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\$~J-24 & 25

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 04th February 2025

+ CRL.L.P. 166/2023
GUJARAT AMBUJA CEMENTS LTDPetitioner
Through: Mr. Mohd. Rashid with Mr. Shivam
Sharma, Advocates.
versus

SHREE LAKSHMI VENKATESH CARGO MOVERS AND
CONSULTANTSRespondent
Through: Mr. Rajiv Mehra, Advocate.

+ CRL.L.P. 241/2023
GUJARAT AMBUJA CEMENTS LTDPetitioner
Through: Mr. Mohd. Rashid with Mr. Shivam
Sharma, Advocates.
versus

SHREE LAKSHMI VENKATESH CARGO MOVERS AND
CONSULTANTSRespondent
Through: Mr. Rajiv Mehra, Advocate.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present leave petitions filed under section 378(4) of the Criminal Procedure Code 1973 ('Cr.P.C.'), the petitioner impugns judgment dated 21.09.2022 passed by the learned Metropolitan Magistrate, Tis Hazari Court, Delhi, whereby the respondent has been acquitted of the offence under section 138 of the

Signature Not Verified

Signed By: ANJALI KAUSHIK

Signing Date: 22.02.2025
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CRL.L.P. 166/2023 & CRL.L.P. 241/2023

Page 1 of 21



Negotiable Instruments Act, 1881 ('NI Act') in criminal complaints bearing CC No. 2477/2017 and CC No. 2479/2017.

2. Delay in filing the leave petitions was condoned and notice on CRL.L.P. No.166/2023 and CRL.L.P. No.241/2023 was issued 28.03.2023 and 08.05.2023 respectively, consequent whereupon replies dated 25.01.2024 have been filed by the respondent.
3. Having heard learned counsel for the parties, leave to appeal is granted and the matters are taken-up as criminal appeals for final disposal today itself.

APPELLANT'S SUBMISSIONS

4. Mr. Mohd. Rashid, learned counsel appearing on behalf of the appellant (complainant in the criminal complaints) submits, that the case concerns 02 cheques bearing No.167953 dated 08.11.1997 for Rs. 20 lacs and No.167954 dated 10.11.1997 for Rs.10 lacs issued by the respondent to the appellant in discharge of certain debts owed against cement that was supplied by the appellant through the respondent, who (latter) was the appellant's Carrying & Forwarding ('C&F') Agent.
5. Mr. Rashid submits, that a perusal of the impugned judgment would show that the learned Magistrate records that the respondent had admitted that they had issued the said cheques; but, after dealing with the various defences raised on behalf of the respondent, the learned Magistrate proceeds to dismiss the complaints on an incorrect application of the principles of law. It is submitted, that *having first correctly enunciated the position of law*, the learned Magistrate has subsequently proceeded on the basis that it was the appellant who was



required to prove that there was a legally recoverable debt from the respondent, and in doing so, the learned Magistrate has completely misinterpreted and misapplied the statutory presumption contained in sections 118 and 139 of the NI Act.

6. Learned counsel draws attention to the following portion of the impugned judgment where the learned Magistrate has correctly articulated the statutory presumption in favour of the appellant :

“16. In the present case, the accused has admitted that the cheque in question (Ex.CW1/13) is his cheque and bears his signature. It was dishonoured for reason “Funds Insufficient” vide cheque returning memo (Ex.CW1/15). As per record, the legal demand notice had been sent to the accused within 15 days from receipt of intimation of dishonor of the cheque in question. The legal demand notice sent by the complainant was duly replied to on behalf of the accused. The same confirms the service of legal demand notice upon the accused. Despite service of notice, payment of cheque amount had not been made by the accused to the complainant within 15 days of receipt of legal demand notice. Hence, all requirements for filing a complaint under Section 138 of NI Act have been complied with in the present case and the complaint has been filed within limitation.

* * * * *

*“18. The Negotiable Instruments Act raises two presumptions in favour of the holder of the cheque i.e. complainant in the present case; firstly, with regard to passing of consideration as contained in **Section 118(a)** and, secondly, a presumption under **Section 139**, that the holder of cheque receiving the same of the nature referred to in Section 138 for discharge, in whole or in part, of any debt or other liability. These presumptions under Sections 118(a) and 139 have to be compulsorily raised as soon as execution of cheque by accused is admitted or proved by the complainant and thereafter burden is shifted upon the accused to prove otherwise. Once the issuance of cheque is established, either by admission or by positive evidence, the presumption under Section 139 of the*



Negotiable Instruments Act, 1881 arises.

In the present case, the accused has admitted his signature on the cheque in question. Hence, the presumptions under Sections 118(a) and 139 of NI Act have been raised in favour of the complainant. The onus then shifted upon the accused to rebut the said presumption. The standard of proof to be discharged by the accused is 'preponderance of probabilities'."

7. Mr. Rashid submits that thereafter, the learned Magistrate proceeds to deal with the various defences raised by the respondent in the following manner :

7.1. That M/s Gujarat Ambuja Cements Ltd. had no authority to prosecute the respondent : Learned counsel submits that this issue was raised since the respondent had had dealings with M/s. DLF Cements Limited, which company was the original complainant, but the name of that company was subsequently changed to M/s. Ambuja Cement Rajasthan Ltd.; and the latter company then amalgamated with M/s. Gujarat Ambuja Cements Ltd. This issue was decided by the learned Magistrate against the respondent, with the following observations :

"Perusal of record reveals that vide order dated 29.08.2000, an application seeking change of name of complainant company (DLF Cement Ltd.) to 'Ambuja Cement Rajasthan Ltd.', filed on behalf of the complainant, was allowed. As such, simple name change of the complainant does not affect the rights and liabilities of the parties. Further, since application had already been allowed and the said order attained finality, the court is not inclined nullify the locus of the complainant at this stage. Thereafter, vide order dated 09.08.2004, an application seeking amendment in the name of complainant company due to its



amalgamation with 'Gujarat Ambuja Cements Ltd.', filed on behalf of the complainant, was allowed. Copy of order of BIFR (Mark R) had been filed on behalf of the complainant along with the same. No objection was raised on behalf of the accused qua the order. As per the general law of amalgamation, rights and liabilities of transferor company are vested in transferee company as per the scheme of amalgamation. No inference can be drawn from the documents filed that right to prosecute the accused had been foregone on behalf of the complainant. Further, since application had already been allowed and the said order attained finality, the court is not inclined nullify the locus of the complainant at this stage. Lastly, on 31.08.2007, an application seeking change of name of complainant company to 'Ambuja Cements Ltd.', filed on behalf of the complainant, was kept pending to be decided at the time of final hearing. However, certified copy of Certificate of Incorporation issued by Registrar of companies for the said name change had not been filed on behalf of the complainant along with the said application. Even the original certificate/certified copy of certificate was not seen and returned. In such a case, application seeking name change of the complainant to 'Ambuja Cements Ltd.' cannot be allowed at this stage. Accordingly, complainant in the present case continues to be 'Gujarat Ambuja Cements Ltd.' However, since the entity has remained the same, there is no material infirmity for pronouncement of judgment."

(emphasis supplied)

- 7.2 That the authorized representative of the complainant did not have the requisite authorization and knowledge to prosecute the criminal complaints : Next, learned counsel points-out, that the learned Magistrate has dealt with this issue with the following observations :



“Challenge to authorization of AR of the complainant had also been raised on behalf of the accused. It had been contended that original AR Sh. Pulin Kumar had only filed a General Power of Attorney and not a specific one. Also, he had no knowledge of the transactions and hence, could not give the best evidence in the case. Perusal of copy of POA (Mark A) of the first AR of the original complaint reveals that necessary averments have been mentioned in the same for pursuing the present complaint (ref. A. C. Narayanan v. State of Maharashtra & Anr. (2014) 11 SCC 790). Further, it had been mentioned in the evidence affidavit that knowledge about the present case had been derived on the basis of records maintained by the complainant. Considering the same, there is no material infirmity in the authorization of the AR to pursue the complaint case.”

(emphasis supplied)

7.3 That the respondent was not liable for any legally enforceable debt : Mr. Rashid submits that the learned Magistrate has dealt with this issue, namely the legal liability of the respondent in relation to the cheques in question, which is central to the present appeal, in the following manner :

“II. There is no legal liability upon the accused qua the cheque in question.

Ld. Counsel for the accused has argued that accounts of the accused were never settled by the complainant. As per the agreement dated 21.01.1997 (Ex.CW1/10), no intimation was given to the accused to entail any liability upon him. The account statement (Ex.CW1/12) is not the original statement of account, is not a finalized one and had not been filed along with the complaint. Accordingly, the cheque in question could not have been issued to the complainant for discharge of any legal liability or part thereof. Per contra, Ld. Counsel for the



complainant has argued that Minutes of Meeting dated 17.10.1997 (Mark X) show that the accused was intimated about his liability. His signatures are available on the same. Further, accused had acknowledged his dues towards the complainant vide letter dated 08.11.1997 (Ex.CW1/11). Hence, no further document was required to prove his liability. Since there is an admission of liability of the accused by the accused himself and the cheque in question having been issued in pursuance of the same, the ingredients of Section 138 of NI Act stand duly proved.

“ Firstly, reliance cannot be placed on either of the aforementioned two documents to establish conclusive or final liability of the accused. The Minutes of Meeting dated 17.10.1997 (Mark X) mentions about liability of Indore Depot and targets for various periods in future. There is no mention of any specific liability of the accused. No acknowledgment of any payment to be made by the accused has been mentioned in the said document. Even DW-2 Sh. Sharad C. Aggarwal (the then Vice President of the original complainant and one of the signatories on the MoM) admitted that the said document was not the concluding document regarding liability of the accused. Hence, the said document is insufficient, in itself, to impose/clarify/declare the final liability of accused, the same cannot even serve as an intimation of liability as no liability has been finalized in the same. Further, letter dated 08.11.1997 (Ex.CW1/11) also falls short to establish/clarify the final liability of the accused. Even if version of the complainant is to be relied upon and it is to be believed that the said document had been voluntarily written by the accused to acknowledge his outstanding towards the original complainant, the same does not establish



any final liability towards which cheques in both the connected complaint cases could have been said to have been issued to the complainant. The reason behind the same is that document Ex.CW1/11 does not mention any total liability, is not commensurate with the figures mentioned in the statement of accounts filed on behalf of the complainant and the total of figures mentioned on the same is much lesser than the total amount of cheques in question in the two complaint cases. Hence, **further positive evidence was required at the end of the complainant to establish the legal liability of the accused against the cheque in question.**

“Secondly, reliance cannot also be placed upon the statement of accounts filed on behalf of the complainant. Despite the original complainant being a Limited Company, no audited statement of accounts had been filed on behalf of the complainant to prove the liability of the accused. Adverse inference has to be drawn against the complainant for the same. Further, the account statements filed on behalf of the complainant are computerized documents and yet, no certificate under Section 65 B of Indian Evidence Act has been filed along with the same. AR of the complainant is neither the author of the same nor was able to answer any question regarding the entries on the same. Furthermore, the figures mentioned on the said statements do not corroborate with the Mark X and Ex.CW1/11. Even the same are not the finalized statements or pertain to settled accounts as the words “TO BE RECONCILED” are mentioned on the same. Accordingly, the said statements cannot be used to establish/prove any liability upon the accused.

* * * * *

“Coming to the mode of imposing liability upon the accused, the same could have been imposed



only as per agreement dated 21.01.1997 (Ex.CW1/10) as admittedly, cement was not sold to the accused for his personal consumption/use/purpose. Admittedly, the complainant has not filed on record any document to show how many dealers were concerned with the accused as their C&F Agent, how much material (cement) was sold to such dealers and what was their outstanding against supply, how many of them defaulted in payment and how much was the total defaulted amount, what steps were taken by the complainant to recover the amount from dealers, when was the defaulted liability of those dealers shifted onto the accused, when was the accused intimated about the liability (if any) and when the accounts were settled with the accused. Hence, as per the agreement dated 21.01.1997 (Ex.CW1/10), no liability of the accused has been established against him by the complainant in the present case.

“In light of the above discussion, **no document has been brought in evidence by the complainant to establish the liability of the accused. Accordingly, the cheque in question cannot be said to be of the nature of cheque under Section 138 of NI Act and cannot be said to be issued against any legally enforceable liability.**”

(emphasis supplied)

- 7.4 That the cheques in question were ‘blank signed’ cheques, issued as ‘security’ and could not have been used towards discharge of any liability : Thereafter, learned counsel points-out, that the learned Magistrate has dealt-with another issue raised in the course of trial, namely that the cheques in question were ‘blank’ though ‘signed’ and had been issued in advance as ‘security’; and could therefore not have been used towards



discharge of any liability. In this behalf, the learned Magistrate has observed as follows :

*“Ld. Counsel for the accused has argued that the cheque in question in both the complaint cases had been given to the complainant as blank signed security cheques, along with few other cheques, in light of the policy of the original complainant to secure themselves against bad debts. Initially four blank cheques were given and later a fifth cheque had been demanded on behalf of the complainant. The said facts have been proved by both DW-1 and DW-3 through their testimonies and by proving circular Mark X (this is the second document bearing identification Mark X). Two of those cheques have been misused in the present connected complaints. Further, if it were to be believed that the cheque in question were issued pursuant to letter dated 08.11.1997 (Ex.CW1/11 and also Ex.CW1/D), then how come the said fact of issuance of cheques finds no mention in the said document. This clearly shows that the cheques were not issued on 08.11.1997. Per contra, Ld. Counsel for the complainant has argued that as per agreement dated 21.01.1997 (Ex.CW1/10), security of Rs. 6 lakhs had been taken from the accused and as such, the company did not require any further security from him. Hence, there was no question of taking any blank cheque from the accused. Further, the circular Mark X and other such circulars, relied upon by the accused, mention only about security cheques to be taken from dealers and not from C&F agents. **Hence, the defence of the accused with respect to possession of cheques being with the complainant by way of security and having been given prior in time, is a sham defence.***

* * * * *

“... .. Furthermore, a consistent defence has been taken by the accused in his reply to legal demand notice, cross-examination of the AR of the complainant, statement under Section 313 Cr.P.C. and his own evidence. Accused has deposed that the cheque in question was issued as



security cheque along with other cheques on demand of the management of the original complainant. The same have been misused in the two connected matters without any settlement of account. Accused has not contested the trial by taking various or inconsistent defences and has not tried to settle the matter on any other ground. Reliance can be placed upon his testimony lead in defence evidence.

*In the considered opinion of the court, **the accused has been able to rebut the presumption and raise a probable defence in his favour qua the possession of cheque in question with the complainant and the absence of a legal liability upon him.***

(emphasis supplied)

8. Mr. Rashid argues, that as a sequitur of the foregoing discussion, the learned Magistrate has come to the following conclusion :

“20. To rebut the presumption raised against him, the accused has challenged the averments in the complaint and the case of the complainant, broadly, on the grounds as mentioned below. After going through the entire record, this court is of the considered opinion that accused has successfully rebutted the presumption under Section 139 of NI Act raised in favour of the complainant.

* * * * *

*“21. Considering the above facts and circumstances in toto, this court is of the considered opinion that **the complainant has not been able to prove the transactions with the accused and his liability for the same. Accused has been able to rebut the presumption of legally enforceable debt to the amount of cheque in question. Thereafter, the onus had shifted back upon the complainant to prove the ingredients of the offence under Section 138 of NI Act against the accused beyond reasonable doubt.** The complainant has failed to discharge the said onus and prove beyond reasonable doubt, the factum of a legally enforceable debt outstanding upon the accused and issuance of cheque by the accused of nature as contemplated under Section 138 of NI Act.*



“22. In the light of above discussion, on account of the fact that the complainant has failed establish the ingredients of offence under Section 138 of NI Act against the accused beyond reasonable doubt, accused Vijay Bhutda, Proprietor of Shree Lakshmi Venkatesh Cargo Movers and Consultants, is hereby acquitted for the offence under section 138 NI Act.”

(emphasis supplied)

9. Learned counsel for the petitioner submits, that the criminal complaints came to be filed in relation to the subject cheques *inter-alia* based on Minutes of Meeting (‘MoM’) dated 17.10.1997 signed between the appellant and the respondent, whereby the respondent had *admitted* to a total outstanding debt of approximately Rs.76,52,991.75 towards the Indore Depot after considering the pending bills upto 16.10.1997, with details as set-out in the said minutes of meeting; and the respondent had also accepted that further supply of cement to the Indore Depot would resume only after they clear the outstanding upto 30.09.1997.
10. Mr. Rashid submits, that it was in this backdrop that against a total outstanding debt of more than Rs. 76 lacs, the subject cheques, in the aggregate sum of Rs.30 lacs, were presented towards part-payment of the debt recoverable from the respondent.
11. It is argued, that as recorded in the impugned judgment, DW-2 who was formerly a Vice-President of the original complainant and the signatory to MoM dated 17.10.1997, had admitted that the said document was signed, though he had said that it was not the conclusive document of liability of the respondent, since the



respondent *owed much more* than what had been indicated in the said document.

12. Furthermore, it is pointed-out that while the MoM dealt with the case of ‘dealers’, in a subsequent letter dated 08.11.1997 issued by the respondent to the appellant, they admitted to a further liability of the ‘institutional parties’ in the sum of about Rs.18 lacs, which document was duly proved and acknowledged by the respondents as Ex. CW-1/11.
13. Accordingly, it is submitted that the learned Magistrate has erred on the point of law by misconstruing the provision of sections 118 and 139 of the NI Act, whereby the onus of proving that there was *no legally enforceable debt* was on the respondent (accused) and not on the petitioner (complainant); and that the respondent had failed to discharge that onus.

RESPONDENT’S SUBMISSIONS

14. On the other hand, Mr. Rajiv Mehra, learned counsel appearing on behalf of the respondent submits, that the subject cheques were issued by the respondent to M/s. DLF Cement Ltd., and not to the appellant under the terms of a Circular dated 11.01.1997, which expressly required that ‘blank’ cheques were to be taken from all dealers and were to be sent to the head office of that company.
15. Mr. Mehra submits, that though the subject cheques were signed, they were ‘blank’, both as to date and amount. Learned counsel further submits, that neither under MoM dated 17.10.1997 (relating to the dues of ‘dealers’) nor under letter dated 08.11.1997 (relating to the dues of ‘institutional parties’) had the respondent admitted to any



specific amount being owed to the appellant; and therefore the subject cheques could not have been presented for encashment.

16. It is argued that the learned Magistrate was therefore correct in having dismissed the criminal complaint under section 138 of the NI Act on the ground that the *complainant had failed to establish a legally enforceable debt*.
17. Learned counsel argues, that as recorded *inter-alia* in para 5 of the impugned judgment, the learned Magistrate has also noted that the authorized representative appearing on behalf for the appellant had clearly said in his post-summoning evidence that his knowledge about the case was derived only from the official records; that he was not working with the complainant at the relevant time; and that he was not aware of the records of M/s DLF Cement Ltd.
18. It is pointed-out, that the authorized representative of the complainant had also disclaimed any knowledge about the dealers and C&F Agents of M/s. DLF Cement Ltd. in the Indore Depot area at the relevant time; and had admitted that he could not give any specification of the goods supplied to them.
19. Learned counsel for the respondent also draws attention to what is narrated in para 5 of the criminal complaint filed by the appellant, which is extracted below :

“... .. The total outstanding balance as on that date was Rs.30,81,058.50. The accused vide cheque No.167953 for Rs.20,00,000/- made part payment towards the outstanding amount in its account.”

Mr. Mehra submits that therefore, there is discrepancy in the



amount alleged to be due from the respondent to the appellant *and* the amount comprised in the said two cheques.

20. Mr. Mehra argues, that as correctly recorded by the learned Magistrate in the impugned judgment, the *complainant had failed to prove the exact amount claimed to be due* from the respondent; and therefore the learned Magistrate had correctly dismissed the criminal complaint on that score.

ANALYSIS & CONCLUSIONS

21. The court has considered the rival submissions made by learned counsel for the parties, in the context of the record before it.
22. At the outset, it must be observed that insofar as the issues (i) whether the criminal complaint filed by the present appellant, namely M/s Gujarat Ambuja Cements Ltd., was maintainable and (ii) whether the AR of the complainant was competent to depose in relation to the matter are concerned, those issues have been decided by the learned Magistrate in favour of the appellant and against the respondent.
23. Before delving into the other issues decided by the learned Magistrate, this court considers it necessary to remind itself of the provisions of section 118 and 139 of the NI Act, which read as under :

118. Presumptions as to negotiable instruments.— Until the contrary is proved, the following presumptions shall be made:

(a) of consideration : that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;



(b) *as to date* : that every negotiable instrument bearing a date was made or drawn on such date;

(c) *as to time of acceptance* : that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) *as to time of transfer* : that every transfer of negotiable instrument was made before its maturity;

(e) *as to order of indorsement* : that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) *as to stamp* : that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) *that holder is a holder in due course* : that the holder of a negotiable instrument is a holder in due course:

Provided that, ...

(emphasis supplied)

139. Presumption in favour of holder.— It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.

(emphasis supplied)

24. Clearly therefore, as per section 118(a) of the NI Act, a statutory presumption must be drawn in favour of a complainant that every negotiable instrument (such as a cheque) is made or drawn for consideration *until the contrary is proved* by the accused person.
25. Section 139 of the NI Act goes further to cast the onus *on the accused* of proving that a cheque was *not received* by a holder in discharge of a debt or other liability owed.
26. This position of law has been articulated by the Supreme Court in



Rangappa vs. Sri Mohan,¹ and further re-articulated by a Co-ordinate Bench of this court in **Satish Kumar vs. State NCT of Delhi**.² Furthermore, this court also notices the decision of the Supreme Court in **Bir Singh vs. Mukesh Kumar**,³ which has been cited with approval by the Supreme Court in its very recent order dated 09.12.2024 passed in **K. Ramesh vs. K. Kothandaraman**⁴ in the following words :

“5. In this regard our attention was drawn to paragraphs 32, 33, 34 and 36 of the judgment in *Bir Singh*, wherein it has been observed that even if a blank cheque leaf is voluntarily signed and handed over by the accused towards some payment would attract the presumption under Section 139 of the Act and in the absence of any cogent evidence to show that the cheque was not issued in discharge of the debt, the presumption would hold good. The said paragraphs are extracted below:

“32. The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post-dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.

33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in

¹ (2010) 11 SCC 441

² 2013 SCC OnLine Del 2963

³ (2019) 4 SCC 197

⁴ SLP (Crl.) No. 3377/2019



discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.”

(emphasis supplied)

27. Also relevant for purposes of the present appeals is the observation of the Supreme court in *K.N. Beena vs. Muniyappan and Another*,⁵ as to the threshold for rebutting a presumption under section 139 of the NI Act. The relevant portion of the judgement reads thus :

“6. In our view the impugned judgment cannot be sustained at all. The judgment erroneously proceeds on the basis that the burden of proving consideration for a dishonoured cheque is on the complainant. It appears that the learned Judge had lost sight of Sections 118 and 139 of the Negotiable Instruments Act. 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

⁵ (2001) 8 SCC 458



*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 debt or 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.** This Court in the case of Hiten P. Dalal v. Bratindranath Banerjee [(2001) 6 SCC 16 : 2001 SCC (Cri) 960] has also taken an identical view.*

*7. In this case admittedly the 1st respondent has led no evidence except some formal evidence. **The High Court appears to have proceeded on the basis that the denials/averments in his reply dated 21-5-1993 were sufficient to shift the burden of proof on to the appellant complainant to prove that the cheque was issued for a debt or liability. This is an entirely erroneous approach. The 1st respondent had to prove in the trial, by leading cogent evidence, that there was no debt or liability. The 1st respondent not having led any evidence could not be said to have discharged the burden cast on him.** The 1st respondent not having discharged the burden of proving that the cheque was not issued for a debt or liability, the conviction as awarded by the Magistrate was correct. The High Court erroneously set aside that conviction.”*

(emphasis supplied)

28. As noticed above, the learned Magistrate has opined that the defence sought to be raised by the respondent that the subject cheques were being held by the appellant as ‘security’ was “a sham defence”. Furthermore, the learned Magistrate has, in so many words, also recorded that the *respondent admits* to the issuance of the subject cheques and the signatures appearing thereon.
29. However, in what is evidently a complete misinterpretation, misconstruction and misapplication of the statutory presumption contained in sections 118(a) and 139 of the NI Act, and as interpreted



by the courts, the learned Magistrate then proceeds to hold that the *appellant (complainant) had failed to establish that there was a legally enforceable debt*. In the opinion of this court, this inference drawn by the learned Magistrate is at complete odds with the foundational presumptions contained in sections 118(a) and 139 of the NI Act, which presumptions hold good *unless and until* the contrary is *proved by the accused person*.

30. It is abundantly clear from the record, as also narrated in the impugned judgment, that the respondent had *admitted* to having issued the subject cheques and the signatures appearing thereon; and the merits defence sought to be raised by the respondent was that the amount comprised in the subject cheques was not due or payable by the respondent to the appellant. The respondent has sought to support this defence on the ground that the subject cheques were 'blank' as to their date and amount when they were issued, and had been given to the original complainant only by way of 'security' towards a possible future debt.
31. The fact that the cheques were issued as 'security' is answered in the MoM dated 17.10.1997 and letter dated 08.11.1997, whereby the respondent has admitted to owing a debt of about Rs. 94 lacs to the appellant, which would entitle the appellant to encash the subject cheques for the sum of Rs. 30 lacs towards part-payment of the debt. Therefore, the respondent cannot be heard to say that the subject cheques, which were admittedly issued as 'security' towards a possible future debt, cannot be encashed to satisfy a part of such debt, which debt stands admitted in the afore-noted MoM and letter.



32. Insofar as the question of the cheques having been 'blank', when issued is concerned, that defence now stands nullified in light of the verdicts of the Supreme Court in *Bir Singh and K. Ramesh* as cited above.
33. As a sequitur to the above, the dismissal of the criminal complaints by the learned Magistrate is unsustainable in law and deserves to be set-aside.
34. Consequently, the present appeals are allowed and impugned judgment dated 29.01.2022 is set-aside; and respondents Nos. 1 and 2 are convicted of the offence under section 138 read with section 141 of the NI Act.
35. The matters are remanded back to the learned Magistrate for sentencing.
36. Let the parties appear before the learned Magistrate for the above purpose on 25th February 2025.
37. The criminal appeals are disposed-of in the above terms.
38. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 4, 2025

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