

**CRM-A-480-MA-2018**

Rs.70,000/-	On 12.03.2015	In cash
Rs.80,000/-	On 10.05.2016	Through Cheque No.021461
Rs.2,30,000/-	On 10.06.2015	In cash
Rs.25,000/-	On 15.06.2016	Through Cheque No.678771

3. It is further the case of the complainant that the accused, in discharge of his liability towards repayment of the above-mentioned amount, issued him Cheque No. 274528 dated 15.10.2016 for a sum of Rs. 2,30,000/-, drawn on State Bank of Patiala, Industrial Area, Yamuna Nagar. However, upon presentation to the bank, the said cheque was dishonoured with the remark "Funds Insufficient." A statutory legal notice was issued by the complainant to the accused, demanding payment of the cheque. Upon the failure of the accused to make payment, the complainant filed a complaint under Section 138 of the Negotiable Instruments Act against the accused.

4. The accused, in his statement under Section 313 of the Cr.P.C., in order to rebut the case of the complainant, stated that he had never borrowed any amount from the complainant. Rather, the accused had intended to purchase a refrigerator and, in order to get it financed, approached the complainant to arrange a financier for the said purpose. The complainant called a person financing through Finance to his home and obtained two blank signed cheques, along with other documents, such as the identification card, to facilitate the financing of the refrigerator. However, the complainant neither

**CRM-A-480-MA-2018**

3

arranged the finance from Bajaj Finance for the accused nor returned the cheques, and one of the said cheques was misused by the complainant in the present complaint.

5. The learned trial Court, while adjudicating the complaint, ultimately concluded that the accused had successfully rebutted the statutory presumption under Section 139 of the Negotiable Instruments Act, and that the complainant failed to prove the alleged liability on the part of the accused to issue the cheque in question in favor of the complainant. The learned trial Court, on the strength of the evidence adduced on record, also noted that earlier, the complainant had instituted a suit (Ex. D-5) for recovery against Sumitra and Kunta, both sisters of the accused. Ex. D-1. The certified copy of the complainant's statement in the said civil suit (Ex D-1) indicated that Sumitra Devi and subsequently her sister, Maina, were employed at the complainant's residence for domestic work receiving a monthly salary of Rs.1200/-. In view of these facts, the learned trial Court held that the relationship between the parties was not of such a nature that the complainant would have lent a sum of Rs. 5,05,000/- to the accused without any security.

6. The learned trial Court relied on the fact that the complainant had no written acknowledgment, pronote, or receipt to prove that he had advanced the alleged sum of money to the accused.

7. The learned trial Court further pointed out the falsity in the complainant's case regarding his claim of advancing an amount



CRM-A-480-MA-2018

4

of Rs. 80,000/- through Cheque No. 021461 on 11.05.2016, and an amount of Rs. 25,000/- through Cheque No. 678771 on 15.06.2016. The complainant, in order to prove the issuance of these two cheques to the accused, relied upon his bank statements (Ex. C-8 and C-9). Upon appraisal of the evidence, the learned trial Court held that the mere perusal of the said bank statements did not conclusively prove that the cheques had been encashed by the accused. The accused suggested during the complainant's examination that the complainant had fabricated false bank entries to falsely implicate the accused in the complaint. The learned trial Court held that the complainant was required to prove the issuance of the cheques to the accused by examining a witness from the bank who could have testified that the amount was disbursed to the accused. The learned trial Court further held that, even if it were assumed for the sake of argument that the cheques for Rs. 80,000/- and Rs. 25,000/- were given to the accused, they would still fall far short of the amount of Rs. 2,30,000/-, which is the amount of the cheque that is the subject matter of the present case.

8. In the case of *H.D. Sundara & Ors. v. State of Karnataka, 2023 (9) SCC 581*, the Hon'ble Supreme Court of India laid down the principles governing the power of appeal filed against acquittal as follows:

*“(a) The acquittal of the accused further strengthens the presumption of innocence;
(b) The Appellate Court, while hearing an appeal against acquittal, is entitled to re-appreciate the oral and documentary evidence;*



(c) The Appellate Court, while deciding an appeal against acquittal, after re-appreciating the evidence, is required to consider whether the view taken by the Trial Court is a possible view which could have been taken on the basis of the evidence on record;

(d) If the view taken is a possible view, the Appellate Court cannot overturn the order of acquittal on the ground that another view was also possible; and

(e) The Appellate Court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

9. Further, the Hon’ble Supreme Court, in the judgment passed in the case titled "***Babu Sahebagouda Rudragoudar and Others v. State of Karnataka***," 2024 INSC 320 = 2024(2) held as follows:

“39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

10. It is argued on behalf of the appellant that the plea taken by the accused in his statement under Section 313 of the Cr.P.C. regarding the calling of a person for availing a financing facility at the complainant's house is not plausible. As such, the accused has failed to rebut the presumption attached to the cheque under Section 139 of the Negotiable Instruments Act. It is argued that such a financing facility is easily available at shops in the market. However,



CRM-A-480-MA-2018

6

this argument on the part of the appellant does not, in any manner, impair the defence taken by the accused. It is not a thumb rule that just because finance facilities are available at shops in the market, a finance person cannot be called to the house of the complainant. The facts of the case clearly indicate that the accused does not belong to an affluent stratum of society, as his two sisters have worked at the complainant's house for domestic jobs at a meager sum of Rs. 1,200/- per month. Therefore, there is a preponderance of probability in the version put forth by the accused.

11. The Hon'ble Supreme Court, in the case of ***M/s Kumar Exports v. M/s Sharma Carpets, 2009(1) RCR (Criminal) 478***, has held as follows:

"11. 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. 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. The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, thereafter, the presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue.”

12. It is argued on behalf of the complainant that the plea taken by the accused is that the cheques issued by him for availing the finance were not returned to him. However, he has not filed any complaint in this regard against the complainant. It is submitted that the accused has not replied to the legal notice issued after the dishonour of the cheque; as such, he has admitted his liability concerning the cheque. As held earlier, the societal status of the accused, belonging to a weaker section of society, means his failure

**CRM-A-480-MA-2018**

8

to take proactive steps, such as lodging a complaint against the complainant or replying to the legal notice, cannot *ipso facto* saddle him with liability in this case. In view of the probable defence put forth by the accused in the trial Court, the onus was upon the complainant to prove his case against the accused beyond a shadow of reasonable doubt. The complainant, in this regard, cannot be permitted to draw any strength from the weakness or carelessness on the part of the accused in pursuing his remedies against the complainant.

13. It is next argued on behalf of the complainant that the complainant had the financial capacity to advance the amount in question to the accused; as such, the claim of the complainant cannot be doubted. It is submitted that the learned trial Court has not considered that Rs. 80,000/- and Rs. 25,000/- were respectively paid by the complainant to the accused through cheques. This plea on the part of the complainant is ex-facie wrong, as the impugned judgment clearly reveals that the learned trial Court has in detail, dealt with the aspect of these two cheques. After scrutinizing the entire evidence meticulously, the learned trial Court rightly concluded that the account statements (Ex. C-8 and C-9) do not, in any manner, conclusively prove that the said cheques were issued to and encashed by the accused. No cogent, convincing, and plausible evidence connecting the accused with the said cheques has been adduced by the complainant.



CRM-A-480-MA-2018

14. Perusal of the judgment of acquittal passed by the trial Court shows that the trial Court has thoroughly examined the entire evidence led by the prosecution in a painstaking manner and has dealt with each and every aspect of the case in a pragmatic way. The judgment of acquittal passed by the trial Court, based on sound reasoning, does not suffer from any illegality or perversity. As such, the judgment of acquittal dated 04.01.2018, passed by the Learned Judicial Magistrate, 1st Class, Yamuna Nagar at Jagadhri, in the present case, is upheld. Resultantly, the present appeal, being bereft of merit, fails and is dismissed.

(SUMEET GOEL)
JUDGE

January 20, 2025
jatin

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No