IN THE COURT OF SH. LOVLEEN, ADDITIONAL SESSIONS JUDGE-03, SAKET COURTS, NEW DELHI

DLSE010094752025

CRL. APPEAL No. 330/2025

MR. ARSHAD HASSAN
S/O MR. IFTEKHAR HUSAIN
R/O F-31/1, PEACE APARTMENT
3RD FLOOR, SHAHEEN BAGH OKHLA
NEW DELHI-110025.

….Appellant

versus

1. **GHULAM HAIDER**
   S/O SH. SHABI UL HASSAN
   R/O N-112, FLAT NO. 402,
   BATLA HOUSE, JAMIA NAGAR
   NEW DELHI-110025.

2. **STATE**

...Respondents

Date of institution	**:**	**09.09.2025**
Date of Reserving judgment	**:**	**16.10.2025**
Date of Pronouncement	**:**	**29.10.2025**

JUDGMENT

1. This is an appeal under section 415 (3) BNSS, 2023 preferred by the appellant against the impugned judgment dated 09.07.2025 and order on sentence dated 28.07.2025 passed by Court of Ld. Judicial Magistrate First Class-(NI Act-05), South East District in CT No. 616448/2016 titled Ghulam Haider Vs. Arshad Hassan, whereby the appellant/ convict Arshad Hassan was convicted of the offence punishable under Section 138 of Negotiable Instruments Act and was sentenced to undergo simple imprisonment 02 months and to pay a fine of Rs. 70 lakhs to the complainant/ appellant as compensation within 90 days from the date of impugned order. In default, appellant/ convict is to further undergo simple imprisonment for 06 months. For the sake of convenience, the appellant/ convict herein shall be referred to as '<u>accused</u>' and the respondent herein shall be referred to as '<u>complainant</u>'.

BRIEF FACTS

2. The facts of the case put forth by the complainant against the accused have been correctly noted by the Ld. Magistrate in his impugned judgment. The relevant paragraphs are reproduced hereinafter for ready reference:-

> "1. *Briefly stated, the factual matrix of the present complaint case is that the complainant and the accused have friendly relations and are known to each other since childhood. The accused approached the complainant with a proposal regarding a property. The complainant thereby, agreed for it and gave a sum*

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of Rs. 39,00,000/- to the accused in March, 2011 through various instalments of cash. However, the accused later sold the property to a third person. Pursuant to which, the complainant demanded sum of Rs. 39,00,000/- back from the accused. Upon much persuasions, the accused issued a cheque bearing no. 000077 dated 19.12.2014 drawn on Kotak Mahindra Bank, D-960, New Friends Colony, New Delhi-110065 amounting to Rs. 39,00,000/- (hereinafter "cheque in question") in favour of the complainant. The said cheque in question when presented by the complainant was returned unpaid vide return memo dated 18.02.2015 for reason "Funds Insufficient".

2. The complainant accordingly, sent a legal notice dated 17.03.2015 to the accused demanding the payment of cheque amount in question within fifteen days of receipt of the notice. The accused when failed to pay the cheque amount in question, the complainant filed the present complaint against the accused under Section 138 of Negotiable Instruments Act, 1881 (hereinafter "NI Act")……… …...................................………… ……………….............…………………………………………"

TRIAL

3. Vide order dated 03.07.2015, the Ld. Magistrate concerned summoned the accused to face trial u/s 138 NI Act. On 07.03.2018, a notice u/s 251 Cr.P.C. was framed upon the accused wherein he admitted his signatures and other particulars on the cheque. He also admitted that he had issued the cheque in favour of the complainant. In defence, accused

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submitted that:- "*I had given the cheque in question to the complainant and the same was also signed and filled by me. However, the said cheque was given to the complainant as a security cheque in respect of one property transaction. The complainant was arranging for me to buy a property. I am engaged in the work of colonizing. However, the property was never purchased through the complainant and as such there is no liability to pay cheque amount to the complainant. I did not give any proposal of selling property and did not receive the sum of Rs. 39 Lakhs in cash in various installments from complainant as alleged in complaint*."

4. During trial, the complainant examined himself as CW-1 in support of his allegations against the accused in this case. Statement of accused was recorded u/s 313 Cr.P.C. In defence evidence, the accused examined one Rehmat Ali as DW-1. Upon the conclusion of trial, accused was convicted of the offence punishable u/s 138 NI Act vide the impugned judgment dated 09.07.2025.

GROUNDS OF APPEAL

5. The grounds cited by the accused against the impugned judgement are as under :

> ***a).*** *That the impugned order and judgment is against the well settled principal of law and also against the facts and circumstances of the case.*
>
> ***b).*** *That the impugned judgment is liable to be set aside as the same is passed without appropriate appreciation of material/evidence on record.*
>
> ***c).*** *That the Ld. Magistrate surprisingly has taken a*

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contradictory stand while appreciating the evidence on record and convicting the appellant for offence U/S 138 NI Act. It is settled position that an accused is supposed to rebut the presumption under section 139 NI Act, the standard of proof for doing so is that "preponderance of probabilities".

d). *That the complainant in entire proceeding not disclosed which property he was purchasing from appellant/convict and the name of another person to whom appellant/convict allegedly sold the said property, and even not remember the dated of alleged payments allegedly claimed by him.*

e). *That the complainant/respondent no. 1 case is based on concocted story wherein neither is any specific property description/address/location nor the specific dates of alleged payments, no agreement, no receipt, no witness of transection etc.*

f). *That to maintain a complaint under the negotiable instrument act there is to be enforceable debt of liability towards the cheque on which complaint was filed but in the instant case the complainant has allegedly shown a time barred liability in alleged averment of paragraph no. 3 of his complaint and in paragraph no. 4 of his evidence by way of affidavit.*

"7 the alleged loan was advanced in the year 1985 and the cheque was issued in the year 1990. by the time the cheque was issued, the appears to have been barred by limitation because no acknowledgement is alleged to have been obtained by the appellant from the first respondent accused before expiry of three years from the date of loan. Thus it is crystal clear that the debt was not legally enforceable at the time of issuance of the cheque and therefore, vide explanation to

section 138 of the negotiable instruments act, which read as under.

Explanation: until the debt is legally recoverable the drawer of the cheque cannot be fastened with the liability under section 138 of the act.

There appear to be no force in the contention of the learned counsel of the appellant that by issuance of the cheque, the limitation for raising the loan amount was extended, because at the time of issuance of the cheque the debt should be a legally recoverable debt. In case a cheque is issued for a time barred debt and it is dishonored, the accused cannot convicted under section 138 of the negotiable instruments act simply on the ground that the debt was not legally recoverable."

There is always a presumption of liability under section 139, however, it is also a rebuttable presumption. In ***Giridhari Lal Rathi v. P. T. V. Ramanujachari and Anr****. 1997 2 crime 658, it is held that by the issuance of the cheque, the limitation for realizing the loan amount cannot be taken as extended, because at the time of issuance of the cheque, a cheque should be for a legally recoverable debt. in* ***AV Murthy v. B. S. Nagabasavanna MANU/SC/0089/2002: 2002 (2) SCC 642),*** *cited supra, the supreme court held" for example if the cheque was drawn in respect of a debt or liability payable under a wagering contract, it could have been said that the debt or liability is not legally enforceable as it is a claim which is prohibited under law. Likewise, a time barred debt also not legally recoverable."*

g)*. That the Hon'ble Delhi High Court in the case title Paranjan Kumar Jain Vs Ravi Malhotra observed as follows that the cheque in lieu of a time barred debt does not come in* *the definition of legally enforceable debt as is contained in the explanation of section 138 of NI Act,*

"4. Learned counsel for the petitioner has placed reliance upon a judgment reported in ***Vijay Polymers Pvt. Ltd. and Anr. v. Vinnay Aggarwal MANU/DE/0486/2009: 162 (2009) DLT 23*** *to support his submission that the cheque issued in lieu of a time barred debt does not come in the definition of legally enforceable debt as is contained in the Expiation of section of 138 of the NI Act. cheque issued for the discharge of such a time barred debt cannot become the subject matter of complaint under section 138 of NI Act; the agreement in this case having terminated on 14.06.2000 and the cheque have been issued almost five year later ie on 25.03.2005 and 30.04.2005, there being no enlargement of period of limitation, it is clear that at this point of time the liability, if any, qua the accused had become time barred. Reliance has also been placed upon Sasseriyil Joseph V. Devassia MANU/KE/0674/2000: 2001 Crl. LJ 24 to support this submission. It is further submitted that the presumption which is contained in section 139 of the NI Act raises a presumption that the said cheque has been issued for the discharge of a debt or liability and the existence of a legally recoverable debt is not a matter of presumption under the aforesaid provision of law. For this proposition reliance has been placed upon* ***Krishshan Janardhan Bhat V. Dattatraya G. Hegde MANU/SC/0503/2008: (2008) 4 SCC 54.***

"12. The judgment relied upon by the learned defense counsel are distinct on there facts, in the case of A V Murthy (Supra), the Hon'ble supreme court had held that the question of the acknowledgement reviving the period of limitation could be agitated before the magistrate, in a case where there was documentary evidence, in the said case the balance sheet of the

respondent had acknowledgement his liability, there is no such documentary evidence in this case."

"14 In the instant case, the two cheques which are the subject matter of this complaint were for the discharge of a liability of a debt arising out of the agreement dated 14.06.2000 which debt has become time barred. This debt was not a legally enforceable debt within the meaning of section 138 Explanation of the NI Act. Complaint and all proceeding emanating there from are accordingly quashed."

***h)**. That as per the alleged averment of paragraph no. 3 of complaint case time barred alleged liability is shown by the respondent no.1.*

***i)**. That no cause of action had arose to file the complaint against the appellant/convict as per the averment of complaint, the alleged claim shown is time barred hence no legally enforceable debt is shown by the respondent no. 1 in the alleged averments of complaint.*

***j).** That no such transaction was ever taken place between the respondent No. 1 and the appellant/convict as alleged, and the security cheque is tried to be enchased by the respondent No. 1 with some mala fide intention.*

***k).** That the complaint case filed by the respondent No. 1 is time barred and the same ought to be rejected/dismissed as per the presidents laid down by the Hon'ble High Courts and Supreme Court.*

***l).** That the complaint under negotiable instrument act under section 138 is not maintainable against non-existing legal recoverable debt as per the catina of judgments of Hon'ble*

High Court and Supreme Court.

m). *That the evidence is to be lead only in those cases in which debt is admitted but no alleged averment of the respondent no. 1 is admitted by the appellant/convict as the security cheque was given to him.*

n). *That in the judgment of Hon'ble Supreme Court in* ***Sasseriyil Joseph V. Devassia, SLP (Crl.) 1785/2001 is*** *reproduced hereunder (MANU/DE/0486/2009, paragraph 8):*

"We have heard learned counsel for the appellant/convict. We have persuade the judgment of the High Court of Kerala in Criminal Appeal No. 161 of 1994 confirming the judgment/order of acquittal passed by the Addl. Sessions Judge, Thalassery in criminal appeal No. 212 of 1992 holding inter alia that the cheque in question having been issued by the appellant/convict for due which was barred by limitation the penal provision under section 138 of the Negotiable Instrument Act is not attracted in the case On the facts of the case as available on the records and the clear and unambiguous provision in the explanation of section 138 of the Negotiable Instrument Act the judgment of the lower appellate court as confirmed by the High Court is unassailed, therefore, the special leave petition is dismissed."

o)*. Because legal notice to the appellant/convict was not served.*

p)*. That the respondent no. 1 admitted in his cross examination that "It is correct that there was/is no agreement between me and appellant/convict towards the sale of any immovable property to me."*

***q)**. That the respondent no. 1 stated in his cross examination that "I do not have any record with respect to receiving of the said amount by appellant/convict."*

***r)**. That nothing came in the evidence of the respondent no. 1 from which acknowledgement can be shown on the part of the appellant/convict as the security cheque was given to the respondent no. 1.*

***s)**. That any prudent person will not believe upon the alleged story prepared by the respondent no. 1 with mala fide intention. That the respondent no. 1 also made the major contradiction statement in his cross examination that "**I gave the amount in three years**" but respondent no. 1 in his complaint and evidence by way of affidavit stated that "…..**gave a sum of Rs. 39,00,000/- (Thirty-Nine Lacs) in the month of March 2011 through various instalments by way of cash**.*

***t)**. That the contradiction statement/averment of the respondent with respect to the payment itself shows falsehood of the claim of the respondent no. 1.*

***u)**. That the evidence of the respondent has been recorded and nothing is came in his evidence to negate the law/issue of time barred liability.*

***v)**. That in the impugned judgment at one place doubt is raised about the issuance of cheque to the complainant but on the other place no consider is given about the alleged payment in cash Rs. 39,00,000/- allegedly given by the complainant/respondent no. 1 without any agreement etc. Complete facts and major contradictions are not taken into the consideration during the passing of judgment. That the issue of*

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time barred alleged liability is also not considered.

***w)**. That the sentence awarded against the appellant is unwarranted and extremely harsh.*

***x)**. That the evidence of the DW-1 is also not considered in the impugned judgment, each and every person has different type mental capacity of remembering merely witness.*

6. It is prayed that the impugned judgment dated 09.07.2025 and the order on sentence dated 28.07.2025 may be set aside.

SUBMISSIONS OF COMPLAINANT

7. On the other hand, Ld. Counsel for the complainant has argued that the accused has been correctly convicted by the Ld. Magistrate. He prays for dismissal of the appeal filed by the accused.

DISCUSSION

8. This Court has considered the oral submissions as well as the records.

9. Recently, the Hon'ble Supreme Court was pleased to define the contours of the law relating to the provision u/s 138 of Negotiable Instruments Act in ***Rajesh Jain Vs. Ajay Singh 2023 INSC 888***. The relevant extracts of the observations are reproduced below for ready reference:-

> ***Section 138 of the NI Act - Necessary Ingredients***
>
> *25. Essentially, in all trials concerning dishonour of cheque, the courts are called upon to consider is whether*

the ingredients of the offence enumerated in Section 138 of the Act have been met and if so, whether the accused was able to rebut the statutory presumption contemplated by Section 139 of the Act.

26. In ***Gimpex Private Limited vs. Manoj Goel (2022) 11 SCC 705*** *, this Court has unpacked the ingredients forming the basis of the offence under Section 138 of the NI Act in the following structure:*

> *(1) The drawing of a cheque by person on do account maintained by him with the banker for the payment of any amount of money to another from that account;*
>
> *(i) The cheque being drawn for the discharge in whole or in part of any debt or other liability;*
>
> *(iii) Presentation of the cheque to the bank arranged to be paid from that account,*
>
> *(iv) The return of the cheque by the drawee bank as unpaid either because the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount*
>
> *(v) A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within 30 days of the receipt of information from the bank in regard to the return of the cheque; and*
>
> *(vi) The drawer of the cheque failing to make payment of the amount of money to the payee or*

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the holder in due course within 15 days of the receipt of the notice.

*27. In **K. Bhaskaran v. Sankaran Vaidhyan Balan (1999) 7 SCC 510** this Court had summarised the constituent elements of the offence in fairly similar terms by holding:*

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

*28. The five (5) acts as set out in **K Bhaskaran's case (supra)** are, generally speaking, matters of record and would be available in the form of documentary evidence as early as, at the stage of filing the complaint and initiating prosecution. Apart from the above acts, it is also to be proved that cheque was issued in discharge of a debt or liability (Ingredient no. (ii) in Gimpex's case). The burden of proving this fact, like the other facts, would have ordinarily fallen upon the complainant. However, through the introduction of a presumptive device in Section 139 of the NI Act, the Parliament has sought to overcome the general norm as stated in Section 102 of the Evidence Act and has, thereby fixed the onus of proving the same on the accused. Section 139, in that sense, is an example of a* *reverse onus clause and requires the accused to prove the non-existence of the presumed fact, i.e., that cheque was not issued in discharge of a debt/liability.*

Burden of Proof and Presumptions: Conceptual Underpinnings

29. There are two senses in which the phrase 'burden of proof' is used in the Indian Evidence Act, 1872 (Evidence Act, hereinafter). One is the burden of proof arising as a matter of pleading and the other is the one which deals with the question as to who has first to prove a particular fact. The former is called the 'legal burden' and it never shifts, the latter is called the 'evidential burden' and it shifts from one side to the other. [See ***Kundanlal v. Custodian Evacuee Property (AIR 1961 SC 1316)]***

30. 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

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adduced by either side (See Halsbury's Laws of England, 4th Edition 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 (AIR 1987 AP139)*** *affirmed in* ***Bharat Barrel Vs. Amin Chand [(1999) 3 SCC 35]]***

31. Presumption, on the other hand, literally means "taking as true without examination or proof". In ***Kumar Exports v. Sharma*** *Exports (2009) 2 SCC 513, 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."*

32. 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 Edition 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** (Supra)]*

*33. 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** (Supra)]*

Section 139 NI Act-Effect of Presumption and Shifting of Onus of Proof

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

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

*36. The Court will necessarily presume that the cheque had been issued towards discharge of a legally enforceable debt/liability in two circumstances. Firstly, when the drawer of the cheque admits issuance/execution of the cheque and secondly, in the event where the complainant proves that cheque was issued/executed in his favour by the drawer. The circumstances set out above form the fact(s) which bring about the activation of the presumptive clause. [**Bharat Barrel Vs. Amin Chand] [(1999) 3 SCC 35]***

*37. Recently, this Court has gone to the extent of holding that presumption takes effect even in a situation where the accused contends that 'a blank cheque leaf was voluntarily signed and handed over by him to the complainant. [**Bir Singh v. Mukesh Kumar (2019) 4 SCC 197**]. Therefore, mere admission of the drawer's signature, without admitting the execution of the entire contents in the cheque, is now sufficient to trigger the presumption.*

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

39. ***John Henry Wigmore[12] on Evidence*** *states as follows:*

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

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

[Rangappa vs. Mohan (AIR 2010 SC 1898)]

41. In order to rebut the presumption and prove to the contrary, it is open to the accused to raise a probable defence wherein the existence of a legally enforceable debt or liability can be contested. The words 'until the contrary is proved' occurring in Section 139 do not mean that accused must necessarily prove the negative that the instrument is not issued in discharge of any debt/liability but the accused has the option to ask the Court to consider the non-existence of debt/liability so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that debt/liability did not exist. ***[Basalingappa Vs. Mudibasappa (AIR 2019 SC 1983) See also Kumar Exports Vs. Sharma Carpets (2009) 2 SCC 513]25***

42. In other words, the accused is left with two options. The first option-of proving that the debt/liability does not exist-is to lead defence evidence and conclusively establish with certainty that the cheque was not issued in discharge of a debt/liability. The second option is to prove the non-existence of debt/liability by a preponderance of probabilities by referring to the particular circumstances of the case. The preponderance of probability in favour of the accused's case may be even fifty one to forty nine and arising out of the entire circumstances of the case, which includes: the complainant's version in the original complaint, the case in the legal/demand notice, complainant's case at the trial, as also the plea of the

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<u>accused in the reply notice, his 313 statement or at the trial as to the circumstances under which the promissory note/cheque was executed. All of them can raise a preponderance of probabilities justifying a finding that there was 'no debt/liability'</u>. ***[Kumar Exports and Sharma Carpets, (2009) 2 SCC 513]***

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

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

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Act, since the nature of the presumptive clauses in Section 118 and 139 is the same, the analogy can be extended and applied in the context of Section 139 as well.

*45. 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 vs. Mudibasappa, AIR 2019 SC 1983; See also, Rangappa vs. Sri Mohan (2010) 11 SCC 441].***

EXISTENCE OF STATUTORY PRESUMPTIONS

10. Trial court record reflects that at the time of framing of notice u/s 251 Cr.P.C, the accused admitted that the cheque in question belongs to him and also bears his signatures and that he has filled the particulars in the cheque. The accused also admitted that he issued the cheque in question to the complainant, albeit for a different purpose then what is claimed by the complainant. Admittedly, the cheque in question was dishonored upon being presented for encashment by the complainant. All the above facts are sufficient to invoke the presumptions available to the complainant u/s 118 NI Act and u/s 139 NI Act. As such, the evidential burden stood transferred upon the accused to prove that the cheque in question were not issued towards discharge of any liability. Until the said evidential burden is discharged by the accused, the presumptions available against the accused u/s 118 NI Act and u/s 139 NI Act will have to be assumed to be true, without expecting the complainant to do anything further. The said burden could be discharged by the accused either by leading defence evidence to conclusively establish that the cheque were not issued in discharge of a debt / liability or by proving the non existence of debt / liability on preponderance of probabilities by referring to the particular circumstances of the case. The nature of evidence required to shift the evidential burden need not necessarily be direct evidence. Once the accused produces such evidence, the burden shifts back to the complainant and the above mentioned presumptions disappear.

REBUTTAL OF STATUTORY PRESUMPTIONS

11. Now, the question left to be decided is whether the said presumptions have been successfully rebutted by the accused or not. In order to adjudicate the same, this Court must deal with the facts adduced on record by the accused during the cross-examination of complainant or during the defence evidence.

12. The said adjudication requires an understanding of the respective stands taken by the parties.

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13. As per complainant, by March 2011 a sum of Rs. 39 lakhs was paid to accused in installments for purchase of an immovable property. But accused sold the said property to someone else. As such, accused issued the cheque in question in favour of complainant for refunding the said amount. However, the cheque in question was dishonored, when presented for encashment by the complainant. Complainant examined himself as a witness during the course of trial.

14. On the other hand, the accused denies any such liability and claims, in response to notice framed upon him u/s 251 Cr.P.C, that *"I had given the cheque in question to the complainant and the same was also signed and filled by me. However, the said cheque was given to the complainant as a security cheque in respect of one property transaction. The complainant was arranging for me to buy a property. I am engaged in the work of colonizing. However, the property was never purchased through the complainant and as such there is no liability to pay cheque amount to the complainant. I did not give any proposal of selling property and did not receive the sum of Rs. 39 Lakhs in cash in various installments from complainant as alleged in complaint."* In his statement recorded u/s 313 Cr.PC, the accused reiterates the said defence. In defence, accused examined one Rehmat Ali as DW-1.

15. Now, we delve into the oral testimony of complainant, who examined himself as CW-1. CW-1 deposed in line with the facts mentioned in the afore-going paragraphs. He was duly cross-examined on behalf of the accused. During the course of his cross-examination, CW1 has clearly admitted that '*there was / is no agreement between him(Complainant) and*

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<u>the accused towards sale of any property to him (Complainant)</u>'. This court notes that the said admission is completely contrary to the claim put forth by the complainant. In the absence of any agreement for sale / purchase of an immovable property, a serious question arises as to the assertions of complainant with respect to the alleged payment of said amount of Rs. 39 lakhs to the accused and also as to the refund of same. In the considered opinion of this Court, complainant should have furnished an explanation in this regard. In the absence of any explanation, this court is constrained to hold that the cheque in question was issued sans any consideration. This inference in fact probablises the defence of the accused. Moreover, this Court notes that complainant has neither bothered to furnish details of the payments allegedly made by him to accused from time to time totaling Rs. 39 lakhs (no dates have been furnished, nor any computation has been furnished), nor has he produced any receipts in respect of the said payments. This Court feels that the case put up by complainant seems to be suffering from the vice of vagueness also. In the entire facts and circumstances, this Court find it appropriate to hold that the accused has successfully rebutted all the statutory presumptions operating against him at the stage of cross examination of complainant.

16. There is no need to delve into the evidence led in defence by the accused as the complainant has not placed any other evidence / material to prop up his case against the accused.

<u>Decision</u>

17. In view of the above discussion, conviction of the accused is liable to be set aside. Ordered accordingly. Accused Arshad Hassan is hereby acquitted of the charges punishable u/s 138 of Negotiable Instruments Act. Needless to state here, the judgment and order on sentence passed by the Ld. Magistrate are hereby set aside.

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Announced & Dictated in the
Open Court today i.e. 29.10.2025

(Lovleen)
ASJ-03 (South East)
Saket Courts, Delhi