VED PRAKASH DEWANGAN

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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 392 of 2019

Reserved for Judgment on 15/10/2026

Judgment delivered on 28/10/2026

Ashok Kumar Sharma S/o Manohar Lal Sharma Aged About 55 Years R/o Shanichari Bazar, Durg, Tahsil And District- Durg, Chhattisgarh.

... Appellant

versus

Uttam Kumar Deshmukh S/o Babulal Deshmukh Aged About 48 Years R/o Bichpara, House No. 264, Nearly Bus Statnd, Village And Post- Nimum, Police Station- Anda, District- Durg, Chhattisgarh.

... Respondent

(Cause title taken from Case Information System)

For Appellant	:	Mr. Jitendra Gupta and Ms. Upasana Yadav, Advocates
For Respondent	:	Mr. Uttam Chand, Advocate on behalf of Mr. R.K. Gomasta, Advocate

Hon'ble Shri Justice Ravindra Kumar Agrawal

C.A.V. Judgment

1. The present acquittal appeal under Section 378(4) of the Code of Criminal Procedure, 1973 has been filed by the appellant against the impugned judgment dated 06.03.2019, passed by learned Judicial Magistrate First Class, Durg, in Criminal Case (NI) No. 243 of 2011,

whereby the respondent/accused has been acquitted from the offence of Section 138 of the Negotiable Instruments Act, 1881 (in short “NI Act”).

2. The brief facts of the case are that the appellant was the complainant before the learned trial Court and the respondent was the accused. The complainant prosecuted a complaint case under Section 138 of the NI Act against the accused before the learned trial Court with the allegation that both parties were well acquainted with each other for a long time and they were having frequent money transaction between them. For discharge of his liability of borrowed amount, the accused had given a cheque of UCO bank, Civic Centre, Bhilai branch bearing No. 935121, dated 30.11.2009 amounting to Rs. 2 lakhs. When the complainant deposited the said cheque in his bank account at bank of Maharashtra, Durg branch, the said cheque was dishonored by the payee bank on the ground of insufficient balance in the bank account of the accused. Initially, the complainant orally informed the accused about dishonor of cheque and when he has not paid the amount, the complainant served a legal demand notice to his counsel on 08.03.2010, which was delivered to the accused on 09.03.2010 and when the amount of cheque was not paid to the complainant, he filed a complaint case under Section 138 of NI Act on 01.04.2010. The complaint case was registered on the same day and process was issued to the accused. After his appearance, the details of offence were explained on 23.02.2011 and after recording evidence of the complainant, statement of the accused under Section 313 of CrPC has been recorded. He denied the circumstances that appears against him,

pleaded innocence and has submitted that he borrowed Rs. 40,000/- from the complainant only once and he has repaid the entire amount. At the time of said transaction, he handed over the documents to the complainant as a security, which has been misused by the complainant. He too has examined himself and another defence witness in his defence and relied upon certain documents. The learned trial Court after hearing the parties and conclusion of the trial acquitted the accused from the alleged offence holding that the complainant has failed to prove the legally recoverable debt exists against the accused and in discharge of the said liability he issued the cheque and there is no sufficient ground to draw presumption in his favour. The said judgment of acquittal is under challenge in the present appeal.

3. Learned counsel appearing for the appellant would submit that, the learned trial court has erred in fact and law while acquitting the respondent/accused from the alleged offence. He would further submit that the statutory presumption in favour of the complainant has been ignored by the learned trial court. He would further submit that the learned trial court has erroneously held that cheque in question (exhibit P-2) was issued for discharge of the liability of borrowed amount of Rs. 40,000/- and with respect to the claimed amount by the complainant, the complainant has not filed any documentary evidence except the agreement (exhibit P-1) nor he examined any witness of the alleged transaction. He would also submit that the accused has not denied that he has not issued the cheque in favour of the complainant and once he admitted his signature over the cheque, the burden shifts upon the accused to show that there was no legally recoverable debt against

him. He would also submit that the learned trial Court has failed to consider that against the dismissal of the civil suit filed by the complainant, the first appeal is pending before this Court. All the statutory presumptions are in favour of the complainant, yet the complaint case has been dismissed by shifting burden upon the complainant and holding that he has failed to prove his case. He would further submit that the learned trial Court has also erroneously considered that the complainant being the money lender has not proved the transaction by producing the relevant documents and that the transaction for more than Rs. 20,000/- in cash is prohibited under the Income Tax Act. The complainant has produced the agreement executed between the parties, which is sufficient to prima facie establish the subject transaction between the parties, therefore, the consideration of the learned trial Court is erroneous and the impugned judgment of acquittal is liable to be set aside and the respondent/ accused may be convicted and sentenced for the alleged offence.

4. On the other hand, learned counsel for the respondent/accused opposes the submissions made by learned counsel for the appellant and submitted that the learned trial court has considered every aspect of the case and has acquitted the respondent/accused, which is strictly in accordance with law. He would also submit that the learned trial Court has rightly re-appreciated the entire evidence on record and found that the complainant failed to establish the foundational facts necessary for drawing the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act. It is submitted that the accused was a money lender and he borrowed an amount of Rs.

40,000/- from the complainant and a promissory note (exhibit P-9) was executed on 04.08.2007 and the said amount was repaid. The documents given to him as a security of borrowed amount was misused by the complainant. In the legal demand notice and the complaint itself, the complainant has not disclosed nature of transaction between them and when the amount of Rs. 2 lakhs was borrowed by the accused. The source of the fund allegedly advanced to the accused has also not been proved. None of the witnesses to the transaction have been examined. The civil suit filed by the complainant with respect to recovery of amount of Rs. 2 lakhs towards the same cheque has been dismissed by the learned trial Court vide judgment and decree dated 05.04.2013 and the complainant could not prove the transaction between the parties with respect to loan of Rs. 2 lakhs. The learned trial Court after appreciating the entire evidence available on record and judgment passed by the Hon'ble Supreme Court holding the field, acquitted the respondent/accused, which does not suffer from any illegality or perversity and therefore, the acquittal appeal is liable to be dismissed.

5. I have heard learned counsel for the parties and perused the record of the trial court and considered their rival submissions.

6. The case of the complainant was that, he was well acquainted with the accused and they had frequent money transactions between them and in lieu of repayment of borrowed amount the accused issued the subject cheque of Rs. 2 lakhs dated 30.11.2009 (exhibit P-2). The complainant has not disclosed as to when the amount of Rs. 2 lakhs was borrowed by the accused, but he averred in the complaint memo

that the accused had borrowed the amount on different occasions. The said cheque was dishonored by the payee bank on 17.02.2010 and thereafter, after service of legal demand notice, the complaint case was filed. The accused denied his liability with the defence that he borrowed an amount of Rs. 40,000/- from the complainant and as a security thereof, the complainant got executed a promissory note and also obtained a passport size photo, blank signed stamp paper, blank signed cheque with the assurance that after repayment of Rs. 40,000/- along with interest, he would return the documents. He repaid the amount of Rs. 40,000/- along with interest in various installments and completed it on 06.03.2010, but he has not returned his documents and misused the same. He never borrowed the amount of Rs. 2 lakhs from the complainant.

7. The respondent/accused though has not denied his signature over the subject cheque, but he specifically denied the existing liability of Rs. 2 lakhs with the defence that the subject cheque was misused by the complainant. It is true that once the execution of the cheque is admitted, the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act, 1881 operate in favour of the holder of the cheque. The law is settled in **Rangappa v. Sri Mohan**, (2010) 11 SCC 441 and **Bir Singh v. Mukesh Kumar**, (2019) 4 SCC 197, that the presumption includes the existence of a legally enforceable debt or liability. However, the presumption is rebuttable, and the accused is not required to discharge the burden beyond reasonable doubt. The accused can rebut the presumption on the preponderance of probabilities either by leading defence evidence or by relying upon the

material elicited from the complainant during cross-examination. Therefore, the question is whether the accused succeeded in creating a probable defence sufficient to rebut the statutory presumption or not.

8. In the case of **Rangappa** (supra), the Hon'ble Supreme Court has held that:-

> "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 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.
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> 27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better

> described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof.
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> 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."

9. In **Basalingappa v. Mudibasappa**, (2019) 5 SCC 418, the Hon'ble Supreme Court has held that the burden upon the accused is only to raise a probable defence, and once such defence is established, the burden shifts back upon the complainant to prove the transaction in question. The Hon'ble Supreme Court has held that:-

> "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.

26. Applying the preposition of law as noted above, in facts of the present case, it is clear that signature on the cheque having been admitted, a presumption shall be raised under Section 139 that the cheque was issued in discharge of debt or liability. The question to be looked into is as to whether any probable defence was raised by the accused. In cross-examination of PW 1, when the specific question was put that cheque was issued in relation to loan of Rs 25,000 taken by the accused, PW 1 said that he does not remember. PW 1 in his evidence admitted that he retired in 1997 on which date he received monetary benefit of Rs 8 lakhs, which was encashed by the complainant. It was also brought in the evidence that in the year 2010, the complainant entered into a sale agreement for which he paid an amount of Rs 4,50,000 to Balana Gouda towards sale consideration. Payment of Rs 4,50,000 being admitted in the year 2010 and further payment of

> loan of Rs 50,000 with regard to which Complaint No. 119 of 2012 was filed by the complainant, copy of which complaint was also filed as Ext. D-2, there was burden on the complainant to prove his financial capacity. In the year 2010-2011, as per own case of the complainant, he made payment of Rs 18 lakhs. During his cross-examination, when financial capacity to pay Rs 6 lakhs to the accused was questioned, there was no satisfactory reply given by the complainant. The evidence on record, thus, is a probable defence on behalf of the accused, which shifted the burden on the complainant to prove his financial capacity and other facts."

10. From perusal of the complaint memo, it transpires that the complainant has not disclosed any date on which the amount was borrowed by the accused. It is only mention that the accused borrowed the amount on different dates and to repayment of it, he issued the subject cheque of Rs. 2 lakhs. Even in the legal demand notice (exhibit P-6C) the complainant has not disclosed any date of loan transaction.

11. In the evidence, the complainant Ashok Kumar Sharma (PW-1) stated that in the year 2007, he started money lending business, but he could not succeeded in the said business. He applied for money lending license in the year 2007, which could be granted in his favour in the year 2008. He forgotten the name of person with whom the accused came to him to borrow the amount. Subsequently, he admitted that Devdhar Sahu was the person, who took him to his shop. He further admitted that Devdhar Sahu brought various persons to him who were in need of money and on his instance, he advanced loan to them and he was also engaged in recovery of the loan amount. He further stated

that in the month of February 2007, the accused borrowed an amount of Rs. 40,000/- for which he obtained a promissory note from him. He further stated that the transaction has not been reduced in writing in any register, even its repayment has also not been reduced in writing. He admitted that the accused had repaid Rs. 40,000/-. He denied the receipts executed by him or his son Vikas in lieu of repayment of borrowed amount in installments. He admitted the seal of his shop in the document (exhibit D-1C). After repayment of Rs. 40,000/- by the accused, he returned the promissory note to him. He further stated that he advanced loan of Rs. 2 lakhs to the accused on 15.07.2007, but the same has not been mentioned in the legal demand notice, even the execution of the agreement has also not been mentioned in the said notice (exhibit P-6). He admitted that after service of notice upon the accused, he made a complaint against him to the Superintendent of Police, Durg. He further admitted that his suit for recovery of the amount filed against the accused was dismissed by the learned trial Court. He admitted that there is overwriting on the date of subject cheque. He also admitted that in his complaint memo, there is no averment that the amount of Rs. 2 lakhs was given to the accused on 15.07.2007 and even the execution of agreement has also not been averred in the complaint memo. Along with the complaint memo, the copy of agreement has not been annexed. He further stated that the accused repaid the amount of Rs. 40,000/- in the month of February which he kept in his shop and the remaining amount of Rs. 1,60,000/- was also kept by him from his business and then he advanced loan of Rs. 2 lakhs to the accused. He could not say about the denomination of the currency note of Rs. 2 lakhs. He admitted that various cheque

bounce cases are pending before the court, which are filed by him. He also admitted that in the income tax return, he has not disclosed the pending litigation. Except the evidence of the complainant, he has not examined any other witness.

12. On the other hand, the defence of the accused is supported by documentary proof of repayment or of the original loan transaction of Rs. 40,000/-, complaint made by him with respect to misuse of cheque and the evidence of the complainant made in the civil suit, which was filed by the complainant against the defendant and the same has been undisputedly dismissed by the learned trial Court.

13. The accused Uttam Kumar Deshmukh has examined himself as DW-1. He stated in his examination-in-chief about loan transaction of Rs. 40,000/- from the complainant, handing over the signed blank stamp paper, signed blank cheque and photograph, refund of the borrowed amount along with the interest and misusing of the cheque and stamp paper by the complainant. He denied the loan of Rs. 2 lakhs. He proved in his defence the documents (exhibit D-1C to D-9C) which was with relates to repayment of the borrowed amount in installments, exhibit D-10C is the list of cases, which were prosecuted by the complainant against different persons for dishonor of cheque, exhibit D-14C, which is the complaint made to the Superintendent of Police, Durg on 06.08.2010 about the misuse of cheque by the complainant, exhibit D-17C with respect to the money lending license in favour of the complainant, exhibit P-18C is the evidence of Devdhar Sahu and exhibit D-19C is the evidence of the complainant, exhibit D-21C is evidence of the complainant in the civil suit and exhibit D-22 is the

judgment and decree dated 05.04.2013 of the learned trial Court passed in civil suit No. 30-B/2011. In cross-examination, he reiterated that he borrowed an amount of Rs. 40,000/- from the complainant only once, which he repaid. He denied the borrowing of Rs. 2 lakhs and execution of any agreement. He proved the promissory note (exhibit P-9), which he executed at the time when he borrowed Rs. 40,000/- from the complainant. He denied that he borrowed Rs. 40,000/- from the complainant, twice.

14. The promissory note (exhibit P-9) is dated 04.08.2007 and the alleged agreement (exhibit P-1C) is dated 15.07.2007. The complainant himself has not stated in his evidence that the accused has borrowed Rs. 40,000/-, twice. When the agreement was executed on 15.07.2007 for the alleged transaction of Rs. 2 lakhs, there was no question to execute the promissory note on 04.08.2007 for Rs. 40,000/-. In the cross-examination of the accused, the complainant given a suggestion that there was two transactions of borrowing loan of Rs. 40,000/-.

15. DW-2, Devdhar Sahu is the person, who was working for the complainant and in whose intervention, the loan of Rs. 40,000/- was advanced to the accused. He stated that at the time of advancing loan of Rs. 40,000/-, the complainant obtained a blank cheque, a promissory note, a stamp paper and a photograph from the accused and obtained his signature over the blank documents and after completing the formalities, the complainant advanced loan of Rs. 40,000/- on 15.05.2007. The accused left the part payment of the borrowed amount to him which he handed over to the complainant and thus the total amount of Rs. 42,000/- was paid by the accused to the

complainant through him. When the accused demanded his documents back, the complainant evaded for the same and thereafter, produced the cheque for its encashment after filling the amount of Rs. 2 lakhs. He proved the documents (exhibit D-1 to D-9). In cross-examination, he stated that the complainant advanced loan to 12-13 persons on his instance. He worked for him for recovery of the borrowed amount for about 1-2 months. He deposited the amount of the accused to the complainant 2-3 times. It is the accused who demanded his documents back from the complainant.

16. From the aforesaid evidence, it is evident that the accused has been able to establish a probable defence sufficient to rebut the presumption arising in favour of the complainant. The complainant's testimony suffers from material inconsistencies and omissions regarding the alleged loan transaction of Rs. 2 lakhs. The alleged transaction and the execution of the agreement dated 15.07.2007 were neither mentioned in the legal demand notice nor in the complaint, and the complainant admitted that no copy of the agreement was annexed to the complaint. Further, the complainant admitted the repayment of the earlier loan of Rs. 40,000/-, the return of the corresponding promissory note, and the existence of overwriting in the date of the disputed cheque. The defence version regarding repayment of the loan of Rs. 40,000/- and subsequent misuse of the signed blank cheque and other documents is supported by documentary evidence, the testimony of DW-2 Devdhar Sahu, the complaint lodged by the accused before the Superintendent of Police, Durg, and the complainant's own evidence in the civil suit, which was dismissed by the trial Court. The discrepancy

between the date of the promissory note and that of the alleged agreement, coupled with the absence of cogent evidence regarding the advancement of Rs. 2 lakhs, further lends credence to the defence version. Thus, upon a cumulative assessment of the oral and documentary evidence on record, the accused has raised a probable defence that creates reasonable doubt regarding the existence of a legally enforceable debt or liability corresponding to the amount of the disputed cheque. Consequently, the statutory presumption stands rebutted, and the burden shifts back to the complainant to establish the alleged transaction and the existence of a legally enforceable debt or liability, which the complainant has failed to discharge.

17. In the case of **Dattatraya v. Sharanappa**, 2024 (8) SCC 573, the Hon'ble Supreme Court has reiterated that although the statutory presumption favours the holder of the cheque, the accused can rebut the same by showing circumstances which render the existence of the alleged debt doubtful or improbable. Once such probable defence emerges from the evidence, the complainant must independently satisfy the Court regarding the transaction.

> **"**18. As the presumption contemplated by virtue of Section 118 of the NI Act, 1881 entails, Section 139 was similarly introduced to provide for a presumption that the holder of cheque had received the issued cheque concerned towards discharging of the liability of the drawer, either in whole or in part. Therefore, at this juncture, it is ideal to make a reference to Section 118 of the NI Act, 1881, which is reproduced as:
>
> > "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 a 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, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has

> been obtained from the maker or acceptor thereof by means of an offence or fraud or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

19. Chapter XIII of the NI Act, 1881, of which Section 118 is a part, lays down specific rules for evidence to be adduced within the scheme of the Act herein. As the text of the said provision showcases, it raises a rebuttable presumption as against the drawer to the extent that the negotiable instrument concerned was drawn and subsequently accepted, indorsed, negotiated, or transferred for an existing consideration, and the date so designated on such an instrument is the date when the negotiable instrument concerned was drawn. It is also further presumed that the same was transferred before its maturity and that the order in which multiple indorsements appear on such an instrument, that is, the deemed order thereon. Lastly, the holder of a negotiable instrument is one in its due course, subject to a situation where the instrument concerned while being obtained from a lawful owner and from his or her lawful custody thereof through undertaking of an offence as contemplated under any statute or through the means of fraud, the burden to prove him or her being a holder in due course, instead, lies upon such a holder.

20. Accordingly, to begin with, the bare provision of Section 139 of the NI Act, 1881 is reproduced herein below:

> "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."
>
> The aforesaid presumption entails an obligation on the court conducting the trial for an offence under Section 138 of the NI Act, 1881 to presume that the cheque in question was issued by the drawer or accused for the discharge of a particular liability. The use of expression "shall presume" ameliorates the conundrum pertaining to the right of the accused to present evidence for the purpose of rebutting the said presumption. Furthermore, the effect of such presumption is that, upon filing of the complaint along with relevant documents, thereby **prima facie** establishing the case against the drawer, the onus of proof shifts on the drawer or accused to adduce cogent material and evidence for rebutting the said presumption, and as established in **Laxmi Dyechem v. State of Gujarat**, based on preponderance of probabilities.

21. While describing the offence envisaged under Section 138 of the NI Act, 1881 as a regulatory offence for largely being in the nature of a civil wrong with its impact confined to private parties within commercial transactions, the three-Judge Bench in the decision of Rangappa highlighted Section 139 of the NI Act, 1881 to be an example of a reverse onus clause. This is done so, as the Court expounds, in the light of Parliament's intent, which can be culled out from the peculiar placing of act of dishonour of cheque in a statute having

criminal overtones. The underlying object of such deliberate placement is to inject and enhance credibility of negotiable instruments. Additionally, the reverse onus clause serves as an indispensable “device to prevent undue delay in the course of litigation”. While acknowledging the test of proportionality and having laid the interpretation of Section 139 of the NI Act, 1881 hereof, it was further held that an accused cannot be obligated to rebut the said presumption through an unduly high standard of proof. This is in light of the observations laid down by a coordinate Bench in Hiten P. Dalal v. Bratindranath Banerjee, whereby it was clarified that the rebuttal ought not to be undertaken conclusively by an accused, which is reiterated as follows : (SCC p. 25, para 23)

> 23. In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.
>
> Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must

> either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the "prudent man".
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> 22.Therefore, it may be said that the liability of the defence in cases under Section 138 of the NI Act, 1881 is not that of proving its case beyond reasonable doubt.
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> 23. In light of the aforesaid discussion, and as underscored by this Court recently in the decision of *Rajesh Jain v. Ajay Singh*^9, an accused may establish non-existence of a debt or liability either through conclusive evidence that the cheque concerned was not issued towards the presumed debt or liability, or through adduction of circumstantial evidence vide standard of preponderance of probabilities."

18. Once the presumption under Sections 118 and 139 of the N.I. Act stood rebutted by a probable defence, the burden shifted back upon the complainant to establish the existence of a legally recoverable debt of Rs.2 lakhs by cogent and reliable evidence. In the present case, apart from the cheque and the disputed agreement, there is no independent evidence proving actual advancement of Rs. 2 lakhs to the accused. The complainant's failure to produce the most natural and best evidence, namely the money-lending records, account books and bank statements, assumes considerable importance. The trial court, after a detailed analysis of the evidence, reached the conclusion that the complainant had failed to discharge the burden which reverted upon him after rebuttal of the presumption. Such a conclusion is a plausible view based on the evidence available on record.

19. In the case of **Rajesh Jain v. Ajay Singh**, 2023 (10) SCC 148, the Hon'ble Supreme Court has considered the burden of proof and presumptions under the NI Act and explained that once the accused established, on a preponderance of probability that no debt or liability existed in the manner pleaded, the burden shifts to the complainant to prove the debt as a manner of fact. If the complainant fails, the complaint is liable to be dismissed. It has been held that:-

> “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 d 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).]
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> 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 affirmed in Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal .]

30. Presumption, on the other hand, literally means "taking as true without examination or proof. In Kumar Exports v. Sharma Carpets, this Court referred to presumption as "devices by use of which courts are enabled and entitled to pronounce on an issue notwithstanding that there is no evidence or insufficient evidence."

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[1]2]

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]

* * *

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

20. In the present case, the learned trial Court, upon appreciation of the evidence, has recorded a finding that the respondent/accused succeeded in raising a probable defence by eliciting material admissions from the complainant regarding the absence of particulars as to the mode of advancement of the alleged loan, non-production of money-lending records, account books and bank statements despite specific challenge, and inconsistencies relating to the complainant's lending activities and source of funds. Thus, unlike the facts before the Hon'ble Supreme Court in the aforesaid decisions, the presumption available to the complainant stood sufficiently rebutted on the preponderance of probabilities, thereby shifting the burden back upon the complainant to independently establish the existence of a legally enforceable debt, which the learned trial Court has rightly considered.

21. It is a settled principle that where an order of acquittal has been recorded, and the view adopted by the trial court is a reasonably possible view arising from the evidence on record, the appellate court would be slow to interfere merely because another view may also be possible. The presumption of innocence stands reinforced by an order of acquittal.

22. The Hon'ble Supreme Court, in **Tulasareddi @ Mudakappa & Another v. State of Karnataka**, reported in 2026 SCC OnLine SC 89, held that :

> "27. In the case of **Babu Sahebagouda Rudragoudar v. State of Karnataka**[1] this Court held in paragraphs 39 to 42 as under:

1. 2024 (8) SCC 149

39. This Court in Rajesh Prasad v. State of Bihar[2] encapsulated the legal position covering the field after considering various earlier judgments and held as below : (SCC pp.482-83, para 29)

29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (Chandrappa v. State of Karnataka[3], para 42)

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

(1) An appellate court has full power to review, reappreciate 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",

2. (2022) 3 SCC 471 : (2022) 2 SCC (Cri) 31

3. (2007) 4 SCC 415 : (2007) 2 SCC (Cri)325], SCC p. 432

> “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
>
> (4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
>
> (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.’
>
> 40. Further, in H.D. Sundara v. State of Karnataka[4], this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 CrPC as follows : (SCC p. 584, para 8)

4. (2023) 9 SCC 581 : (2023) 3 SCC (Cri) 748]

"8. … 8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating 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;

8.4.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

8.5. 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."

41. 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:

> 41.1. That the judgment of acquittal suffers from patent perversity;
>
> 41.2. That the same is based on a misreading/omission to consider material evidence on record; and
>
> 41.3. 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.
>
> 42. The appellate court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial court.

* * *

29. From the aforesaid decisions rendered by this Court, it can be said that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the findings of acquittal recorded by the Trial Court. Further, 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. The following principles have to be kept in mind by the Appellate Court while dealing with the appeals against an order of acquittal:

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

(b) whether the judgment is based on misreading/omission to consider the material evidence on record;

(c) an order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference.’

(d) 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;

(e) 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

(f) 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.”

23. In the present case, the findings recorded by the learned trial Court are neither illegal nor perverse, nor do they suffer from misreading of evidence. The accused successfully created a reasonable doubt regarding the existence of a legally enforceable debt of Rs. 2 lakhs and the complainant failed to counter such doubt by reliable evidence.

Consequently, this Court is of the considered opinion that no ground is made out for interference with the judgment of acquittal passed by the learned trial Court.

24. The acquittal appeal, therefore, deserves to be and is accordingly **dismissed**.

Sd/-
(Ravindra Kumar Agrawal)
Judge

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