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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 30th August, 2024

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CRL.L.P. 622/2016

RAJ KUMAR

..... Petitioner

Through: Mr. Ajay Sharma and Mr. Vipul Kumar, Advocates.

versus

SUSHIL KUMAR

..... Respondent

Through: Mr. Rakesh Lakra and Ms. Kanika Sharma, Advocates.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. By this petition, Petitioner seeks leave to appeal against the impugned judgment dated 09.06.2016 passed by learned Special Judge (PC Act), CBI-03, Dwarka Courts, New Delhi, whereby the appeal being CA No.43/2015 filed by the Respondent under Section 374 Cr.P.C. against the judgment dated 15.10.2015 and order on sentence dated 05.11.2015 passed by learned MM-01 (NI Act), South-West District, Dwarka Courts, New Delhi, in CC No.3759/2013 titled '*Raj Kumar v. Sushil Kumar*' was allowed. Petitioner was the complainant before the Trial Court and Respondent was the accused and parties are hereinafter referred to by their litigating status before this Court.

2. Case set up by the Petitioner in the present petition is that Petitioner owing to friendly relationship with the Respondent and upon request of the latter, extended financial help in the sum of Rs.14 lacs on a number of



2024:DHC:6566



occasions between 29.09.2011 and 11.01.2012. Petitioner was assured that the said amount will be repaid by March, 2012. In discharge of his liability, Respondent issued a cheque bearing No.546144 for a sum of Rs.8 lacs, dated 05.03.2012 drawn on Canara Bank, Najafgarh, New Delhi, which on presentation was dishonoured and the reason in the dishonour memo was 'exceeds arrangement'.

3. It is the case of the Petitioner that when the Respondent was informed of the dishonour of the cheque, he apologized to the Petitioner and issued a fresh cheque bearing No.550403 dated 03.04.2012 for a sum of Rs.8 lacs drawn on Canara Bank, Najafgarh, New Delhi, but the said cheque was also dishonoured on presentation for the same reason 'exceeds arrangement'. Constrained by this, Petitioner sent a legal notice to the Respondent on 17.04.2012 but no payment was made within the prescribed period and Petitioner filed a criminal complaint under Sections 138-142 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act').

4. Pre-summoning evidence was led by the Petitioner by examining himself as CW-1 and tendering his affidavit Ex.C1, in which he reiterated the allegations made in the complaint. Following documents were exhibited by the Petitioner:-

- (i) Return Memo dated 19.03.2012 as Ex.CW1/1;
- (ii) Cheque bearing No. 550403 as Ex.CW1/2;
- (iii) Return Memo dated 10.04.2012 as Ex.CW1/3;
- (iv) Copy of legal notice as Ex.CW1/4;
- (v) Copies of Postal receipts as Ex.CW1/5 and CW1/6; and
- (vi) Computer generated tracking report as Ex.CW1/7.



2024:DHC:6566



5. Summons were issued to the Respondent. Notice was framed by the learned MM on 14.09.2012 under Section 251 Cr.P.C. Respondent pleaded 'not guilty' and claimed trial. Petitioner led evidence and examined two witnesses. Petitioner examined himself as CW-1 and adopted the contents of his affidavit Ex.C1 already tendered at the stage of pre-summoning evidence. He relied on the aforementioned documents and additionally on the following documents:

- (i) ITR Acknowledgement as Ex.CW1/8 (colly); and
- (ii) Copy of certificate issued by RMP Global Events as Ex.CW1/9 (OSR).

6. Petitioner examined Sh. Ashok Sehrawat, Senior Manager, Oriental Bank of Commerce, Basai Road, Gurgaon, the then Branch Manager of the Bank at Dichaon Kalan Branch as CW-2. The witness proved the endorsement on the back of the cheque as Ex.CW2/A and deposed with respect to letter dated 11.06.2012 Ex.CW2/B. Both witnesses were cross-examined by the Respondent and Petitioner's evidence was closed.

7. Respondent denied the allegations levelled against him when the incriminating circumstances were put to him during his Statement under Section 313 Cr.P.C. He did not lead any defence evidence. Respondent admitted the issuance of the first cheque as well as the second cheque in lieu of the first cheque. He, however, took a defence that the cheques were issued on account of a property deal between the parties and the amount given was for the purpose of investment. The case set up was that on the request of the Petitioner, Respondent paid a sum of Rs.18 lacs for investing in a flat in Kargil Apartments, Dwarka. Subsequently, Petitioner gave another proposal for investment of Rs.8 lacs in flats in Lok Nayak Puram.



2024:DHC:6566



Petitioner issued a cheque of Rs.18 lacs to return the money received by him earlier from the Respondent and by this gesture won the trust of the Respondent and therefore, having faith in the Petitioner, Respondent issued the cheque of Rs.8 lacs in his favour. However, the Bank Manager informed him that the cheque was misplaced and in this background, a second cheque for Rs.8 lacs was issued by the Respondent. Receipt of legal notice sent by the Petitioner calling upon the Respondent to pay the amount was admitted by the Respondent. On failing to get back the payment from the Respondent, Petitioner filed a complaint under Sections 138-142 of NI Act.

8. Petitioner examined himself and the Branch Manager of the concerned Bank while Respondent only gave a Statement under Section 313 Cr.P.C. and did not lead defence evidence. Trial Court convicted the Respondent for the offence punishable under Section 138 NI Act vide judgment dated 15.10.2015 and vide order dated 05.11.2015, sentenced him to simple imprisonment for a period of four months. Respondent was also directed to pay a compensation of Rs.10 lacs to the Petitioner within 30 days and in case of default, to further undergo SI for two months. Trial Court observed that once the Respondent admitted that he had issued the cheque and had signed on the same, a presumption would arise in favour of the Petitioner as a holder of the cheque under Sections 118 and 139 of NI Act and Respondent had failed to rebut the presumption. As per the Trial Court, ingredients of Section 138 NI Act were satisfied and Respondent was guilty of the offence charged. Respondent was admitted to bail on furnishing a personal bond in the sum of Rs.30,000/- with one surety of the like amount, which was furnished on the same date and accepted till 07.11.2015.



2024:DHC:6566



9. The judgment of the Trial Court was assailed by the Respondent before the learned Additional Sessions Judge in criminal appeal being CA No.43/2015 and vide judgment dated 09.06.2016, the Appellate Court allowed the appeal and set aside the judgment of the Trial Court as well as the order on sentence and acquitted the Respondent. In the opinion of the Appellate Court, Respondent was able to rebut the presumption arising in favour of the Petitioner under Sections 118 and 139 NI Act and his defence was probable. Cheque in question was given for the purpose of investment only and not towards discharge of liability of Rs.14 lacs loan allegedly taken from the Petitioner and that there was no evidence to prove that Petitioner had advanced any loan to the Respondent.

10. Learned counsel for the Petitioner argued that the impugned judgment dated 09.06.2016 is manifestly erroneous and contrary to the law on the subject. Appellate Court overlooked that Respondent in his Statement under Section 313 Cr.P.C. had admitted issuance of the cheque and his signatures thereon. Receipt of legal notice dated 17.04.2012 was also admitted and once the execution of cheque is admitted, Section 139 of NI Act mandates a presumption that the cheque was for the discharge of any debt or other liability. No doubt, the presumption is a rebuttable one, but Respondent was unable to rebut the same. Petitioner led evidence through several documents such as his complaint, dishonoured cheque, return memos and legal demand notice. There is no infirmity in the judgment of the Trial Court as Petitioner had proved the advancement of the loan by filing his balance sheet Mark 'A'. Part of the loan of Rs.14 lacs was advanced through a cheque which was duly reflected in his bank statement, certified copy of which was filed during the course of arguments before the Appellate Court, reflecting entries



2024:DHC:6566



from 29.09.2011 till 27.01.2012. Entry of Rs.7 lacs reflected in the bank statement in favour of one Harish was, in fact, the loan advanced to the Respondent as Harish was known to him and therefore, Appellate Court erred in concluding that Petitioner was unable to prove that a sum of Rs.14 lacs was advanced as loan to the Respondent.

11. It was further contended that Respondent had filed a false and frivolous complaint against the Petitioner under Section 138 read with Section 142 NI Act alleging that he had given a sum of Rs.18 lacs to the Petitioner on 24.11.2011 for investing in a flat in Kargil Apartments, Dwarka. Petitioner had again approached him with a proposal to invest some money in flats in Lok Nayak Puram and Respondent agreed and issued a cheque of Rs.8 lacs for investment. In March, 2012, Petitioner informed the Respondent that the deal of flats in Kargil Apartments was finalized and issued a cheque of Rs.18 lacs, bearing No.100479 dated 25.03.2012 drawn on Oriental Bank of Commerce, Village and Post Office Dichaon Kalan, Najafgarh, New Delhi, in favour of the Respondent to return the money. By this act, it was alleged that Petitioner won the trust of the Respondent and in good faith, the cheque of Rs.8 lacs was issued by the Respondent for investment in flats in Lok Nayak Puram. As per the allegation levelled by the Respondent, Petitioner had deliberately stopped payment of the said cheque of Rs.18 lacs, which was returned by the Bank vide return memo dated 29.03.2012. Petitioner urged that this entire story was fabricated by the Respondent and stand of the Petitioner was vindicated when he was acquitted in the criminal case originating out of a complaint filed by the Respondent under Section 138/142 NI Act and it was held by the Court that the signatures appearing on the cheque of Rs.18 lacs were forged. This



2024:DHC:6566



shows that the Respondent is habitual of making false statements and claims.

12. It was argued that Petitioner proved before the Trial Court that the cheque Ex.CW1/2 was issued by the Respondent in discharge of liability towards the loan taken from the Petitioner, through documentary and oral evidence and his deposition as CW-1 was duly corroborated by CW-2 Ashok Sehrawat, the then Branch Manager of the concerned Bank, in whose presence the cheque was given. Appellate Court failed to appreciate that the Respondent did not lead defence evidence and Statement under Section 313 Cr.P.C. could not be read in evidence for rebutting presumption raised under Section 139 NI Act. Even if the Statement is taken into consideration, it fortified the case of the Petitioner since Respondent admitted in response to Question No.3 that: *“The earlier cheque was misplaced and upon request of the bank Manager, I had issued the cheque”*.

13. It was further argued that Appellate Court wrongly held that Petitioner failed to prove that he had advanced a loan of Rs.14 lacs to the Respondent, overlooking that Respondent in his cross-examination agreed that in the year 2011 he had deposited money by way of DD with PWD in relation to some contracts, after borrowing the same from the Petitioner. Respondent deposed that he had withdrawn Rs.83,000/- in cash through self cheque from Petitioner's account and that the cheque of Rs.8 lacs was handed over to the Petitioner in the month of March, 2012 in lieu of the previous cheque of Rs.8 lacs issued by him, after a phone call was received from Petitioner's bank that the previous cheque was misplaced. The second cheque was issued on the request of the Branch Manager of the concerned Bank and on the back of the cheque, an endorsement to this effect was made by the Branch



2024:DHC:6566



Manager. These admissions of the Respondent were sufficient to prove the case of the Petitioner that he had advanced Rs.14 lacs and Respondent had issued a cheque in discharge of legal liability towards the Petitioner.

14. Lastly, it was argued that Appellate Court wrongly held that the bank statement of the Petitioner did not show a single transaction of Rs.10,12,000/- and Petitioner had not stated in his complaint or during the pre-summoning evidence that he had transferred the amount in the account of the Respondent. This finding is against the categorical stand of the Petitioner in his complaint that he had given loan to the Respondent on different occasions from 29.09.2011 to 11.01.2012. Appellate Court wrongly held that the presumption was rebutted by a mere denial by the Respondent of having availed the loan of Rs.14 lacs, as the presumption in law under Section 139 NI Act predicated on the admission of an accused that the cheque was issued and signed by him, cannot be rebutted by a mere denial. Court has also erred in holding that Petitioner admitted issuance of cheque of Rs.18 lacs in favour of the Respondent as there is no such admission on record. Reliance was placed by learned counsel on the judgment of the Supreme Court in *P. Rasiya v. Abdul Nazer and Another, 2022 SCC OnLine SC 1131*, wherein it was held that presumption under Section 139 NI Act favours the holder of a cheque whereby it is presumed that the cheque was received for discharge of any debt or liability and onus is upon the accused to prove that the cheque was not for the discharge of any such debt or liability.

15. Learned counsel for the Respondent submitted that there are no grounds for leave to appeal against the impugned judgment as the judgment of the Appellate Court is a well-reasoned judgment, based on material



2024:DHC:6566



before the Court and the evidence led by the Petitioner. No doubt that Respondent admitted issuing the cheque in question as well as the signatures on it and this gave rise to a presumption in law in favour of the Petitioner under Section 139 NI Act, however, the presumption is a rebuttable one. It is open to the accused to rebut the presumption and in doing so, he is only required to set up a probable defence. In the present case, Respondent was able to establish that he had issued the cheque of Rs.8 lacs for the purpose of investment in a property after the Petitioner had won his faith in the earlier transaction, in which Rs.18 lacs was paid by the Respondent to the Petitioner for investment in property and the latter had diligently issued a cheque to refund the said amount. On information from the Banker that the cheque of Rs.8 lacs issued by the Respondent was misplaced, Respondent issued a second cheque in lieu thereof and therefore, there was no debt that the Respondent was to repay to the Petitioner.

16. Appellate Court also found and rightly so that after the Respondent succeeded in rebutting the presumption, Petitioner was unable to prove the most fundamental fact which formed the basis of the complaint that he had allegedly advanced Rs.14 lacs to the Respondent as loan. It was urged that if any party advances loan and takes a position that the loan was advanced both by a banking instrument and cash, the best evidence will be to produce the DD/cheque and receipt in acknowledgement of the cash. In the present case, Appellate Court has observed that Petitioner neither produced the cheque/DD, by which allegedly part of the loan amount was advanced and nor was any document produced to show part payment in cash to the Respondent. Petitioner made several attempts to establish that loan was advanced but was unsuccessful as neither the ITR nor the balance sheets



2024:DHC:6566



reflected that payments were made in favour of the Respondent. The stand of the Petitioner that a sum of Rs.7 lacs was paid to the Respondent indirectly through Harish also turned out to be incorrect and Appellate Court rightly noted that no evidence was led to show that Harish had received the amount on behalf of the Respondent. The complaint filed by the Petitioner is false and fabricated with an intent to maliciously prosecute the Respondent and Appellate Court rightly acquitted the Respondent and thus the judgment warrants no interference.

17. Heard learned counsels for the Petitioner and the Respondent and examined their rival submissions.

18. Indisputably, Respondent has been acquitted by the learned Additional Sessions Judge in appeal filed by him against his conviction by the Trial Court and therefore, the first issue that needs consideration is the scope and ambit of interference by an Appellate Court in a judgment acquitting the accused. Appellate Court has, no doubt, wide powers to re-appreciate the evidence in an appeal against acquittal and come to a different conclusion, on facts and law, but there is no gainsaying that this power must be exercised with due care and caution since the presumption of innocence at the start of the trial is strengthened by acquittal of the accused by a judicial order. The Supreme Court in ***Ghurey Lal v. State of Uttar Pradesh, (2008) 10 SCC 450***, elucidated and crystallized the principles that the Courts are required to keep in mind as guiding light, when deciding an appeal against a judgment acquitting the accused and relevant passages from the said judgment are as under:-

“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 re appreciate 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 the trial court was wrong.

70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the Trial Court's acquittal:

1. 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.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

(i) The Trial Court's conclusion with regard to the facts is palpably wrong;

(ii) The Trial Court's decision was based on an erroneous view of law;

(iii) The Trial Court's judgment is likely to result in "grave miscarriage of justice";

(iv) The entire approach of the Trial Court in dealing with the evidence was patently illegal;

(v) The Trial Court's judgment was manifestly unjust and unreasonable;

(vi) The Trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive.

2. The appellate court must always give proper weight and consideration to the findings of the Trial Court.



3. If two reasonable 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.

71. Had the well-settled principles been followed by the High Court, the accused would have been set free long ago. Though the appellate court's power is wide and extensive, it must be used with great care and caution.”

19. In ***Bannareddy and Others v. State of Karnataka and Others, 2018 SCC OnLine SC 289***, the Supreme Court observed as under:-

“10. Before we proceed further to peruse the finding of the High Court, it is relevant to discuss the power and jurisdiction of the High Court while interfering in an appeal against acquittal. It is well settled principle of law that the High Court should not interfere in the well-reasoned order of the Trial Court which has been arrived at after proper appreciation of the evidence. The High Court should give due regard to the findings and the conclusions reached by the trial court unless strong and compelling reasons exist in the evidence itself which can dislodge the findings itself. This principle has further been elucidated in *Sambhaji Hindurao Deshmukh v. State of Maharashtra*, (2008) 11 SCC 186 : (2009) 2 SCC (Cri) 464, SCC para 13, wherein this Court observed that : (SCC pp. 190-91)

“13. ... The High Court will interfere in appeals against acquittals, only where the Trial Court makes wrong assumptions of material facts or fails to appreciate the evidence properly. If two views are reasonably possible from the evidence on record, one favouring the accused and one against the accused, the High Court is not expected to reverse the acquittal merely because it would have taken the view against the accused had it tried the case. The very fact that two views are possible makes it clear that the prosecution has not proved the guilt of the accused beyond reasonable doubt and consequently the accused is entitled to benefit of doubt....”

11. It is not in dispute that the presumption of innocence is further reinforced, reaffirmed and strengthened against the acquitted accused by the judgment in his favour. (Vide *Dara Singh v. Union of India*, (2011) 2 SCC 490: (2011) 1 SCC (Cri) 706 (SCC in para 94.)”

20. The Supreme Court in ***Mohd. Akhtar alias Kari and Others v. State of Bihar and Another, (2019) 2 SCC 513***, observed:-



“19.Interference with an order of acquittal is not permissible on the ground that a different view is possible. If the acquittal is justified on a probable view taken by the Trial Court, it should not be interfered with.....”

21. A Division Bench of this Court in ***State v. Kaishar Ali, 2019 SCC OnLine Del 9875***, held as under:-

“12. It is also settled law that any acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to review the evidence and to come to its own conclusion. The power to grant leave must be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of an accused.”

22. It would be relevant and useful to allude to the observations of this Court in ***Niraj v. Ramesh Pratap Singh @ Raju Singh, 2012 SCC OnLine Del 3813***, which are extracted hereunder for ready reference:-

“6. It is also well settled that the Appellate court should reverse an acquittal only for very substantial and compelling reasons. In the event, two views are possible on the evidence adduced before the Trial Court and the view taken by the Trial Court is a plausible view, the Appellate Court should not interfere and substitute its own view against the plausible view taken by the Trial Court. In fact, the Supreme Court in Chandrappa v. State of Karnataka, (2007) 4 SCC 415 while referring to previous cases laid down the following general principles regarding the powers of appellate court while dealing an appeal against an order of acquittal:—

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

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

(3) Various expressions, such as, ‘substantial and compelling reasons’, ‘good and sufficient grounds’, ‘very strong circumstances’, ‘distorted conclusions’, ‘glaring mistakes’, etc. are



not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence 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."

7. *The Supreme Court in a subsequent judgment in Arulvelu v. State Represented by the Public Prosecutor, (2009) 10 SCC 206 has held as under:—*

"40. Unquestionably, the Appellate Court has power to review and re-appreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial Court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallized by aforementioned judgments of this Court. 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. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial Court. ""

23. In the backdrop of these judgments, wherein law on interference by an Appellate Court in a judgment acquitting the accused has been crystallized, I may now proceed to examine the impugned judgment passed by the learned ASJ acquitting the Respondent, basis the evidence on record, both oral and documentary and rival arguments of the parties.



24. Before proceeding, it would be important to refer to Section 138 of NI Act, which is extracted hereunder for ready reference:-

“Section 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 be extended 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 of other liability means a legally enforceable debt or other liability.”

25. It is a settled law that in matters relating to dishonour of cheques, Courts have to consider whether the ingredients of Section 138 of NI Act are made out and whether the accused is able to rebut the statutory presumption under Section 139 of NI Act. In ***Gimpex Private Limited v. Manoj Goel, (2022) 11 SCC 705***, the Supreme Court has delineated the ingredients which form the basis of an offence under Section 138 of NI Act as follows:



“26. The ingredients of the offence under Section 138 are:

26.1. The drawing of a cheque by person on an account maintained by him with the banker for the payment of any amount of money to another from that account.

26.2. The cheque being drawn for the discharge in whole or in part of any debt or other liability.

26.3. Presentation of the cheque to the bank.

26.4. The return of the cheque by the drawee bank as unpaid either because 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.

26.5. A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within 30 days of the receipt of information from the bank in regard to the return of the cheque.

26.6. The drawer of the cheque failing to make payment of the amount of money to the payee or the holder in due course within 15 days of the receipt of the notice.”

26. In ***K.Bhaskaran v. Sankaran Vaidhyan Balan and Another, (1999) 7 SCC 510***, once again the constituent elements of the offence under Section 138 of NI Act were brought forth as follows:

“14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence: (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.”

27. In ***Basalingappa v. Mudibasappa, (2019) 5 SCC 418***, the Supreme Court was examining the legal principles regarding nature of presumption to be drawn under Section 139 NI Act and the manner in which it can be rebutted by an accused. Referring to and relying on earlier judgments of the Supreme Court, in ***Basalingappa (supra)***, the Supreme Court summarized



the principles and relevant passages are as under:-

“13. This Court in *Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal* [*Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal*, (1999) 3 SCC 35] had occasion to consider Section 118(a) of the Act. This Court held that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable and defendant can prove the non-existence of a consideration by raising a probable defence. In para 12, the following has been laid down: (SCC pp. 50-51)

“12. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon his failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist.”

14. *S.B. Sinha, J. in M.S. Narayana Menon v. State of Kerala* [*M.S. Narayana Menon v. State of Kerala*, (2006) 6 SCC 39 : (2006) 3 SCC (Cri)]



30] had considered Sections 118(a), 138 and 139 of the Act, 1881. It was held that presumptions both under Sections 118(a) and 139 are rebuttable in nature. Explaining the expressions “may presume” and “shall presume” referring to an earlier judgment, the following was held in para 28: (SCC p. 49)

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

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

15. It was noted in *M.S. Narayana Menon case* [*M.S. Narayana Menon v. State of Kerala*, (2006) 6 SCC 39 : (2006) 3 SCC (Cri) 30] , that the expression “shall presume” cannot be held to be synonymous with conclusive proof. Referring to definition of words “proved” and “disproved” under Section 3 of the Evidence Act, 1872 the following was laid down in para 30: (SCC p. 50)

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



16. This Court in *M.S. Narayana Menon case* [*M.S. Narayana Menon v. State of Kerala*, (2006) 6 SCC 39 : (2006) 3 SCC (Cri) 30] held that what is needed is to raise a probable defence, for which it is not necessary for the accused to disprove the existence of consideration by way of direct evidence and even the evidence adduced on behalf of the complainant can be relied upon. Dealing with standard of proof, the following was observed in para 32: (SCC p. 51)

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

17. In *Krishna Janardhan Bhat v. Dattatraya G. Hegde* [*Krishna Janardhan Bhat v. Dattatraya G. Hegde*, (2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166], this Court held that an accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. The following was laid down in para 32: (SCC p. 62)

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

18. This Court in *Krishna Janardhan Bhat case* [*Krishna Janardhan Bhat v. Dattatraya G. Hegde*, (2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166] again reiterated that whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is “preponderance of probabilities”. In para 34, the following was laid down: (SCC p. 63)

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

19. 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], this Court again examined as to when the complainant discharges the burden to prove that the instrument was executed and when the burden shall be shifted. In paras 18 to 20, the following has been laid down: (SCC p. 520)



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

19. The use of the phrase “until the contrary is proved” in Section 118 of the Act and use of the words “unless the contrary is proved” in Section 139 of the Act read with definitions of “may presume” and “shall presume” as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over.

20. ... The accused 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.”

20. A three-Judge Bench of this Court in *Rangappa v. Sri Mohan* [*Rangappa v. Sri Mohan*, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 :



(2011) 1 SCC (Cri) 184] had occasion to elaborately consider the provisions of Sections 138 and 139. In the above case, the trial court had acquitted the accused in a case relating to dishonour of cheque under Section 138. The High Court had reversed [Mohan v. Rangappa, 2005 SCC OnLine Kar 783] the judgment of the trial court convicting the accused. In the above case, the accused had admitted signatures on the cheque. This Court held that where the fact of signature on the cheque is acknowledged, a presumption has to be raised that the cheque pertained to a legally enforceable debt or liability, however, this presumption is of a rebuttal nature and the onus is then on the accused to raise a probable defence. In para 13, the following has been laid down: (SCC p. 446)

“13. The High Court in its order [Mohan v. Rangappa, 2005 SCC OnLine Kar 783] noted that in the course of the trial proceedings, the accused had admitted that the signature on the impugned cheque (No. 0886322 dated 8-2-2001) was indeed his own. Once this fact has been acknowledged, Section 139 of the Act mandates a presumption that the cheque pertained to a legally enforceable debt or liability. This presumption is of a rebuttal nature and the onus is then on the accused to raise a probable defence. With regard to the present facts, the High Court found that the defence raised by the accused was not probable.”

21. After referring to various other judgments of this Court, this Court in Rangappa case [Rangappa v. Sri Mohan, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184] case held that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability, which, of course, is in the nature of a rebuttable presumption. In para 26, the following was laid down: (Rangappa case [Rangappa v. Sri Mohan, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184], SCC p. 453)

“26. In light of these extracts, we are in agreement with the respondent-claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat [Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166] may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.”

22. Elaborating further, this Court in Rangappa case [Rangappa v. Sri



Mohan, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184] held that Section 139 of the Act is an example of a reverse onus and the test of proportionality should guide the construction and interpretation of reverse onus clauses on the defendant-accused and the defendant-accused cannot be expected to discharge an unduly high standard of proof. In paras 27 and 28, the following was laid down: (Rangappa case [Rangappa v. Sri Mohan, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184], 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.

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.”

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

25.1. 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.

25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard



of proof for rebutting the presumption is that of preponderance of probabilities.

25.3. 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.

25.4. 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.

25.5. It is not necessary for the accused to come in the witness box to support his defence.”

28. Dealing with and analysing the effect of presumption and shifting of onus of proof, the Supreme Court in **Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148**, held as follows:

“33. The NI Act provides for two presumptions : Section 118 and Section 139. Section 118 of the Act inter alia directs that it shall be presumed, until the contrary is proved, that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that “unless the contrary is proved, it shall be presumed, that the holder of the cheque received the cheque, for the discharge of, whole or part of any debt or liability”. It will be seen that the “presumed fact” directly relates to one of the crucial ingredients necessary to sustain a conviction under Section 138.

34. Section 139 of the NI Act, which takes the form of a “shall presume” clause is illustrative of a presumption of law. Because Section 139 requires that the Court “shall presume” the fact stated therein, it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. But this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary as is clear from the use of the phrase “unless the contrary is proved”.

35. The Court will necessarily presume that the cheque had been issued towards discharge of a legally enforceable debt/liability in two circumstances. Firstly, when the drawer of the cheque admits issuance/execution of the cheque and secondly, in the event where the complainant proves that cheque was issued/executed in his favour by the drawer. The circumstances set out above form the fact(s) which bring



about the activation of the presumptive clause. [Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal.]

36. Recently, this Court has gone to the extent of holding that presumption takes effect even in a situation where the accused contends that a blank cheque leaf was voluntarily signed and handed over by him to the complainant. [Bir Singh v. Mukesh Kumar]. Therefore, mere admission of the drawer's signature, without admitting the execution of the entire contents in the cheque, is now sufficient to trigger the presumption.

37. As soon as the complainant discharges the burden to prove that the instrument, say a cheque, was issued by the accused for discharge of debt, the presumptive device under Section 139 of the Act helps shifting the burden on the accused. The effect of the presumption, in that sense, is to transfer the evidential burden on the accused of proving that the cheque was not received by the Bank towards the discharge of any liability. Until this evidential burden is discharged by the accused, the presumed fact will have to be taken to be true, without expecting the complainant to do anything further.

38. John Henry Wigmore on Evidence states as follows:

“The peculiar effect of the presumption of law is merely to invoke a rule of law compelling the Jury to reach the conclusion in the absence of evidence to the contrary from the opponent but if the opponent does offer evidence to the contrary (sufficient to satisfy the Judge's requirement of some evidence), the presumption ‘disappears as a rule of law and the case is in the Jury's hands free from any rule’.”

39. The standard of proof to discharge this evidential burden is not as heavy as that usually seen in situations where the prosecution is required to prove the guilt of an accused. The accused is not expected to prove the non-existence of the presumed fact beyond reasonable doubt. The accused must meet the standard of “preponderance of probabilities”, similar to a defendant in a civil proceeding. [Rangappa v. Sri Mohan].

40. In order to rebut the presumption and prove to the contrary, it is open to the accused to raise a probable defence wherein the existence of a legally enforceable debt or liability can be contested. The words “until the contrary is proved” occurring in Section 139 do not mean that the accused must necessarily prove the negative that the instrument is not issued in discharge of any debt/liability but the accused has the option to ask the Court to consider the non-existence of debt/liability so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that debt/liability did not exist. [Basalingappa v. Mudibasappa; see also Kumar Exports v. Sharma Carpets].

41. In other words, the accused is left with two options. The first



option—of proving that the debt/liability does not exist—is to lead defence evidence and conclusively establish with certainty that the cheque was not issued in discharge of a debt/liability. The second option is to prove the non-existence of debt/liability by a preponderance of probabilities by referring to the particular circumstances of the case. The preponderance of probability in favour of the accused's case may be even fifty-one to forty-nine and arising out of the entire circumstances of the case, which includes : the complainant's version in the original complaint, the case in the legal/demand notice, complainant's case at the trial, as also the plea of the accused in the reply notice, his Section 313CrPC statement or at the trial as to the circumstances under which the promissory note/cheque was executed. All of them can raise a preponderance of probabilities justifying a finding that there was “no debt/liability”. [Kumar Exports v. Sharma Carpets].

42. The nature of evidence required to shift the evidential burden need not necessarily be direct evidence i.e. oral or documentary evidence or admissions made by the opposite party; it may comprise circumstantial evidence or presumption of law or fact.

43. The accused may adduce direct evidence to prove that the instrument was not issued in discharge of a debt/liability and, if he adduces acceptable evidence, the burden again shifts to the complainant. At the same time, the accused may also rely upon circumstantial evidence and, if the circumstances so relied upon are compelling, the burden may likewise shift to the complainant. It is open for him to also rely upon presumptions of fact, for instance those mentioned in Section 114 and other sections of the Evidence Act. The burden of proof may shift by presumptions of law or fact. In Kundan Lal case when the creditor had failed to produce his account books, this Court raised a presumption of fact under Section 114, that the evidence, if produced would have shown the non-existence of consideration. Though, in that case, this Court was dealing with the presumptive clause in Section 118 NI Act, since the nature of the presumptive clauses in Sections 118 and 139 is the same, the analogy can be extended and applied in the context of Section 139 as well.

44. Therefore, in fine, it can be said that once the accused adduces evidence to the satisfaction of the Court that on a preponderance of probabilities there exists no debt/liability in the manner pleaded in the complaint or the demand notice or the affidavit-evidence, the burden shifts to the complainant and the presumption “disappears” and does not haunt the accused any longer. The onus having now shifted to the complainant, he will be obliged to prove the existence of a debt/liability as a matter of fact and his failure to prove would result in dismissal of his complaint case. Thereafter, the presumption under Section 139 does not again come to the complainant's rescue. Once both parties have adduced evidence, the



2024:DHC:6566



Court has to consider the same and the burden of proof loses all its importance. [Basalingappa v. Mudibasappa; see also, Rangappa v. Sri Mohan]”

29. In ***Rangappa v. Sri Mohan***, (2010) 11 SCC 441, the Supreme Court ruled on two important aspects: (a) the presumption mandated by Section 139 does indeed include the existence of a legally enforceable debt or liability but this is a rebuttable presumption and the accused can raise a defence contesting the debt or liability *albeit* the initial presumption favours the complainant; and (b) reverse onus clauses usually impose an evidentiary burden and not a persuasive burden and therefore, when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of ‘preponderance of probabilities’ and if the accused is able to raise a probable defence which creates a doubt on the existence of a legally enforceable debt or liability, prosecution can fail and in doing so, accused can rely on material 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. Relevant passages are as follows:-

“23. The respondent claimant has also referred to the decision reported as Mallavarapu Kasivisweswara Rao v. Thadikonda Ramulu Firm [(2008) 7 SCC 655], wherein it was observed: (SCC p. 660, para 17)

“17. Under Section 118(a) of the Negotiable Instruments Act, the court is obliged to presume, until the contrary is proved, that the promissory note was made for consideration. It is also a settled position that the initial burden in this regard lies on the defendant to prove the non-existence of consideration by bringing on record such facts and circumstances which would lead the court to believe the non-existence of the consideration either by direct evidence or by preponderance of probabilities showing that the existence of consideration was improbable, doubtful or illegal.”

24. This decision in Mallavarapu Kasivisweswara Rao case [(2008) 7 SCC 655], then proceeded to cite an extract from the earlier decision in Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal [(1999) 3 SCC



35] : (SCC pp. 50-51, para 12)

“12. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist.”

(emphasis supplied)

Interestingly, the very same extract has also been approvingly cited in Krishna Janardhan Bhat [(2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166] .

25. *With regard to the facts in the present case, we can also refer to the following observations in M.M.T.C. Ltd. v. Medchl Chemicals & Pharma (P) Ltd. [(2002) 1 SCC 234 : 2002 SCC (Cri) 121] : (SCC p. 240, para 19)*

“19. ... The authority shows that even when the cheque is dishonoured by reason of stop-payment instructions by virtue of Section 139 the



court has to presume that the cheque was received by the holder for the discharge, in whole or in part, of any debt or liability. Of course this is a rebuttable presumption. The accused can thus show that the 'stop-payment' instructions were not issued because of insufficiency or paucity of funds. If the accused shows that in his account there were sufficient funds to clear the amount of the cheque at the time of presentation of the cheque for encashment at the drawer bank and that the stop-payment notice had been issued because of other valid causes including that there was no existing debt or liability at the time of presentation of cheque for encashment, then offence under Section 138 would not be made out. The important thing is that the burden of so proving would be on the accused."

(emphasis supplied)

26. *In light of these extracts, we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat [(2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166] may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.*

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

28. *In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is*



able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.”

30. In **Rajesh Jain (supra)**, the Supreme Court reiterated that there are two senses in which the phrase ‘*burden of proof*’ is used in the Indian Evidence Act, 1872, i.e. burden of proof arising as a matter of pleading and the other is the one which deals with the question as to who has first to prove a particular fact. The former is called ‘*legal burden*’ and it never shifts and latter is called ‘*evidential burden*’, which shifts from one side to the other. So noting, the Supreme Court held that the accused has two options. The first option is to prove that the debt/liability does not exist and this can be done by leading defence evidence and establishing conclusively and with certainty that the cheque was not issued in discharge of a debt/liability. The second option is to prove the non-existence of debt/liability on a principle of preponderance of probabilities by referring to particular circumstances of the case which includes: complainant’s version in the original complaint; case in the legal/demand notice; complainant’s case at the trial; plea of the accused in the reply notice; and/or accused’s Statement under Section 313 Cr.P.C. or at the trial as to circumstances under which promissory note/cheque was issued. All of these can raise preponderance of probabilities justifying a finding that there was no debt/liability. The evidence could be circumstantial or on presumption of law or fact and need not necessarily be direct. Relevant passages are as under:-

“Burden of proof and presumptions : Conceptual underpinnings

28. *There are two senses in which the phrase “burden of proof” is*



used in the Evidence Act, 1872 (“the Evidence Act” hereinafter). One is the burden of proof arising as a matter of pleading and the other is the one which deals with the question as to who has first to prove a particular fact. The former is called the “legal burden” and it never shifts, the latter is called the “evidential burden” and it shifts from one side to the other. [See *Kundan Lal Rallaram v. Custodian (Evacuee Property)* [*Kundan Lal Rallaram v. Custodian (Evacuee Property)*, 1961 SCC OnLine SC 10 : AIR 1961 SC 1316].]

29. The legal burden is the burden of proof which remains constant throughout a trial. It is the burden of establishing the facts and contentions which will support a party's case. If, at the conclusion of the trial a party has failed to establish these to the appropriate standards, he would lose to stand. The incidence of the burden is usually clear from the pleadings and usually, it is incumbent on the plaintiff or complainant to prove what he pleaded or contends. On the other hand, the evidential burden may shift from one party to another as the trial progresses according to the balance of evidence given at any particular stage; the burden rests upon the party who would fail if no evidence at all, or no further evidence, as the case may be is adduced by either side (see *Halsbury's Laws of England*, 4th Edn. para 13). While the former, the legal burden arising on the pleadings is mentioned in Section 101 of the Evidence Act, the latter, the evidential burden, is referred to in Section 102 thereof. [*G. Vasu v. Syed Yaseen Sifuddin Quadri* [*G. Vasu v. Syed Yaseen Sifuddin Quadri*, 1986 SCC OnLine AP 147 : AIR 1987 AP 139] affirmed in *Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal* [*Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal*, (1999) 3 SCC 35].]

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31. Broadly speaking, presumptions are of two kinds, presumptions of fact and of law. Presumptions of fact are inferences logically drawn from one fact as to the existence of other facts. Presumptions of fact are rebuttable by evidence to the contrary. Presumptions of law may be either irrebuttable (conclusive presumptions), so that no evidence to the contrary may be given or rebuttable. A rebuttable presumption of law is a legal rule to be applied by the Court in the absence of conflicting evidence (*Halsbury*, 4th Edn., paras 111, 112]. Among the class of rebuttable presumptions, a further distinction can be made between discretionary presumptions (“may presume”) and compulsive or compulsory presumptions (“shall presume”). [*G. Vasu v. Syed Yaseen Sifuddin Quadri* [*G. Vasu v. Syed Yaseen Sifuddin Quadri*, 1986 SCC OnLine AP 147 : AIR 1987 AP 139]]

32. The Evidence Act provides for presumptions, which fit within one of three forms: “may presume” (rebuttable presumptions of fact), “shall presume” (rebuttable presumption of law) and conclusive presumptions



(irrebuttable presumption of law). The distinction between “may presume” and “shall presume” clauses is that, as regards the former, the Court has an option to raise the presumption or not, but in the latter case, the Court must necessarily raise the presumption. If in a case the Court has an option to raise the presumption and raises the presumption, the distinction between the two categories of presumptions ceases and the fact is presumed, unless and until it is disproved. [G. Vasu v. Syed Yaseen Sifuddin Quadri [G. Vasu v. Syed Yaseen Sifuddin Quadri, 1986 SCC OnLine AP 147 : AIR 1987 AP 139]]

Section 139, NI Act-Effect of presumption and shifting of onus of proof

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41. *In other words, the accused is left with two options. The first option—of proving that the debt/liability does not exist—is to lead defence evidence and conclusively establish with certainty that the cheque was not issued in discharge of a debt/liability. The second option is to prove the non-existence of debt/liability by a preponderance of probabilities by referring to the particular circumstances of the case. The preponderance of probability in favour of the accused's case may be even fifty-one to forty-nine and arising out of the entire circumstances of the case, which includes : the complainant's version in the original complaint, the case in the legal/demand notice, complainant's case at the trial, as also the plea of the accused in the reply notice, his Section 313CrPC statement or at the trial as to the circumstances under which the promissory note/cheque was executed. All of them can raise a preponderance of probabilities justifying a finding that there was “no debt/liability”. [Kumar Exports v. Sharma Carpets [Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513 : (2009) 1 SCC (Civ) 629 : (2009) 1 SCC (Cri) 823]]*

42. *The nature of evidence required to shift the evidential burden need not necessarily be direct evidence i.e. oral or documentary evidence or admissions made by the opposite party; it may comprise circumstantial evidence or presumption of law or fact.”*

31. From the aforesaid judgments, it is as clear as day that essential ingredients, which form the basis of an offence under Section 138 NI Act, are: (a) drawing of a cheque; (b) presentation of the cheque to the bank; (c) return of the cheque unpaid by the drawee bank; (d) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount; and (e) failure of the drawer to make payment within 15 days of



2024:DHC:6566



receipt of the notice. Once the execution of the cheque is admitted, Section 139 NI Act mandates a presumption that cheque was issued in discharge of a debt/liability. The presumption is a rebuttable presumption and the onus is on the accused to raise a probable defence, the standard of proof for which is preponderance of probabilities. To rebut the presumption, it is open to the accused to rely on evidence led by him or on material submitted by the complainant. It is not necessary for the accused to come in the witness box in support of his defence as Section 139 imposes an ‘*evidentiary burden*’ and not ‘*persuasive burden*’. As held in **Rajesh Jain (supra)**, accused can rely on his Statement under Section 313 Cr.P.C. also to rebut the presumption justifying a finding that there is no debt/liability. [**Ref.: Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513**]. This position of law has been reiterated by the Supreme Court in a recent judgment in **Dattatraya v. Sharanappa, 2024 SCC OnLine SC 1899** and relevant passages are as follows:-

“21. In light of the aforesaid discussion, and as underscored by this Court recently in the decision of Rajesh Jain v. Ajay Singh, an accused may establish non-existence of a debt or liability either through conclusive evidence that the concerned cheque was not issued towards the presumed debt or liability, or through adduction of circumstantial evidence vide standard of preponderance of probabilities.

22. Since a presumption only enables the holder to show a prima facie case, it can only survive before a court of law subject to contrary not having been proved to the effect that a cheque or negotiable instrument was not issued for a consideration or for discharge of any existing or future debt or liability. In this backdrop, it is pertinent to make a reference to a decision of 3-Judge Bench in Bir Singh v. Mukesh Kumar, which went on to hold that if a signature on a blank cheque stands admitted to having been inscribed voluntarily, it is sufficient to trigger a presumption under Section 139 of the NI Act, 1881, even if there is no admission to the effect of execution of entire contents in the cheque.

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24. Through this legal fiction adopted by the legislature vide Amendment Act of 1988 to the NI Act, 1881 it has barred the drawer of a cheque, which was dishonoured, to take a defence that at the time of issuance of the cheque in question he or she had no reason to believe that the same will be dishonoured upon being presented by the holder of such a cheque, especially and specifically for the reasons underlined in Section 138 of the NI Act, 1881.

25. A comprehensive reference to the Sections 118, 139 and 140 of the NI Act, 1881 gives birth to a deemed fiction which was also articulated by this Court in *K.N. Beena v. Muniyappan* as follows:

*“Under section 118, unless the contrary was proved, it is to be presumed that the negotiable instrument (including a cheque) had been made or drawn for consideration. Under section 139 the court has to presume, unless the contrary was proved, that the holder of the cheque received the cheque for discharge, in whole or in part, of a debt or liability. Thus, in complaints under section 138, the court has to presume that the cheque had been issued for a debtor's liability. This presumption is rebuttable. However, the burden of proving that a cheque had not been issued for a debt or liability is on the accused. The Supreme Court in the case of *Hiten P. Dalal v. Bratindranath Banerjee* has also taken an identical view.”*

26. Furthermore, on the aspect of adducing evidence for rebuttal of the aforesaid statutory presumption, it is pertinent to cumulatively read the decisions of this Court in *Rangappa (supra)* and *Rajesh Jain (supra)* which would go on to clarify that accused can undoubtedly place reliance on the materials adduced by the complainant, which would include not only the complainant's version in the original complaint, but also the case in the legal or demand notice, complainant's case at the trial, as also the plea of the accused in the reply notice, his Section 313 CrPC 1973 statement or at the trial as to the circumstances under which the promissory note or cheque was executed. The accused ought not to adduce any further or new evidence from his end in said circumstances to rebut the concerned statutory presumption.”

32. In the backdrop of these principles, I may now come to the facts of the present case. As noted above, Trial Court convicted the Respondent for the offence under Section 138 NI Act but the Appellate Court has set aside the judgment of the Trial Court and acquitted the Respondent. Applying the principles elucidated by the Supreme Court, since the Respondent admitted



the issuance of the cheque in question as also his signatures, a presumption arose in favour of the Petitioner under Section 139 NI Act that the cheque was issued in discharge of debt/liability. The moot question, therefore, that arises for consideration is whether any probable defence was raised by the Respondent to rebut the said presumption.

33. Defence of the Respondent was that the cheque in question for a sum of Rs.8 lacs was given by him for the sole purpose of investment in flats in Lok Nayak Puram, Bakkarwala, New Delhi, pursuant to a proposal by the Petitioner as they were earlier also dealing with each other for purchase of some property at Kargil Apartments. Respondent had filed a complaint under Section 138 NI Act against the Petitioner when the cheque issued by him for a sum of Rs.18 lacs was dishonoured when presented in the bank by the Respondent, relating to Kargil Apartments. Petitioner was unable to dent this defence and his own witness CW-2 the Branch Manager of the concerned Bank at one stage admitted that the second cheque was issued by the Respondent as a replacement for the earlier cheque, which had been misplaced by the Bank.

34. Appellate Court noted that the alleged loan was stated to be advanced in several tranches between 29.09.2011 and 11.01.2012 i.e. Rs.10,12,000/- through demand draft/cheque and Rs.3,87,000/- through cash, but neither the alleged cheque/DD nor any cash receipt were brought on record. Significantly, neither in the legal notice dated 17.04.2012 sent by the Petitioner nor in the complaint before the learned MM, there was a whisper of the mode of advancing the loan of Rs.14 lacs. Even in the evidence filed by way of affidavit at the pre-summoning stage, the details of the mode of the payment and the specific dates of advancing the loans are conspicuously



2024:DHC:6566



missing. Admittedly and strangely, Petitioner never filed a suit for recovery of the alleged loan amount.

35. Noticeably, there is stark contradiction in the stand of the Petitioner during the cross-examination. Petitioner in his deposition as CW-1 stated that no document was executed with regard to advancement of the loan but the loan amount was reflected in his ITR for the year 2011-12, which when exhibited as Ex.CW1/8 did not reflect the said loan amount. Petitioner thereafter claimed that the advance was reflected in his balance sheet for the relevant period which he had handed over to his Chartered Accountant. He produced copy of the balance sheet and profit and loss account on 31.03.2012, which was marked as Mark 'A' (colly) in the absence of the originals. Petitioner deposed that it was correct that under the head 'sundry debtors', name of the Respondent was not mentioned. He volunteered that name of an individual is never mentioned in the balance sheet as a practice *albeit* he admitted that the said document did not bear the stamp or name of the CA also.

36. In view of this deposition of the Petitioner in cross-examination, Appellate Court observed that since the loan was stated to be advanced through DD/cheque of Rs.10,12,000/-, the best evidence to prove was the bank account statement, which was never produced during evidence before the Trial Court and withholding of the best evidence leads to an adverse inference that in case the statement was produced, the same may not have corroborated the stand of the Petitioner of having advanced the loan. It is pertinent to mention that during pendency of the appeal, certified copy of the bank account statement was produced by the Petitioner, but it is noted by the Appellate Court that there was not a single entry showing transfer of



2024:DHC:6566



Rs.10,12,000/- into the account of the Respondent through demand draft or cheques. An entry of Rs.7 lacs was found in the name of one Harish on 21.12.2011 but as rightly noted by the Court, the same could not be read as an entry in favour of the Respondent as no evidence came on record that Rs.7 lacs were transferred to Harish on behalf of the Respondent. Even with regard to the alleged cash payment of Rs.3,87,000/-, no receipt was produced by the Petitioner. Therefore, the Appellate Court rightly came to the conclusion that there was no evidence on record to establish that Petitioner had advanced a sum of Rs.14 lacs to the Respondent as loan.

37. It is crucial to note that for the first time in the cross-examination, Petitioner explained the circumstances in which the cheques came to be issued. It was his case that the second cheque was issued as the first cheque of Rs.8 lacs was taken away by the Respondent from his bank by impersonating as the Petitioner and thereafter, before the Village Panchayat, Respondent admitted his mistake and issued the second cheque in which details were filled by the Petitioner. This stand was found to be unbelievable by the Appellate Court on multiple grounds: (a) this case was set up for the first time in cross-examination and there was no mention of this either in the complaint or even during the pre or post summoning evidence; (b) allegation of impersonation is a serious matter and it was imperative for the Petitioner to have so stated in the complaint and led evidence for the Respondent to rebut; and (c) CW-2, the Branch Manager of the concerned Bank made false and contradictory depositions, which dents this allegation. In his examination-in-chief, CW-2 stated that it was the Respondent who had taken away the cheque of Rs.8 lacs and gave another cheque before the Panchayat which was duly endorsed on the back by him. However, in his cross-



2024:DHC:6566



examination, he admitted that the fact of the alleged theft of the cheque or apology by the Respondent before the Panchayat was told to him by the Petitioner and he had no personal knowledge of the same. It also came out in his cross-examination that for collecting a cheque, a requisition slip is required and signatures of the customers are taken in the Cheque Returning Register. It was admitted that the receipt on the basis of which cheque was taken was not the same by which it was deposited. Evidence of CW-2 also demolished the case of the Petitioner that he was the one who had filled the details on the second cheque.

38. In light of the evidence on record, Appellate Court concluded that the defence of the Respondent was a plausible one that he had given the cheque of Rs.8 lacs for investment and he was able to successfully rebut the presumption under Sections 118 and 139 of NI Act and that no evidence came on record to substantiate that Petitioner had advanced a loan of Rs.14 lacs to the Respondent. This Court finds no infirmity in this conclusion and in this context, I may allude to the judgment of the Supreme Court in ***Kundan Lal Rallaram v. The Custodian, Evacuee Property Bombay, 1961 SCC OnLine SC 10***, where the Supreme Court observed that when the creditor failed to produce his account books, the Court can raise a presumption of the fact under Section 114 of the Indian Evidence Act that the evidence if produced would have shown the non-existence of the consideration. Following these observations, in ***Rajesh Jain (supra)***, the Supreme Court held as follows in paragraphs 42 and 43, which at the cost of repetition are extracted hereunder:-

“42. The nature of evidence required to shift the evidential burden need not necessarily be direct evidence i.e. oral or documentary evidence or



admissions made by the opposite party; it may comprise circumstantial evidence or presumption of law or fact.

43. *The accused may adduce direct evidence to prove that the instrument was not issued in discharge of a debt/liability and, if he adduces acceptable evidence, the burden again shifts to the complainant. At the same time, the accused may also rely upon circumstantial evidence and, if the circumstances so relied upon are compelling, the burden may likewise shift to the complainant. It is open for him to also rely upon presumptions of fact, for instance those mentioned in Section 114 and other sections of the Evidence Act. The burden of proof may shift by presumptions of law or fact. In Kundan Lal case [Kundan Lal Rallaram v. Custodian (Evacuee Property), 1961 SCC OnLine SC 10 : AIR 1961 SC 1316] when the creditor had failed to produce his account books, this Court raised a presumption of fact under Section 114, that the evidence, if produced would have shown the non-existence of consideration. Though, in that case, this Court was dealing with the presumptive clause in Section 118 NI Act, since the nature of the presumptive clauses in Sections 118 and 139 is the same, the analogy can be extended and applied in the context of Section 139 as well.”*

39. It will be relevant and useful to once again refer to the recent judgment of the Supreme Court in ***Dattatraya (supra)***, where a similar situation arose for consideration and the Supreme Court held as follows:-

“26. *Furthermore, on the aspect of adducing evidence for rebuttal of the aforesaid statutory presumption, it is pertinent to cumulatively read the decisions of this Court in Rangappa (supra) and Rajesh Jain (supra) which would go on to clarify that accused can undoubtedly place reliance on the materials adduced by the complainant, which would include not only the complainant's version in the original complaint, but also the case in the legal or demand notice, complainant's case at the trial, as also the plea of the accused in the reply notice, his Section 313 CrPC 1973 statement or at the trial as to the circumstances under which the promissory note or cheque was executed. The accused ought not to adduce any further or new evidence from his end in said circumstances to rebut the concerned statutory presumption.*

27. *Applying the aforementioned legal position to the present factual matrix, it is apparent that there existed a contradiction in the complaint moved by the Appellant as against his cross-examination relatable to the time of presentation of the cheque by the Respondent as per the statements of the Appellant. This is to the effect that while the Appellant claimed the cheque to have been issued at the time of advancing of the loan as a*



security, however, as per his statement during the cross-examination it was revealed that the same was presented when an alleged demand for repayment of alleged loan amount was raised before the Respondent, after a period of six months of advancement. Furthermore, there was no financial capacity or acknowledgement in his Income Tax Returns by the Appellant to the effect of having advanced a loan to the Respondent. Even further the Appellant has not been able to showcase as to when the said loan was advanced in favour of the Respondent nor has he been able to explain as to how a cheque issued by the Respondent allegedly in favour of Mr. Mallikarjun landed in the hands of the instant holder, that is, the Appellant.

28. Admittedly, the Appellant was able to establish that the signature on the cheque in question was of the Respondent and in regard to the decision of this Court in *Bir Singh (supra)*, a presumption is to ideally arise. However, in the above referred context of the factual matrix, the inability of the Appellant to put forth the details of the loan advanced, and his contradictory statements, the ratio therein would not impact the present case to the effect of giving rise to the statutory presumption under Section 139 of the NI Act, 1881. The Respondent has been able to shift the weight of the scales of justice in his favour through the preponderance of probabilities.

29. The Trial Court had rightly observed that the Appellant was not able to plead even a valid existence of a legally recoverable debt as the very issuance of cheque is dubious based on the fallacies and contradictions in the evidence adduced by the parties. Furthermore, the fact that the Respondent had inscribed his signature on the agreement drawn on a white paper and not on a stamp paper as presented by the Appellant, creates another set of doubt in the case. Since the accused has been able to cast a shadow of doubt on the case presented by the Appellant, he has therefore successfully rebutted the presumption stipulated by Section 139 of the NI Act, 1881.

30. Moreover, affirming the findings of the Trial Court, the High Court observed that while the signature of the Respondent on the cheque drawn by him as well as on the agreement between the parties herein stands admitted, in case where the concern of financial capacity of the creditor is raised on behalf of an accused, the same is to be discharged by the complainant through leading of cogent evidence.”

40. This judgment will be incomplete without referring to a judgment of the Co-ordinate Bench of this Court in ***Vipul Kumar Gupta v. Vipin Gupta, 2012 SCC OnLine Del 4384***, relevant paragraph of which is as follows:-



“9. I find myself in agreement with the reasoning given by the learned ACMM that before a person is convicted for having committed an offence under Section 138 of the Act, it must be proved beyond a reasonable doubt that the cheque in question, which has been made as a basis for prosecuting the respondent/accused, must have been issued by him in the discharge of his liability or a legally recoverable debt. In the facts and circumstances of this case, there is every reason to doubt the version given by the appellant that the cheque was issued in the discharge of a liability or a legally recoverable debt. The reasons for this are a number of factors which have been enumerated by the learned ACMM also. Some of them are that non-mentioning by the appellant in his Income Tax Return or the Books of Accounts, the factum of the loan having been given by him because by no measure, an amount of Rs. 9,00,000/- can be said to be a small amount which a person would not reflect in his Books of Accounts or the Income Tax Return, in case the same has been lent to a person. The appellant, neither in the complaint nor in his evidence, has mentioned the date, time or the year when the loan was sought or given. The appellant has presented a cheque, which obviously is written with two different inks, as the signature is appearing in one ink, while as the remaining portion, which has been filled-up in the cheque, is in a different ink. All these factors prove the defence of the respondent to be plausible to the effect that he had issued these cheques by way of security to the appellant for getting a loan from Prime Minister Rojgar Yojana. The respondent/accused has only to create a doubt in the version of the appellant, while as the appellant has to prove the guilt of the accused beyond reasonable doubt, in which, in my opinion, he has failed miserably. There is no cogent reason which has been shown by the appellant which will persuade this Court to grant leave to appeal against the impugned order, as there is no infirmity in the impugned order.”

41. For all the aforesaid reasons, in my view, no interference is warranted in the findings and conclusions of the Appellate Court in the impugned judgment dated 09.06.2016, wherein the defence set up by the Respondent was found to be a probable one on the touchstone of preponderance of probabilities and thus no ground for grant of leave to appeal is made out.

42. Petition seeking leave to appeal is hereby dismissed.

JYOTI SINGH, J

AUGUST 30, 2024/kks