IN THE COURT OF MS. SHEETAL CHAUDHARY PRADHAN
ADDL. SESSIONS JUDGE-02 : SOUTH EAST DISTRICT
SAKET COURT : NEW DELHI

Criminal Appeal No.490/2025
Intec Capital Limited vs. Bharti Singh
U/s 138 NI Act

Intec Capital Ltd.
708, Manjusha Building
57, Nehru Place,
New Delhi – 110019.

…. Appellant

Versus

Bharti Singh
D/o Prem Babu
Printing Explore
R/o B-150 & 151, New Panchwati,
Ghaziabad, Uttar Pradesh.

Also at:
Printing Explore
Office No. 112, 1st Floor, Tensingh Palace,
Rakesh MA, Ghaziabad,
Uttar Pradesh.

.... Respondent

Date of Institution	:	**09.09.2025**
Date of Arguments	:	**20.02.2026**
Date of Judgment	:	**07.04.2026**
Decision	:	**Appeal allowed. Impugned judgment stands set aside.**

JUDGMENT

1. Appellant namely Intec Capital Ltd. has filed present appeal against respondent namely Bharti Singh thereby challenging impugned judgment of acquittal dated 27.02.2020.

2. Appellant herein was complainant before Ld. Trial Court and respondent herein was accused before Ld. Trial Court. In order to avoid confusion, parties will be referred with the same nomenclature with which they were referred before Ld. Trial Court, in my subsequent paragraphs.

3. Case of complainant in brief was that, complainant a Company incorporated and existing under the Companies Act, 1956 has filed the present complaint through its AR Mr. SUMIT KUMAR. That the complainant is engaged in business of providing the loan finance, hire purchase and leasing of motor vehicles and machinery/plant/equipment and working capital loan for the business. That the borrower (Printing Explore) through its proprietor Mr. Gyani Singh approached the complainant for grant of loan, and made an application for availing finance facility of Rs. 6,86,400/- for business purposes and accordingly the Loan Agreement bearing Agreement No. 9646 and having the loan account No. LNNOI02414-150004922 was entered. Further, the borrower assured and represented to the complainant, inter alia, that it has the financial capacity to repay the loan amount, if the same is sanctioned. That the accused in his personal and individual

capacity also stood as the guarantor *(hereinafter referred as "Guarantor")* and represented to the complainant that borrower is a company of sound means and if finance/loan is advanced to it, the Borrower, shall repay the same as per the terms of the loan. It was further assured by the accused, that in the event of default by the Borrower, the accused being the Guarantor shall repay the loan amount. That the complainant based on the representations and assurances of accused entered into a Loan Agreement being Loan Agreement No. 9646 and having the loan account No LNNO102414-150004922 *(hereinafter referred to as "Loan Agreement")* with PRINTING EXPLORE as the borrower required the said loan for carrying out its business. **The accused stood as the Guarantor in the said Loan Agreement whereby she bind herself to be responsible for the repayment of the loan amount. That the accused being the Guarantor, vide separate Deed of Guarantor inter alia, specifically agreed to pay the complainant without demur, reservation, contest or protest whatsoever, all monies or dues and discharge all obligations and liabilities within 7 days, if demand is raised by the complainant.** In view of above mentioned Deed of Guarantee, the accused agreed that the guarantee shall be a continuing one and shall be deemed to have been given separately for repayment of loan, interest thereon, cost charges and other expenses mentioned in the Agreement and shall be in force till entire amount guaranteed is paid in full. That the borrower defaulted in repayment of the loan installments as per the agreed schedule. In such consequences, the complainant approached the borrower several times towards recovery of the Dues and Liabilities, but on some pretext or the other, the borrower failed to repay the loan amount. **That the accused in discharge of the liability of the aforesaid borrower issued the cheque bearing no. 37457 for a sum of Rs. Rs 4,78,274/- dated 08/02/2016 drawn on SHIVALIK MERCANTILE CO OP BANK LTD.** The said cheque was issued by the accused to discharge the borrower's liability as well as his liability which came upon the accused being a guarantor for the said loan, on account of default in repayment of loan borrower. That the accused while issuing the said cheques assured the complainant that on its presentation the same will be honoured and as such the complainant presented the cheques at its banker namely, HDFC Bank Nehru Place. To the utter shock of complainant that the said cheque was issued towards and which had been assured to be honored upon presentation, was returned back vide bank returning memo dated 16/02/2016 with the remarks "FUNDS INSUFFICIENT". The said intimation was received by complainant on 20/02/2016. That the complainant tried to contact the accused but the accused didn't responded and there after the complainant got issued legal notice as per the provisions of the Negotiable Instrument Act, 1881 through his advocate vide Dated 05/03/2016. That the said notice was duly served upon accused on 15/03/2016. Despite having the knowledge of the notice the accused failed to make the payment within 15 days which the accused legally bound to make the payment, hence the complainant has no other option but to file the present complaint. Hence, complainant filed complaint case u/sec 138 Negotiable Instrument Act (In short ‘NI Act).

PROCEEDINGS BEFORE THE LD. TRIAL COURT

4. After filing of complaint, Ld. Trial Court took cognizance of offence **and recorded pre-summoning evidence, based on which, accused was summoned**. **Subsequently, proceedings u/sec. 207 CrPC were completed and** accused was given Notice u/sec. 251 Cr.P.C. on 27.04.2017 for the alleged offence, to which, he pleaded not guilty and claimed trial. During, the framing of notice accused claimed that *"I have not signed on any document as guarantor. The cheque in question is not issued by me. I am government servant and I did not stand as guarantor for any loan. I have no knowledge as regards the loan transaction in question. I did not receive legal notice."* Thereafter, matter was fixed for post summoning complainant evidence.

POST SUMMONING EVIDENCE

5. **In his evidence, complainant examined Sh. Ashish Kumar as CW1** and tendered his evidence affidavit Ex.CW1/A in which, he reiterated the contents of his complaint. Same are not repeated here for the sake of brevity. He relied upon documents viz. copy of board resolution in favour of Mr. Sanjeev Goel Ex. CW1/1, copy of authority letter executed in favour of Sh. Ashish Kumar Ex. CW1/1A, copy of loan agreement Ex. CW1/C, original cheque no. 037457 Ex. CW1/2, returning memo dated 16.02.2016 Ex. CW1/3, copy of legal demand notice dated 05.03.2016 Ex. CW1/4, postal receipts Ex. CW1/5 and returned envelope Ex. CW1/6, notice dated 21.12.2015 Ex. CW1/D.

6. **During cross-examination, CW-1 deposed that** he had joined the complainant company on 17.01.2018 and it was correct that the alleged loan agreement was not signed in his presence. The accused was the guarantor to the loan agreement Ex. CW1/1C. Complainant had obtained the documents from the accused for compliance of KYC norms i.e. Aadhar card. The copy of the Aadhar card of the accused was not placed on record. accused had visited the office of the complainant in November 2014 to sign the loan agreement. The principal borrower was granted loan of Rs. 68,6400/-. The principal borrower repaid Rs. 1,44,000/- till the year 2015. CW-1 did not know the mode of repayment by the principal borrower. The officials of Account Department used to collect the payment from the principal borrower but he did not know the name of the same. Further, the complainant had not filed the original loan agreement in the court and only photocopies were filed. Subsequently, CW-1 brought the loan agreement alongwith grantee agreement. He did not know if the borrower had given the original documents of the machinery to complainant or not. There was tripartite agreement executed between complainant company, borrower and PNB consortium. He did not know where the machinery was installed. CW-1 did not try to inquire from the officials of the complainant company regarding the same. He did not know whether the officials of the complainant company had visited the place where the said machinery was installed. Gyani Singh was the borrower whereas, Gyani Singh and Bharti Singh, both were guarantors in their individual capacity. He did not know who had verified the address of the witnesses on the loan

agreement. Complainant company had verified the eligibility of borrowers to grant him loan as per CIBIL report and the same report has not been placed on record. He could not tell in whose handwriting the loan agreement had been filled. One Ms. Pooja Sondhi had signed the loan agreement on behalf of the complainant company. He further deposed that it was correct that as per the loan agreement complainant was duty bound to sell the hypothecated machinery to recover the loan amount and the complainant company did not take any such step to recover the remaining loan amount. He did not know the reasons due to which the machinery was not sold by the complainant company. He could not tell if accused Bharti Singh was present at the time of execution of loan agreement. Complainant had also filed a case under Section 138 NI Act against borrower Gyani Singh and the same was pending. He further deposed that complainant company had obtained the documents from accused for compliance of KYC norms but he had not brought the same and could not produce the same. Borrower Gyani Singh did not give four addresses of accused to the complainant company.

7. **CW-2 Ravi Kumar, Assistant Manager, Accounts, Intech Capital deposed that** he was relying upon the statement of loan number LNNO102414-150004922 which was Ex.CW2/1 and certificate u/s 65-B Indian Evidence Act which was Ex. CW2/2. Copy of arbitration award dated 14.04.2016 was Ex. CW2/3. As on 08.02.2016 the borrower was liable to pay Rs.5,00147/-according to statement Ex. CW2/1. Collateral money to the tune of Rs.171600/- was adjusted against the outstanding amount on

27.12.2015. When the cheque had bounced the collateral amount kept with the complainant had been already adjusted against the total outstanding of the borrower.

8. **During cross-examination CW-2 deposed that** he was doing job in the complainant company since 01.11.2019. He had not signed any entry made in the statement Ex.CW2/1 before 16.02.2016. He had no personal knowledge of the present case. He do not know who had handed over the cheque in question to the complainant company. It was correct that statement of loan account is of borrower namely M/s Printing Explore and not of Bharti Singh (Vol. Bharti Singh may be co-borrower or guarantor). It was correct that he was deposing as record of complainant company. Further, that he had no knowledge of arbitration award Ex.CW2/3. It was correct that he had filed this award at the instruction of complainant company. He had no knowledge whether the complainant had arbitration award Ex. CW2/3 before filing the present complaint. He did not know whether any petition for execution of arbitration award has been filed or not by the complainant company.

STATEMENT OF ACCUSED/RESPONDENT U/S 313 CRPC.

9. Thereafter, complainant evidence was closed and matter was fixed for recording of statement of accused u/sec. 313 CrPC r/w Section 281 Cr.P.C. which was recorded on 03.11.2018. *During the aforesaid statement denied to have signed on the gurantee agreement Ex. CW1/C and stated that she had not received any*

notice for loan termination Ex. CW1/1D regarding discharge of liability as gurantor and denied to have issued the cheque in question Ex. CW1/2 and that she had no knowledge that the same was dishonored. She further denied that she did not received any legal notice dated 05.03.2016 Ex. CW1/4 in the present matter.

10. Defence evidence was led by respondent/ accused and she examined 4 witnesses in her defence.

11. **DW-1 Satender Shukla, Assistant Branch Manager, HDFC deposed that** he had brought the summoned record i.e., the returning memo of cheque no.037457 dated 08.02.2016 of Rs. 478274/-. The same was Ex.DW-1/1. As per the returning memo, the said cheque was drawn on Standard Charted Bank. He had verified the records of his bank. The cheque bearing number 037457 was issued by Ms. Bharti Singh which was drawn on Shivalik Bank. Shivalik Bank was not direct member of RBI, hence it processed its cheque through HDFC Bank as a sub-member bank. The returning memo issued earlier was wrong because in the said memo the name of the bank on which the cheque was drawn is mentioned as Standard Chartered Bank. He had brought the letter dated 20.12.2018 which is now Ex.DW1/2 alongwith copy of correct returning memo which is now Ex.DW1/3 and the print out of email in this regard which is now Ex.DW1/4. Witness is shown original cheque no.037457 which is drawn Shivalik Bank.

12. In cross-examination of DW-1 nothing was asked by the witness however opportunity was given to the Ld. Counsel for accused.

13. **DW-2 Sh. Anurag Vijeta, Branch Head - Shivalik Mercantile Cooperative Bank Ltd. Ghaziabad, U.P deposed that** he had brought the Account opening form in the name of Ms. Bharti W/o Sh. Gyani Singh. The copy of account opening form was Ex.DW2/1 (OSR) running into four pages. The documents for compliance of KYC norms i.e. copy of PAN, Election ID Card, ID card, rent agreement was Ex.DW2/2 (colly) running into five pages. The statement of said account is Ex.DW2/3 running into three pages. He needed some time to tell when the cheque book and number of cheques to Ms. Bharti Singh in this account was issued. He had brought the register for issuance of cheque book to their customers Ms. Bharti Singh was issued cheque book containing cheque number 37451 to 37460 on 21.11.2013. The copy of the relevant page was Ex.DW2/4 (OSR). He could not tell who had signed at point A on Ex.DW2/4. Witness was shown the cheque Ex.CW1/2. After seeing the same, witness stated that he cannot tell whether the said cheque had been drawn on Shivalik Mercantile Cooperative Bank Ltd or not because it is a old cheque. Witness was shown another blank cancelled cheque number 450348 drawn on Shivalik Mercantile Cooperative Bank Ltd. After seeing the same, witness identified the said cheque as issued by his bank. The said blank cancelled cheque is now Ex.DW2/5, It is correct IFSC code always contains the letters of the name of the bank.

Ques. I put it to you that cheque Ex.CW1/2 bears the IFSC code

"IBKL0236SMB', therefore, it was not issued by Shivalik Mercantile Cooperative Bank Ltd?

Ans. Earlier IDBI Bank was partner of Shivalik Mercantile Cooperative Bank Ltd for clearance of cheques, NEFT and RTGS payments therefore, earlier IFSC code contains the letter of name of IDBI bank and our bank also.

He could not tell whether the cheque Ex.CW1/2 is a forged and fabricated cheque and has not been issued with cheque book of their bank without looking the cheque with ultraviolet machine. Witness sought permission to check the authenticity of cheque Ex.CW1/2 with UV Ray Machine brought by him. The same was allowed by the court. **After inspection of cheque Ex.CW1/2, witness stated that the said cheque was issued to Bharti Singh who is account holder in his bank.** Witness was shown pass book of account number 150010006450 in the Bharti. After seeing the same, witness stated that the said passbook has been issued by his branch. The copy of the first page and last page of the said passbook was Ex.DW2/6 (OSR). **The IFSC code of Shivalik Mercantile Cooperative Bank Ltd, 507 Sachin Complex Ghaziabad, SMCB0001015 and MICR code is 110721003. The above mentioned IFSC code was assigned after termination of tie up with IDBI Bank for any NEFT and RTGS.**

Ques. Why there is difference in account number in cheque Ex.CW1/2 and copy of passbook Ex.DW2/6?

Ans. The account number of all our clients were changed due to up-gradation of software. Earlier the account number of Ms. Bharti was 015001000645 and now it is 150010006450. As per record, which is now Ex DW2/7.

There was no requirement of any authority /permission to change the account number.

14. **During his cross examination he deposed that** the cheque Ex.CW1/2 was returned by his branch due to funds insufficient. It was correct that the cheque Ex.CW1/2 had been issued to Bharti Singh.

15. **DW-3 Sh. Roopak Kashyap, S/o late Sh. Purushottam Kashyap, R/o 84, Nehru Nagar, Agra, U.P. deposed that** he is handwriting and fingerprint expert with about 24 years of experience. During this period he had examined hundreds of documents of disputed handwriting and finger prints. He had passed and secured B.Com and LLB degree. He had also received practical training of examination of handwriting and finger prints and other allied matters relating to it. He received his practical training in the offices and laboratories of three leading and eminent handwriting and fingerprints expert of India, namely late Sh. Purushottam Kashpap- consultant expert of UPCID, late Prof. B.B. Kashyap- Hon. Prof. French Association of Technical examiners of questioned documents and late Sh. Deepak Kashyap- Certified finger prints expert as qualified candidate for position by Department of State Police, Oregon USA. On 30.11.2018 and 23.05.2019, he took the digital photographs of disputed and standard signature in the court after obtaining the permission from the court. He had examined disputed and standard signature and gave my report which was Ex.DW3/1, running into ten pages, bearing his signature at point A. The digital photographs taken by

him were Ex.PW3/2 (colly) 35 sheets. His opinion is at point B in Ex.DW3/1.

16. **DW-3 during cross examination deposed that** he is a practicing lawyer also. He had done LLB from Agra. Ques.

Q. What do you mean by Graphology?

Ans. Graphology means measuring the curves and strokes of writing. It is also called as Graphomatory.

He did not have any degree/ diploma in the above noted field of graphology and forensic science. He did not know the age and qualification of Bharti Singh. Age, qualification or any illness, personality of a person may or may not have any bearing on the handwriting of the said person. Under forensic science they do not consider the personality of the writer it is the other science to attempt to read the personality of the writer with the help of his/her handwriting. **It was correct that two or more signature written by the same person are not completely identical.He did not attempt to read the personality of Bharti Singh from her handwriting.**

Ques. To understand the handwriting pattern of the subject you are supposed to be acquainted with the handwriting of the subject over a period of time and on the basis of number of documents. Have you done SO?

Ans. In the present case the standard writing of the writer is taken from different documents bearing different dates ranging from 2013 to 2019.

Ques. Can you locate the documents bearing the signature of Bharti Singh from 2013 to 2019?

Ans. I have taken the signature from vakalatnama and two signatures from notice of year 2017, four signatures from account opening form of year 2013, nine signatures from specimen sheet for the year 2019.

Whereas the disputed signature are pertaining to year 2016 so the signature written prior and post years of disputed signature are covered as standard signature.

Yes, wide range of time difference in executing the signature may cause some difference in the signature of the writer. He mentioned about the variation in the signature of Bharti Singh. He had not used the technique video spectrial comparital or digital microscope to make the comparison since it was not necessary in this case. He had compared the disputed and standard signature by their visual examination on original documents and their digital enlargement. He had used different lense also to study the writing strokes and details. He had not used the photoshop software for comparison as this software is not meant for examination of disputed signature.

Ques. Have you mentioned the range of natural variation in your report?

Ans. Yes, while examining I have at many places mentioned the variation in the strokes, design and formation found in the similar word written by the writer at different place i.e. the clear elaboration of concept of natural variation.

17. **DW-4 Bharti Singh S/o Sh. Prem Babu R/o House No.295, Sector-3A, Vaishali, Ghaziabad, U.P. (u/s 315 Cr.PC) deposed that** "I did not sign any loan agreement, guarantee agreement with M/s Intec Capital Ltd. I never received the cheque book from my bank from which the cheque in question bearing number 037457 had

been issued therefore, the question of issuance of said cheque to the complainant does not arise at all. I did not receive any legal demand notice from the complainant. I am not liable to pay anything to the complainant."

18. **During cross examination, DW-4 deposed that** she was not aware whether her husband has taken any loan from the complainant company. She could identify the signature of her husband if shown to her. Witness was shown application form for loan submitted on behalf of M/s. Printing Explore. She couldnot identify the signature at point A. The copy of said application form was Ex. DW4/C1 (OSR). Witness was shown another application form for loan along with the copy of ID proof submitted on behalf of M/s. Printing Explore and Ms. Bharti Singh. Application form bears her signatures at point A and my photograph at point B. The copy of said application form was Ex. DW4/C2 (OSR). The self attested copy of ID proof does not bear her signatures which was marked as Mark DW4/C3 (colly). She had not received Ex. CW1/1D which is notice of termination and reference to Arbitration. She was not aware if her husband had repaid any amount in connection with the loan agreement to the complainant. **She did not know how the cheque in question entered into the hands of the complainant.** It is wrong to suggest that the same was handed over by me to complainant.

Q. Have you lodged any police complaint that your cheque has been misused?

Ans. After receiving the notice from the court I came to know about the said cheque. She wrote a letter to my banker to inform

her whether any cheque book containing the cheque in question has ever been issued to her. The said letter was dated 04.10.2018. The copy of letter was marked as Mark DW4/C4 colly.

19. Thereafter, DE was closed on 02.11.2019 and thereafter final arguments were heard on 17.02.2020 and thereafter vide impugned judgment dated 27.02.2020 the accused was acquitted.

20. Subsequently, present appeal was preferred by accused.

GROUNDS OF CHALLANGE

21. Ld. Counsel for appellant/complainant has taken following grounds challenging the impugned order:

A. That the impugned judgment of the Ld. Trial Court is bad and unsustainable, both in law as well as facts and circumstances of the present case and deserved to be set aside on this ground itself.

B. That the Ld. Trial Court failed to appreciate that the complainant/Appellant had proved all the ingredients necessary to prove the offence U/s 138 NI Act. The Respondent has not denied his signatures on the cheque and thus the presumption U/s 139 and 118 of the NI Act arises in favour of the complainant, which has not been rebutted by the Respondent in the present case.

C. That the Ld. Trial Court failed to appreciate that the respondent has not been able to rebut the presumption in any manner whatsoever by raising a probable defence. No evidence was led on its behalf to rebut the said presumption in favour of the complainant U/s 118 & 139 NI Act. The Respondent has only stated that the cheque in question was a security cheque, which is of no defence in the eyes of Law as clearly been laid down by the Hon'ble High Court of Delhi in the case titled ***V.S. Yadav versus Reena (Crl. A. No. 1136 of 2010)***.

D. That the Ld. Trial court wrongly acquitted the respondent/accused by substantially considering the report given by the hand-writing expert called at the instance of the accused herself and also in complete ignorance of the law laid down by the Hon'ble Apex Court of India in this aspect that the opinion tendered by the hand writing expert should be very cautiously relied upon and that too only in cases where it has been duly corroborated with other strong piece of evidence.

E. That the Ld. Trial Court completely overlooked the fact that the bank witness (DW-2) namely Sh. Anurag Vijeta called at the instance of the accused person after inspecting the cheque in question with a UV Ray Machine, clearly stated in his examination in chief that the said cheque was issued to Bharti Singh (accused herein) who was the account holder in the bank.

F. That the Ld. Trial Court completely ignored the fact that the examination carried out by the expert was simply a visual examination without using any instrument or applying any special technique such as Video Spectrial Comparital or Digital

Microscope, as deposed by him during his cross-examination.

G. That the Ld. Trial Court completely ignored the fact that the admitted signatures of the respondent/accused on the loan application form were not obtained by the handwriting expert for the examination/comparison which clearly suggests some serious foul play on the part of the handwriting expert called at the instance of the respondent/accused.

H. That the Id. Trial court completely erred in appreciating the law as laid down by the Hon'ble High Court of Delhi in the case of ***OM PRAKASH AND ORS. Vs. CENTRAL BUREAU OF INVESTIGATION (CBI) [MANU/DE/2619/2017]*** that;

"It is trite law that unlike the science of finger printing which is quite accurate, science of matching the handwriting is not an exact science and thus opinion of an expert in handwriting must be received with great caution and before a conviction is based, there should be other cogent and convincing evidence proved by the prosecution to base a conviction thereon."

It was further held that;

"We need not subscribe to the extreme view expressed by the Supreme Court of Michigan, but there can be no doubt that this type of evidence, being opinion evidence is by its very nature, weak and infirm and cannot of itself from the basis for a conviction."

ARGUMENTS ON BEHALF OF APPELLANT

22. It has been argued by Ld. Counsel for appellant that in the present matter the Ld. Trial Court while passing the impugned judgment of acquittal did not take into consideration the testimony of the witnesses examined bythe complainant and accused / respondent. It has been argued that the impugned judgment is silent in respect to the testimony of the witnesses which show that the accused had issued the cheque in question and the complainant had proved that the same was issued in discharge of legal liability. It has been argued that the impugned judgment of acquittal is liable to be set aside.

23. During the course of arguments Ld. Counsel for appellant relied upon the judgment in case ***Rajesh Jain Vs. Ajay Singh dated 09.10.2023 passed by Hon'ble Supreme Court of India***.

SUBMISSIONS ON BEHALF OF RESPONDENT/ ACCUSED

24. That the Petitioner/appellant failed to establish that the amount of Rs.4,78,274/- was a legally enforceable debt on account of the fact that the appellant had admitted receiving the part payment from the borrower Gyani Singh. That the respondent has successfully raised a probable defense which creates a doubt about the existence of legally enforceable debt and therefore the present appeal filed by the appellant should be dismissed with cost.

25. It has been argued that the complainant had filed the present

complaint that the M/s Printing Explore (hereinafter referred a borrower) had obtained loan amount Rs.6,86,400/- for business purpose and accordingly, the loan agreement bearing No. 9646 was executed in between the complainant and the borrower and having the loan account No. LNNO102414-150004922 was entered and the borrower (husband of the accused) assured and represented to the complainant to repay the loan amount. The accused was stood guarantor for the borrower and signed the loan agreement as a guarantor and thereafter the borrower failed to repay the loan amount. Further it has been argued that it has been alleged that the accused issued the alleged cheque bearing No. 037457 of account No. 015001000645 for Rs.4,78,274/- dated 08.02.2016 drawn on Shivalik Mercantile Co-op. Bank Ltd., Branch Ghaziabad, U.P. in favour of the complainant. The complainant presented the said cheque for the payment with HDFC Bank, Nehru Place, New Delhi, the same was returned to the complainant vide memo dated 16.02.2016 with remarks "funds insufficient". Even after issue legal notice dated 05.03.2016 and sent by speed post on 12.03.2016 which was duly served upon the accused on 15.03.2016 but the accused failed to make the payment nor given the reply, the accused committed the offensive act u/s 138 of N.I. Act, hence this complaint. That this Hon'ble Court has issued the notice to the accused and the accused appeared before this Hon'ble Court and submitted the bail bond and accused was released on bail. The accused denied her signature on the loan agreement and also denied the issuance of cheque and also denied her signature on the cheque and she also denied that she never obtained the cheque book, as alleged by the complainant. It has been argued that after framing of notice complainant. It has been argued that during cross examination of CW-1 the complainant completely failed to prove its case. Further that the accused had produced DW1 Sh. Satender Shukla, Asstt. Branch Manager, HDFC Bank, Nehru Place, New Delhi who produced the records Ex.CW1/2 letter dated 20.12.2018, Ex.DW1/3 copy of correct returning memo and Ex.DW1/4 print out e-mail. That the accused also produced DW2 Sh. Anurag Vijeta whose chief was recorded and he was crossed accordingly. He brought the register for the issuance of cheque book to the customers. The accused Ms. Bharti Singh was issued cheque containing cheque No. 37451 to 37460 on 21.11.2013. The copy of relevant page of register of issuance of cheque book Ex. DW2/4. He also admitted that I cannot tell who had signed at point "A" on Ex. DW2/4. During the cross examination witness DW2 admitted that he cannot tell whether the said cheque Ex.CW1/2 had been drawn on Shivalik Mercantile Co-p. Bank ltd. or not. During the cross examination it has been clearly proved that the accused never got issued the cheque book in her own name. It has been argued that the accused/respondent had taken the permission from this Hon'ble Court to examine the witness from CFSL whereby the hand writing expert was called to compare the signature on the, alleged cheque and her signature on the loan agreement and the signature on the issuance of cheque book register. Shri Roopak Kashyap had inspected the case file and filed his report dated 06.07.2019 Ex.DW3/1. As per his reports after the detailed examination and comparison between disputed and standard signatures he found that the disputed signatures are not written by the writer who has written the standard signature. During the cross examination it has been clearly proved that the disputed signatures are totally fake. Further, accused examined herself as DW-4. Nothing has been proved against the accused by the complainant. However, the counsel for the complainant during the examination filed the another cross loan application form submitted by borrower which is (husband of the accused) exhibited as EX.DW4/C-2. The said previous another application form is not related or connected with the present case and there would be no effect in the present case. The counsel for the complainant wants to create the evidence of the chain for obtaining the loan amount by the borrower and the accused was stood previously guarantor for obtaining the loan amount but on the said application form no loan amount was sanctioned to the borrower. Hence, the plea taken by the counsel for the complainant is totally baseless and it cannot be said that the accused is liable for obtaining the loan amount by the borrower when the accused has already denied her signature as a guarantor on the loan agreement in the present case. That the accused is well qualified lady and innocent by nature. The accused was married with Sh. Sripal Singh on 26.10.2007 who died on 19.12.2008, thereafter the alleged borrower of the loan Sh. Giani Singh got married with the accused Bharti Singh on 10.02.2010 who is the younger brother of Sripal Singh. Sh. Giani Singh, proprietor of M/s Printing Explore was very cunning and fraud by nature and cheated accused alongwith a number of person/s and after playing fraud with the persons who fled away on 03.12.2015 from his house not traceable till date. Now a days the accused is residing with her two minor children and the burden of the children is upon the accused and has been suffering mental loss and agony by the act and conduct of the alleged borrower. The accused has also filed a divorce petition against her husband (alleged borrower of loan) u/s 13 (1) (ia) of Hindu Marriage Act, the same is pending before the Hon'ble Court, Principal Judge, Family court, Agra, U.P. That the accused never stood guarantor for obtaining the loan amount by borrower nor signed the loan agreement as a guarantor. The accused has also not got issued any cheque book against her account as alleged by the complainant, nor received the cheque book and the accused has also never issued the alleged cheque to the complainant. Hence, the present complaint filed by the complainant is totally false. The accused is not liable to pay the alleged loan amount taken by the borrower from the complainant. That 27.04.2017, the charge U/s 251 Cr.P.C. framed by this Hon'ble Court after hearing the arguments on behalf of the accused. At that time, the counsel for the accused had already denied 1 her involvement in the present case in any manner, as alleged and also argued that the accused never applied for obtaining the cheque book nor received the same by the bank at any point of time. The counsel also submitted that the accused never stood guarantor nor submitted the cheques to the complainant and not put her signature on the said cheque. That the accused submitted applications dated 08.06.2018, 04.10.2018 by registered post and e-mail on 19.07.2018 to the Manager of Shivalik Bank, Branch Ghaziabad, U.P. to know about the issuance of cheque book for whom and mode of its disbursal and date either by post or by hand but no reply till date which are marked as DW4/C-4 (colly running into 3 pages). There are a number of defects in the alleged cheque under the present case in IFSC Code of the bank. It seems that the Manager of Shivalik Bank and the complainant are sitting in the boat of corruption and by making the conspiracy to each other has involved the accused in the present case without any reason. That the accused after getting copy of the complaint of the present case along with the documents and going through the dishonoured cheque dated copy of 08.02.2016 bearing No. 037457 A/c No. 015001000645 having her fake nature, IFS NO. IBKL0236SMB and MICR No. Code 110240269, two branch addresses, one of sector 27 Noida and other one Bhatia Mod G.I. Road, Ghaziabad, no validity, hand written valuation limit also not in round figure which is against the Jurisdiction of concerned bank as the valuation if at all, is always in printed form and in round figure and also the same cheque involving four banks named Shivalik Bank, HDFC Bank, IDBI Bank and STANDARD CHARTERED. All these anomalies are against the standard norms of banking regulation. That the accused shown the copy of cheque in question and queried from many banks but almost all suspected the cheque not being genuine due to different peculiarities such as IFS Code "IBKL0236SMB" in that IBKI belongs to IDBI Bank not Shivalik Bank since first four Alphabets always indicate the name of particular bank whereas real IFSC of Shivalik Mercantile Co-operative Bank is SMCB0001015 in that first four alphabets belongs to Shivalik Bank not to IDBI Bank and the numerical number belongs to specific branch (i.e.br Ghaziabad) and in her bank account opening form dated 13.01.13 brought on record on 07.02.2019 by Manager Shivalik Bank the IFSC SMCB and A/c No. is shown 015001000645 whose cheque is in question and its MICR No. 110240269 in that first three digitdenotes the city code

(Delhi NCR), next three digits bankcode (HDFC Bank) and last three digits branch code place unknown whereas her real A/c No. is 150010006450 and IFS Code SMCB0001015 as per passbook issued dated 08.02.2019 to the accused and its MICR No. is 721003the copy of the same is available on record in that first three digits denotes city (Delhi/NCR) and 721 indicate bank i.e. Shivalik Bank and 003 indicates specific branch (i.e. Ghaziabad) instead of A/c No. 015001000645 and IFS Code IBKL0236SMB and MICR No. 110240269 whose cheque in question cheque in question. Copy of Authentic Authority IBDI Bank, HDFC Bank, RBI ICR Guidelines, Copy of cheques ICICI Bank, SBI Bank and UCO Bank Annex. -4, 4A, 4B,4C. showing IFSC. That the cheque's validity for three months came to effect from 01 April 2012 as per RBI guideline available on record whereas the cheque in question dated 08.02.2016 is having no validity. That the cheque in question is having two branch addresses seems to be against RBI Fundamental rules/norms and also no Authentic Authority put up before the Hon'ble Court on record to that effect. In the present case the Manager of Sector-27 NOIDA Branch appeared before the Hon'ble Court and denied involvement of his branch on 20.12.2018 and told the cheque in question belongs to Ghaziabad Branch. That the Manager of HDFC Bank appeared before Hon'ble Court On 03.12.2018 as DW supported dishonoured memo is of his bank and on question of Hon'ble Court regarding Drawn on Bank shown STANDARD CHARTERED on the memo, he replied to the Head Office Guidelines and any sort of Gazette Notification, date of change of A/c No's, details of changing digits, change of IFSC, MICR No. CTS clearing agencies being HDFC Bank, Standard

Chartered, IDBI Bank and own Bank and mode of intimation to the customers and that too within short span of time from Jan 2013 to Feb 2016 and also he got recorded before the Hon'ble Court that changes has taken place on the basis of CBS (software undation) in the year 2014 and cheque book issue date has been shown 21.11.2013 having A/c No. 015001000645 which changed to 150010006450 (the "0" shifted from first digit to last digit) after software updation then how and under which rule the old cheque bearing A/c No. 015001000645 was dishonored by Shivalik Bank on 16.02.2016 and HDFC Bank me, o showing "STANDARD CHARTERED" as "Drawn on Bank" in place of "Shivalik Bank" and on question of Hon'ble Court the Manager of HDFC Bank told and got recorded before Hon'ble Court that name of STANDARD CHARTERED has been printed wrongly and the CTS clearing of Shivalik Bank is through our Bank. And on the question of IDBI Bank IFSC on cheque in question the Manager of Shivalik Bank told may be tie up with the IDBI Bank and having no Authentic Authority to that effect. But recently also the accused deposited a cheque bearing No. 450354 dated 20.02.2019 of Shivalik Bank, Branch Ghaziabad issued by Mr. Ashwani Kumar Singh A/c No. 101510080175 and the same has been dishonoured by Shivalik Bank but showing "Return Bank" in blank on the memo issued by UCO Bank against her A/c No. 2983011001447. That the copy of cheque book issue register put up before Hon'ble Court by Shivalik Bank Manager is having a lot of overwriting and even cutting and also signed by someone in receiving column in place of accused. That the complainant did not tell the place, date, time and to whom accused handed over the cheque. That the accused never visited the office of complainant and also did not sign the loan Agreement showing her as a Guarantor at all whereas her fake signature has been made on the said Agreement. The PW1 in his cross-examination could not tell the place, date and time of meeting with the accused. That the said Loan has been granted against particular Asset i.e. A Printing Machine but no concerned papers and even bill is not available on the record which is totally against the terms and conditions of the Loan Agreement. That the personal documents i.e. ID proof, photo, Aadhaar Card etc. Of the borrower and even of the witnesses are not available on record. That 2 addresses of accused has been shown on the record such as Plot No. 180,151 New Pushpwati Colony, Ghaziabad, U.P. (On Agreement) and plot No. 150-151, New Panchwati Colony, G.T. Road, Ghaziabad, U.P. (On notice) etc. That the complainant must get the Asset insured by borrower and will keep the insurance policy with its office as per Agreement but the same also is not on the record. That the representatives of complainant company shall inspect the mortgaged, hypothecated Asset and the place of installation as per Agreement but PW1 during his cross examination stated that the same was not seen the Asset and its installation place which are self explanatory on the loan Agreement Deed. It is argued that the appeal is liable to be dismissed and the order of the Ld. Trial Court be upheld.

LAW PERTAINING TO OFFENCE U/S 138 NI ACT

26. **Before proceeding further, I must mention the relevant law pertaining to sec. 138 NI Act.**

27. In order to appreciate and decide present appeal, I find it relevant to mention here law relating to Section 138 NI Act and with respect to the presumptions U/s. 118 (a) and 139 NI Act. The said provisions and the interpretations given by higher echelon of Judiciary, are relevant. Therefore, they are mentioned below:-

"138 ***Dishonour of cheque for insufficiency, etc., of funds in the account****,- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for (a term with may be extended to two years), or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless-*

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity,

whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, (within thirty days) of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice."

28. Hon'ble Apex Court had the occasion to appreciate and interpret aforesaid provision in case titled as **Kusum Ingots and Alloys Ltd. Vs. Pennar Peterson Securities Ltd. (2000) 2 SCC 745**. In the said judgment Hon'ble court observed that in order to successfully prosecute the drawer of a cheque for an offence U/s. 138 NI Act, following facts are required to be proved successfully.

"a) A person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for discharge of any debt or other liability.

b) That cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its *validity, which ever is earlier.*

c) *That cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank.*

d) *The payee or the holder in the due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque, within 15 days of the receipt of the information by him from the bank regarding the return of the cheque as unpaid.*

e) *The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of said notice..........”*

“............Judicial statements have deferred as to the quantum of rebutting evidence required. In Kundun Lal Rallaram Vs. Custodian, Evacuee Property, Bombay AIR 1961 SC 1316, this Court held that the presumption of law under Section 118 of presumption of fact raised under Section 114 of the Evidence Act. The decision must be limited to the facts of that case. The more authoritative view has been laid down in the subsequent decision of the Constitution Bench in

Dhanvantrai Balwantrai Desai v. State of Maharashtra : 1964 Cri. L 1437 : 1964 Cril 1437, where this Court reiterated the principle enunciated in State of Madras v. Vaidyanath Iyer (supra) and clarified that the distinction between the two kinds of presumption lay not only in the mandate to the Court, but also in the nature of evidence required to rebut the two. In the case of a discretionary presumption the presumption if drawn may be rebutted by an explanation which "might reasonably be true and which is consistent with the innocence" of accused. On the other hand in the case of mandatory presumption "the burden resting on the accused person in such a case would not be as light as it is where a presumption is raised under S.114 of the Evidence act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The words 'unless the contrary is proved' which occur in this provision make it clear that the presumption has to be rebutted by 'proof' and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the court finds its existence to be so probable that a *reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by provision cannot be said to be rebutted......*"

29. Section 118 (a) and Section 139 of NI Act are mentioned in verbatim below :-

"***Section 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, was indorsed, negotiated or transferred for consideration;"

"***Section 139 : Presumption in favour of holde****r – 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."*

30. It is a well settled legal position that the presumptions U/s. 118 and 139 NI Act are rebuttable presumptions and the burden lies on the accused to prove that he had no liability/debt on the date of issue of the cheque. It is also a settled principle of law that to bring home an offence under any of the penal provisions, it is essential to

prove the case beyond reasonable doubt and the ingredients of the offence should be satisfied. Hon'ble Apex court had the occasion to appreciate the aforesaid provisions in certain case laws which are relevant for the purpose of adjudication of this appeal. The relevant observations of the said case laws are mentioned in my subsequent paragraphs.

31. In case titled as **M.S. Narayana Menon Vs. State of Kerala, 6 SCC 39,** it was held that;

> *"While dealing with that aspect in a case under Section 138 of the Negotiable Instruments Act, 1881, this court held that presumptions under sections 118 (a) and 139 of the Act are rebuttable and the standard of proof required for such rebuttal is preponderance of probabilities and not proof beyond reasonable doubt. The Court observed:*
>
> *In terms of section 4 of the Evidence Act whenever it is provided by the Act that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved. The words "proved" and "disproved" have been defined in section 3 of the Evidence Act (the interpretation clause).*
>
> *Applying the said definitions of "proved or "disproved" to the principle behind section 118 (a) of the Act, the court shall presume a negotiable instrument to be for consideration*

unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon.

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

Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence to exist or consider its existence to be reasonable probable, the standard of reasonability being that of the "prudent man".

32. In Case titled as **Hiten P.Dalal Vs. Bratindranath Banerjee (2011) 6 SCC 16** it was held as under:-

"Presumptions are rules of evidence and do not conflict with the presumption of innocence,

because by the latter all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.

In other words, provided the facts required to form the basis of a presumption of law exists, 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."

33.Hon'ble Apex court in case titled as **Krishna Janardhan Bhatt Vs. Dattatraya G.Hegde (2008) 4 SCC 54** observed;

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

"Statute mandates raising of presumption but it stops at that. It does not say how presumption

drawn should be held to have rebutted. Other important principles of legal jurisprudence, namely, presumption of innocence as human rights and the doctrine of reverse burden introduced by Section 139 should be delicately balanced. Such balancing acts, indisputably would largely depend upon the factual matrix of each case, the materials brought on record and having regard to legal principles governing the same."

34. Further, in **Bharat Barrel and Drum Manufacturing Company Vs. Amin Chand Pyarelal (1999) 3 SCC 35** it was observed as under:-

> *"Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of*

the negotiable instrument. The burden upon the defendant of proving the non-existence of consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man *would, under the circumstances of the case, shall act upon the plea that it did not exist.*"

"Section 139 of the Act is an example of 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 the absence of compelling justification, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is settled position that when an accused has to rebut the "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 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."

35. In Case titled as **M/s. Kumar Exports Vs. M/s. Sharma Carpets Crl. Appeal No. 2045 of 2008 passed by Hon'ble Supreme Court of India,** it was held as under:

"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 server 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."

36. In Case titled as **John K. John v. Tom Varghese 2007 (4) Civil Court Cases 690 (S.C)**, it was held as under:-

"*.....Presumption raised in terms of Section 139 of the Act is rebuttable. If, upon analysis of the evidence brought on records by the parties, in a fact situation obtaining in the instant case, a finding of fact has been arrived at by the High Court that the cheques had not been issued by the respondent in discharge of any debt, in our opinion, the view of the High Court cannot be said to be perverse warranting interference by us* *in exercise of our discretionary jurisdiction under Article 136 of the Constitution of India. The High Court was entitled to take notice of the conduct of the parties. It has been found by the High Court s of fact that the complainant did not approach the court with clean hands. His conduct was not that of a prudent man. Why no instrument was executed although a huge sum of money was allegedly paid to the respondent was a relevant question which could be posed in the matter. It was open to the High Court to draw its own conclusion therein. Not only no document had been executed, even no interest had been charged.....”*

37. **Above case laws therefore, indicate that presumptions u/s 118 & 139 N.I.Act are rebuttable in nature. Accused needs not to rebut those presumptions, through defence evidence only. He can do so by cross examining complainant witnesses. It is for complainant, to prove his case beyond reasonable doubt. Now, whether complainant proves his case beyond reasonable doubt and whether aforesaid presumptions are rebutted by accused vary from case to case. This is the understanding of law, which I have based on above case laws and based on which I am proceeding further, in this judgment.**

FINDINGS

38. Reverting back to the facts of the present case, I find that case of complainant/appellant is that the complainant is a company incorporated under the Companies Act and is a non banking financial institution and provides loans for the businesses. The husband of the accused namely Gyani Singh approached the complainant company for obtaining loan for an amount of Rs. 686400/- for business purpose and for the same a loan agreement was executed. The husband of the accused was granted loan and the accused stood surety against the said loan amount and when the husband of accused defaulted in repayment of loan installment the accused in discharge of the liability issued the cheque in question bearing no. 37457 for a sum of Rs. 478274 dated 08.02.2016 drawn on Shivalik Mercantile Cooperative Bank Ltd. It has been mentioned that the cheque upon presentation was dishonoured on 16.02.2016 with remarks *'funds insufficient'*. Subsequently complainant served legal notice to accused on 15.03.2016 but the accused failed to repay the amount and hence complaint was filed U/s 138 NI Act.

39. Upon appearing before the Ld. Trial Court, during framing of notice, accused denied to have signed any document pertaining to the guarantor, also denied to have issued the cheque and stated that she had no knowledge regarding any loan transaction and that she did not receive the legal notice.

40. In support of the complaint, complainant examined 2 witnesses and relied upon documents Ex. CW1/A which was the evidence by

way of affidavit, copy of board resolution Ex. CW1/1, copy of authority letter Ex. CW1/1A, copy of loan agreement Ex. CW1/C, the cheque in question Ex. CW1/2, cheque returning memo Ex. CW1/3, legal demand notice dated 05.03.2016 Ex. CW1/4, postal receipts Ex. CW1/5 and returned envelope Ex. PW1/6 and one notice dated 21.12.2015 Ex CW1/D. Complainant also through CW-2 relied upon the statement of loan account Ex. CW2/1, copy of arbitration award Ex. CW2/3.

41. The arguments on behalf of the complainant are primarily that the accused being the wife of borrower namely Giani Singh stood as guarantor. The cheque in question Ex. CW1/2 bears the signature of complainant, even if disputed by the accused, stands proved with the testimony of DW-2 Anurag Vijeta, Branch Head, Shivalik Mercantile, Cooperative Bank who deposed that the cheque book having aforesaid cheque was issued to accused on 21.03.2013 and accused Bharti Singh was holder in the aforesaid account no. 150010006450 and the aforesaid account subsequently merged with IDI Bank. Also, that the cheque in question was returned due to *'insufficient funds'* and not for the reason that the signatures of the accused differed. It has also been the argument of the complainant that mere denial on behalf of the accused regarding the factum of loan does not show discharge of burden and there is presumption against the accused which has been proved by complainant and therefore accused ought to have been convicted.

42. On the other hand, the contentions raised on behalf of accused are revolving around the fact that she was not aware about any loan

agreement signed between the complainant and husband of accused or signing of any guarantor agreement between the complainant and the accused qua the aforesaid loan and that she had never signed on any such loan agreement and had never issued the cheque in question in discharge of any legal liability. During the course of arguments, Ld. Counsel for accused has mentioned that the accused is currently not residing with her husband is not aware about his whereabouts. It was further contented that the signatures on the cheque and on documents relied upon by the complainant to the pertain to the accused and to prove the same the complainant examined witness DW-3 namely Roopak being a forensic examiner. Apart from the aforesaid submissions, Ld. Counsel for accused also pointed discrepancies in issuance of cheque and pressed upon the fact that the Shivalik Mercantile Cooperative Bank subsequently merged with IDBI and the cheque in question was presented through some other bank and therefore the case of the complainant does not stand proved.

43. In the present matter the accused has disputed her signatures on the cheque in question and has stated that the same was issued by her towards any legal liability. The accused also denied being DW-4 that the cheque book was not issued to her and that she never received any legal demand notice from the complainant. However, after carefully perusing the evidence available on record it can be concluded that the alleged cheque in question was issued by the accused as the same has been proved by the testimony of DW-2 and therefore any subsequent denial regarding issuance of cheque by the accused cannot be taken into consideration. Further, though

the accused from the beginning had taken the stand that the cheque in question does not pertain to her, the same is also narrated with the fact that DW-2 has categorically stated that the cheque book containing the cheque in question was issued to the accused on 21.11.2013. The aforesaid record containing the account opening form was Ex. DW-2/1 which also contains the KYC documents of accused which were Ex. DW2/2 establish that the cheque in question was of the accused and issued to the accused by the concerned bank. It is also proved by the complainant that the cheque Ex. CW1/2 was dishonored due to insufficient funds and the cheque returning memo Ex. DW1/1 was for the reason of *'insufficient funds'* and not due to the reason that the signatures on the cheque did not match. Therefore, the contentions raised on behalf of the accused regarding ignorance of issuance of cheque or its subsequent dishonour do not absolve her from the liability against the amount of Rs. 478274/-. Further, the aforesaid witnesses which were examined were the bank officials, who deposed regarding the execution of the cheque and cannot be doubted as they were the witnesses examined by the accused herself. Further, DW-3 Roopak Kashyap who was examined as a forensic expert, during cross examination admitted that she did not have any degree in respect to forensic sciences and is only an advocate by person and therefore, the testimony of DW-3 stands discarded. Therefore, mere denial on the issuance of cheque did not help the accused. The presumption U/s 118 and Section 139 of the NI Act arises in favour of the complainant and the accused did not rebut the same by raising any probable defence.

44. It is also to be seen that the accused who examined herself as DW-4, during her cross examination did not clarify as to how the cheque in question came to the hands of the complainant. The mere denial even on the aforesaid aspect did not help the cause of the accused. The envelope of the notice sent to the accused which was Ex. CW-1/6 also shows that the accused upon receiving the same, tried to mislead the person who went to handover the same and purposely did not accept it. The aforesaid conduct of accused shows that she was aware about the proceedings against her but chose not to reply for the same. It has been stated by the accused during her cross examination that when she came to know regarding the present matter of dishonor of cheque she wrote letters to her bank, however, surprisingly the accused did not take any step to file any complaint before any police authority if the cheque was misused by the complainant and surprisingly even the aforesaid letters to bank were written by her only in October, 2018, i.e. when cheque in question was dishonored on 08.02.2016 and the same does not show bonafide intention of the accused.

45. In the aforesaid facts and circumstances, it is amply clear that the accused failed to discharge the burden by raising a probable defence and the accused was unable to dislodge the case of the complainant and the presumption U/s 139 and 118 of the NI Act arises in favour of the complainant

46. The net result is that complainant was able to prove its case beyond reasonable doubt on the basis of its evidence. Accused did not succeeded to raise probable defence and rebut presumptions u/s

118 read with Section 139 N.I.Act. Ld. Trial Court wrongly acquitted the accused/respondent vide impugned judgment. As such, impugned judgment stands set aside. **Accused Bharti Singh stands convicted U/s 138 NI Act. Present appeal with respect to the judgment of acquittal stands allowed.**

47. Impugned judgment passed by Ld. Trial Court is set aside.

48. Copy of the present order be sent to Ld. Trial Court for information.

Sheetal chaudhary
Digitally signed by Sheetal chaudhary
Date: 2026.04.07 16:00:47 +0530

Announced in open Court
On 07.04.2026

[Sheetal Chaudhary Pradhan]
ASJ-02/South East District
Saket Courts/New Delhi/07.04.2026 (m)