sections 118 and 139 are apparent on the face of the record. The trial court had also consciously taken note of these facts and had drawn the requisite presumption. Therefore, it is required to be presumed that the cheques in question were drawn for consideration and the holder of the cheques i.e. the complainant received the same in discharge of an existing debt. The onus, therefore, shifts on the appellant-accused to establish a probable defence so as to rebut such a presumption.*
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> ***16.*** *In Rangappa v. Sri Mohan [Rangappa v. Sri Mohan, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184] , this Court has reiterated and summarised the principles relating to presumptions under Sections 118 and 139 of the NI Act and rebuttal thereof in the following : (SCC pp. 453-54, paras 26-28)*
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> *"26. In the light of these extracts, we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna JanardhanBhat [Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166] may not be*

[2](2019) 18 SCC 106

correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it is based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.

27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard of 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."*

***17.** On the aspects relating to preponderance of probabilities, the accused has to bring on record such facts and such circumstances which may lead the Court to conclude either that the consideration did not exist or that its non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that the consideration did not exist. This Court has, time and again, emphasised that though there may not be sufficient negative evidence which could be brought on record by the accused to discharge his burden, yet mere denial would not fulfil the requirements of rebuttal as envisaged under Sections 118 and 139 of the NI Act. This Court stated the principles in Kumar Exports [Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513 : (2009) 1 SCC (Civ) 629 : (2009) 1 SCC (Cri) 823] as follows : (SCC pp. 520-21, paras 20-21)*

"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, therefore, the presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue."

18. *In the case at hand, even after purportedly drawing the presumption under Section 139 of the NI Act, the trial court proceeded to question the want of evidence on the part of the complainant as regards the source of funds for advancing loan to the accused and want of examination of relevant witnesses who* *allegedly extended him money for advancing it to the accused. This approach of the trial court had been at variance with the principles of presumption in law. After such presumption, the onus shifted to the accused and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the appellant-accused. The aspect relevant for consideration had been as to whether the appellant-accused has brought on record such facts/material/circumstances which could be of a reasonably probable defence.*

19. *In order to discharge his burden, the accused put forward the defence that in fact, he had had the monetary transaction with the said Shri Jagdishbhai and not with the complainant. In view of such a plea of the appellant-accused, the question for consideration is as to whether the appellant-accused has shown a reasonable probability of existence of any transaction with Shri Jagdishbhai? In this regard, significant it is to notice that apart from making certain suggestions in the cross-examination, the appellant-accused has not adduced any documentary evidence to satisfy even primarily that there had been some monetary transaction of himself with Shri Jagdishbhai. Of course, one of the allegations of the appellant is that the said stamp paper was given to Shri Jagdishbhai and another factor relied upon is that Shri Jagdishbhai had signed on the stamp paper in question and not the complainant.*

19.1. *We have examined the statement of Shri Jagdishbhai as also the said writing on stamp papers and are unable to find any substance in the suggestions made on behalf of the appellant-accused.*

19.2. *The said witness Shri Jagdishbhai, while pointing out his acquaintance and friendship with the appellant as also with the* *respondent, asserted in his examination-in-chief, inter alia, as under:*

"Accused when he comes to our shop where the complainant in the matter Shashimohan also be present that in both the complainant and accused being our friends, were made acquaintance with each other. The accused had necessity of money in his business, in my presence, had demanded Rs 22,50,000 (Rupees twenty-two lakhs fifty thousand) on temporary basis. And thereafter, the complainant from his family members by taking in piecemeal had given to the accused in my presence. Thereafter, on demanding the money by the complainant, the accused had given seven (7) cheques to the complainant in our presence but such cheques being washed out in rainy water and on informing me by the complainant I had informed to the accused. Thereafter, Rohitbhai had given other seven (7) cheques to the complainant in my presence and the deed was executed on Rs 100 stamp paper in there is my signatures."

19.3. *This witness was cross-examined on various aspects as regards the particulars in the writing on the stamp paper and the date and time of the transactions. In regard to the defence as put in the cross-examination, the witness stated as under:*

"I have got shop in National Plaza but in rain no water logging has taken place. It is not true that there had been no financial dealings between me and the accused today. It is not true that I had given rupees ten lakhs to the accused Rohitbhai on temporary basis. It is not true that for the amount given to the accused, I had taken seven blank duly cheques also blank stamp paper without signatures. It is not true that there was quarrel between me and the accused in the matter of payment of interest. It is not true that even after the payment of Rs ten lakhs and the huge amount of the interest in the matter of interest quarrel was made. It is not true that due to the reason of quarrel with the accused, in the cheques of the accused lying with me by making obstinate writing has filed the false

complaint through Shashimohan Goyanka. It is not true that no financial dealings have taken place between the complainant and the accused. Therefore I also the complainant both at the time of evidence the accused at what place, on what date, at what time, the amount taken has not been able to make clearly. (sic) It is not true that the blank stamp paper duly signed were lying in which obstinate writing has been made therefore the same has not been registered through Sub-Registrar. It is not true that the dealings have been made between me and accused therefore there is my signatures and the signatures of the accused and the complainant has not signed. It is not true that any types of dealings between the accused and the complainant having not been done in my presence therefore in my statement no clarification has been given. It is not true that the accused in my presence as mentioned in the complaint any cheque has not been given. It is not true that I in collusion with the complainant to usurp the false amount the false complaint has been filed through Shashimohan Goyanka. It is not true that in support of the complaint of Shashimohan Goyanka is giving false statement."

19.4. *The statement of Shri Jagdishbhai does not make out any case in favour of the appellant-accused. It is difficult to say that by merely putting the suggestion about the alleged dealing to Shri Jagdishbhai, the appellant-accused has been able to discharge his burden of bringing on record such material which could tilt the preponderance of probabilities in his favour.*

19.5. *The acknowledgment on the stamp paper as executed by the appellant on 21-3-2007 had been marked with different exhibit numbers in these 7 cases. In Complaint Case No. 46499 of 2008, the same is marked as Ext. 54 and reads as under:*

"Today the executor I Rohit Patel Ranchhodray Masala is a partner. Due to the financial difficulties having been arised, I have taken Rs

22,500,000 (Rupees twenty-two thousand fifty thousand only-sic) from my group which are to be paid to Shashimohan Goyanka.

With reference to that today I have given seven (7) cheques of Corporation Bank, Alkapuri Branch Bearing Nos. 763346 to 762252 amounting to Rs 22,50,000 (Rupees twenty-two lakhs fifty thousand only) Dates : (1) 1-4-2008, (2) 1-5-2008 (3) 1-7-2008, (4) 1-8-2008 (5) 1-10-2008 (6) 1-11-2008 (7) 1-12-2008 the account of which is 40007.

Earliest these cheques were given but due to rain water logging the said cheques having been washed out (7) cheques have again been given which is acceptable to me."

19.6. *The fact of the matter remains that the appellant could not deny his signatures on the said writing but attempted to suggest that his signatures were available on the blank stamp paper with Shri Jagdishbhai. This suggestion is too remote and too uncertain to be accepted. No cogent reason is available for the appellant signing a blank stamp paper. It is also indisputable that the cheques as mentioned therein with all the relevant particulars like cheque numbers, name of bank and account number are of the same cheques which form the subject-matter of these complaint cases. The said document bears the date 21-3-2007 and the cheques were post-dated, starting from 1-4-2008 and ending at 1-12-2008. There appears absolutely no reason to discard this writing from consideration.*

19.7. *One of the factors highlighted on behalf of the appellant is that the said writing does not bear the signatures of the complainant but and instead, it bears the signatures of the said Shri Jagdishbhai. We find nothing unusual or objectionable if the said writing does not bear the signatures of the complainant. The said writing is not in the nature of any bipartite agreement to be signed by the parties thereto. It had been a writing in the nature of acknowledgment by the appellant-accused about existence of a debt; about his liability to* *repay the same to the complainant; about his having issued seven post-dated cheques; about the particulars of such cheques; and about the fact that the cheques given earlier had been washed away in the rain water logging. Obviously, this writing, to be worth its evidentiary value, had to bear the signatures of the accused, which it does. It is not unusual to have a witness to such a document so as to add to its authenticity; and, in the given status and relationship of the parties, Shri Jagdishbhai would have been the best witness for the purpose. His signatures on this document, therefore, occur as being the witness thereto. This document cannot be ruled out of consideration and existing this writing, the preponderance of probabilities lean heavily against the appellant-accused.*

20. *Hereinabove, we have examined in detail the findings of the trial court and those of the High Court and have no hesitation in concluding that the present one was clearly a case where the decision of the trial court suffered from perversity and fundamental error of approach; and the High Court was justified in reversing the judgment of the trial court. The observations of the trial court that there was no documentary evidence to show the source of funds with the respondent to advance the loan, or that the respondent did not record the transaction in the form of receipt of even kachcha notes, or that there were inconsistencies in the statement of the complainant and his witness, or that the witness of the complaint was more in the know of facts, etc. would have been relevant if the matter was to be examined with reference to the onus on the complaint to prove his case beyond reasonable doubt. These considerations and observations do not stand in conformity with the presumption existing in favour of the complainant by virtue of Sections 118 and 139 of the NI Act. Needless to reiterate that the result of such presumption is that existence of a legally enforceable debt is to be presumed in favour of the complainant. When such a presumption is drawn, the factors relating to the want of* *documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not. The other observations as regards any variance in the statement of complainant and witness; or want of knowledge about dates and other particulars of the cheques; or washing away of the earlier cheques in the rains though the office of the complainant being on the 8th floor had also been irrelevant factors for consideration of a probable defence of the appellant. Similarly, the factor that the complainant alleged the loan amount to be Rs 22,50,000 and seven cheques being of Rs 3,00,000 each leading to a deficit of Rs 1,50,000, is not even worth consideration for the purpose of the determination of real questions involved in the matter. May be, if the total amount of cheques exceeded the alleged amount of loan, a slender doubt might have arisen, but, in the present matter, the total amount of 7 cheques is lesser than the amount of loan. Significantly, the specific amount of loan (to the tune of Rs 22,50,000) was distinctly stated by the appellant-accused in the aforesaid acknowledgment dated 21-3-2017.*

***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.*

***22.** The result of discussion in the foregoing paragraphs is that the major considerations on which the trial court chose to proceed clearly show its fundamental error of approach where, even after drawing the presumption, it had proceeded as if the complainant was to prove his case beyond reasonable doubt. Such being the fundamental flaw on the part of the trial court, the High Court cannot* *be said to have acted illegally or having exceeded its jurisdiction in reversing the judgment of acquittal. As noticed hereinabove, in the present matter, the High Court has conscientiously and carefully taken into consideration the views of the trial court and after examining the evidence on record as a whole, found that the findings of the trial court are vitiated by perversity. Hence, interference by the High Court was inevitable; rather had to be made for just and proper decision of the matter.*

23. *For what has been discussed hereinabove, the findings of the High Court convicting the appellant-accused for the offence under Section 138 of the NI Act deserve to be, and are, confirmed.*

24. *Coming to the question of punishment for the offence aforesaid, as noticed, the High Court has awarded the punishment of simple imprisonment for a period of one year together with fine to the extent of double the amount of cheque (i.e. a sum of Rs 6 lakhs) with default stipulation of further imprisonment for a period of one year in each case; and, out of the amount payable as fine, the complainant Respondent 2 is ordered to be compensated to the tune of Rs 5.5 lakhs in each case. In the totality of the circumstances of this case and looking to the nature of offence which is regulatory in nature, while we find that the punishment as regards monetary terms calls for no interference but then, the sentence of imprisonment deserves to be modified.*

24.1. *In the singular and peculiar circumstances of this case, where the matters relating to 7 cheques issued by the appellant in favour of Respondent 2 for a sum of Rs 3 lakhs each are being considered together; and the appellant is being penalised with double the amount of cheques in each case i.e. in all a sum of Rs 42,00,000, in our view, the appellant deserves to be extended another chance to mend himself by making payment of fine, of course, with the stipulation that in case of default in payment of the amount of fine, he would undergo simple imprisonment for a period of one year.*

25. *Therefore, this appeal is partly allowed in the following terms : The common judgment and order dated 8-1-2018 [Shashi Mohan Goyanka v. State of Gujarat, 2018 SCC OnLine Guj 3674] in R/Criminal Appeal No. 1187 of 2017 connected with R/Criminal Appeals Nos. 1191 to 1196 of 2017 by the High Court of Gujarat at Ahmedabad is maintained as regards conviction of the appellant-accused for the offence under Section 138 of the Negotiable Instruments Act, 1881 for dishonour of 7 cheques in the sum of Rs 3 lakhs each, as drawn by him in favour of the complainant Respondent 2; however, the sentence is modified in the manner that in each of these 7 cases, the appellant-accused shall pay fine to the extent of double the amount of each cheque (i.e. a sum of Rs 6 lakhs in each case) within 2 months from today with the stipulation that in case of default in payment of fine, the appellant-accused shall undergo simple imprisonment for a period of one year. On recovery of the amount of fine, the complainant Respondent 2 shall be compensated to the tune of Rs 5.5 lakhs in each case. In the event of imprisonment for default in payment of fine, the sentences in all the 7 cases shall run concurrently."*

12. The Hon'ble Supreme Court in ***P. Rasiya v. Abdul Nazer***[3] held the following:-

"7. *Feeling aggrieved and dissatisfied with the judgment and orders passed by the Appellate Court affirming the conviction of the accused under Section 138 of the N.I. Act, the accused preferred three different Revision Applications before the High Court. By the impugned common judgment and order, the High Court has reversed the concurrent findings recorded by both the courts below and has acquitted the accused on the ground that, in the complaint, the*

[3] *2022 SCC OnLine SC 1131*

Complainant has not specifically stated the nature of transactions and the source of fund. However, the High Court has failed to note the presumption under Section 139 of the N.I. Act. As per Section 139 of the N.I. Act, 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 discharge, in whole or in part, of any debt or other liability. Therefore, once the initial burden is discharged by the Complainant that the cheque was issued by the accused and the signature and the issuance of the cheque is not disputed by the accused, in that case, the onus will shift upon the accused to prove the contrary that the cheque was not for any debt or other liability. The presumption under Section 139 of the N.I. Act is a statutory presumption and thereafter, once it is presumed that the cheque is issued in whole or in part of any debt or other liability which is in favour of the Complainant/holder of the cheque, in that case, it is for the accused to prove the contrary. The aforesaid has not been dealt with and considered by the High Court. The High Court has also failed to appreciate that the High Court was exercising the revisional jurisdiction and there were concurrent findings of fact recorded by the courts below."

13. In ***Rangappa v. Sri Mohan***[4]**,** the Hon'ble Supreme Court held the following:-

"19. *It has been contended on behalf of the appellant-accused that the presumption mandated by Section 139 of the Act does not extend to the existence of a legally enforceable debt or liability and that the same stood rebutted in this case, keeping in mind the discrepancies in the complainant's version. It was reasoned that it is open to the accused to rely on the materials produced by the complainant for disproving the existence of a legally enforceable debt or liability. It has been contended that since the complainant did not conclusively*

[4](2010) 11 SCC 441

show whether a debt was owed to him in respect of a hand loan or in relation to expenditure incurred during the construction of the accused's house, the existence of a legally enforceable debt or liability had not been shown, thereby creating a probable defence for the accused.

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27. *Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof.*

28. *In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.*

29. *Coming back to the facts in the present case, we are in agreement with the High Court's view that the accused did not raise a probable defence. As noted earlier, the defence of the loss of a blank cheque was taken up belatedly and the accused had mentioned a different date in the "stop payment" instructions to his Bank. Furthermore, the instructions to "stop payment" had not even mentioned that the cheque had been lost. A perusal of the trial record also shows that the accused appeared to be aware of the fact that the cheque was with the complainant. Furthermore, the very fact that the accused had failed to reply to the statutory notice under Section 138 of the Act leads to the inference that there was merit in the complainant's version. Apart from not raising a probable defence, the appellant-accused was not able to contest the existence of a legally enforceable debt or liability."*

14. It is imperative to assess the cross-examination of PW-1 in its entirety. The cross-examination of PW-1 on several dates are delineated as follows:-

"Cross-examination of PW-1:- *On the date of receipt of the cheque by the accused he issued the acknowledgement. Cheque was issued in favour of Sundaram Enclave Pvt. Ltd. (Complainant company) drawn on UBI, evening Marketing Branch of Shyambazar. I did not file any Bank statements of our company in Court. We have a sum of Rs.14 lakhs in favour of the accused through cheque prior to 31.03.2005 and I could not say the exact date. I could not recollect the cheque number and date of the issuance of cheque in favour of the accused. The accused person encashed the said sum of Rs.14 lakhs before 31.03.2005 from our account. Computer account is maintained in our company and obviously the said encashment has been shown in the statement of bank account/ our official computer generated document. I did not produce any bank account or computer generated statement in court. All the records relating to the accounts for the year 2004-05 is being maintained in our office. Bank* *account statement is also lying in our office relating to our bank statement. I could produce the said statements in court if required.*

Cross-examination resumes of PW-1 on 26.08.11:- *I did not bring any document in pursuance to the order dated 06.08.10. Not a fact as the statement of accounts do not reveal any transaction of money with the accused, I have failed to produce it (voluntarily). He has taken money and executed a promissory note. I an H.S. pass. Not a fact the accused for the purchase of a flat had asked for money from me and I assured him to pay the same and took the cheque and promissory note from him. Not a fact ultimately I did not pay any money to the accused. Not a fact in May 2005 after the death of the father of the accused, the accused had asked for return of the cheque and note as he was no longer interested to purchase the flat. I can file statement of account if another chance is given.*

Cross-examination resumes on 19.11.11:- *Not a fact the accused did not issue the impugned cheque in discharge of liability. Not a fact I have filed this case with ulterior motive to have wrongful gain."*

15. In cross-examination the complainant/opposite party no. 1 deposed that said Loan of Rs.14,00,000/- (Rupees Fourteen Lakhs) was paid by cheque on the account of the company with U.B.I., Shyambazar Market Evening Branch and also stated that the Company's Account was debited by such amount but could not state on which date the amount was debited and he further deposed that Bank Statement was lying in Company's Office and it's Account was computerized. He also stated that he could produce those in the Learned Court below (vide Deposition dated 06.08.2010). Defence prayed for adjournment so that PW-1 could produce those documents in the Learned Court below but PW-1 did not appear for 7 consecutive dates and lastly on 19.11.2011 he appeared and his cross-examination was concluded

but he did not produce said documents and withhold the same and as such adverse presumption ought to have been raised.

16. Neither in the petition of complaint nor in the affidavit-in-chief PW-1 stated how the complainant company paid the loan amount, by cash, by cheque or draft or date of payment of loan amount.

17. Having possession of statement of account and office account PW-1 did not produce to show whether petitioner actually took loan when he denied, raised he presumption under illustration to Section 114 of Evidence Act that had those documents been produced it would be unfavourable to the complainant when PW-1 did not depose or state in his complaint how and when money was paid.

18. Onus was on the complainant to prove that the instant cheque was outcome of legally enforceable debt. It was a probable fact and law did not permit any assumption without evidence on material point specially when those were in the custody of PW-1 in the form of bank statement of Account and Office Accounts.

19. If the explanation to Section 138 of Negotiable Instrument Act was satisfied, then only the latter provision of Section 139 of the Negotiable Instrument Act can be invoked, otherwise not. Here in this case by non-production of such documents PW-1/complainant failed to discharge the onus as required under explanation to Section 138 of the Negotiable Instrument Act and for that, ‘presumption’ as enshrined in Section 139 of the Negotiable Instrument Act was not attracted.

20. Under Section 139 of the Negotiable Instrument Act presumption was rebuttable, “unless contrary is proved” and “liability” ‘must be legal liability’. To rebut presumption, petitioner examined himself under Section 315 of Cr.P.C. and provided the carbon copy of the letter dated 09.05.2005 addressed to the complainant and sent under certificate of posting to the complainant on 10.05.2005. On 01.11.2001 petitioner sent lawyer’s notice under Section 66 Evidence Act, (Ext. C) for production of original letter, but the same was returned with the remark ‘left’ although it was sent to 181, Dum Dum Road, the address given by complainant and on record. Letter dated 09.05.2005 sent by the petitioner asking for return of cheque for the reasons stated therein was proved and marked (Ext. B) and certificates of posting (Ext. A). This raised a presumption that the complainant received the letter dated 09.05.2005 under illustration (f) to Section 114 Evidence Act that common course of business had been followed. There was neither any evidence from DW-1 when he was asked to show the contrary i.e. “the court shall also have regard – “as enshrined in Section 114 Evidence Act, where it stated as to illustration (f). “The question is, whether a letter was received. It was shown to have been posted, but the usual course of post was interrupted by disturbance.” So it was to be presumed that the complainant has received the letter (Ext. B). In his letter dated 09.05.2005 (Ext. B) petitioner stated, Sarajit Samanta, a Director of the company got a letter signed confirming receipt of Rs.14,00,000/- (Rupees Fourteen Lakhs) as also the post dated 15.05.2005 cheque on 30.03.2005 as security although the loan was not released and received by him. DW-1 further

deposed that Mr. Samanta told cheque and letter was required for processing loan. Prior to receiving loan his father died and he decided not to purchase flat, that is why he asked for return of cheque and letter. In spite of repeated request complainant did not return the cheque but deposited in Bank. Explaining the cause for issuance of cheque and letter and subsequently claiming those back through a letter (Ext. B) and sent under certificate of posting (Ext. A) and by non-production of proof of payment by PW-1, the presumption was rebutted.

21. The findings of the Learned Metropolitan Magistrate regarding conviction and sentence to pay compensation of Rs.18,00,000/- (Rupees Eighteen Lakhs) and in default to suffer simple imprisonment for 6 months is set aside.

22. Accordingly, the instant criminal revisional application being CRR 3322 of 2013 is allowed.

23. There is no order as to costs.

24. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.

25. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)