

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

Criminal Appeal No.402/2025, 403/2025 & 404/2025
M/s Givo Pvt. Ltd. vs. Rajesh Rohilla
U/s 138 NI Act

M/s Givo Private Ltd.
(Now known as Givo Fasions Private Ltd.)

Through Authorized Representative
Registered office at B-11/8127, Vasant Kunj,
New Delhi – 110070
& Corporate Office at
42nd Milestone,
Kherki Daula Village,
Jaipur, Gurugram - 122001

.... Appellant

Versus

Sh. Rajesh Rohilla
S/o Sh. Shyam Sunder
R/o Flat No. 517, Sector 2,
Pocket-6, Rohini, New Delhi – 110085.

.... Respondent

Date of Institution	:	08.02.2025
Date of Arguments	:	23.03.2026
Date of Judgment	:	15.05.2026
Decision	:	Appeal Dismissed
		Impugned Order/Judgment of Ld.
		Trial Court in all three matters
		stands upheld.

JUDGMENT

1. Appellant namely M/s Givo Private Ltd. had filed present appeals against respondent namely Rajesh Rohilla thereby challenging impugned judgment of acquittal dated 16.01.2020 by which the respondent/Rajesh Rohilla was acquitted for the offence u/s 138 NI Act by the Ld. Trial Court in all three matters. The appeals were initially filed before Hon'ble High Court of Delhi and vide order dated 08.09.2025 the criminal appeals have been received by way of transfer.
2. By way of present common order I shall be disposing of the three appeals bearing no.402/2025, 403/2025 & 404/2025, as the issue in the aforesaid appeals are same and only the cheques in question are different.
3. 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.

BRIEF FACTS

4. Case of complainant in brief was that, the complainant M/s GIVO Retail Ltd., is a company incorporated under the Indian Companies Act, 1956 having its registered office at B-11/8127, Vasant Kunj, New Delhi - 110070 and at 15A/34-35, Ajmal Khan Road, Karol

Bagh, New Delhi. The instant complaint is being filed on behalf of the Complainant by Shri Faizur Rehman_S/o Shri Azizur Rehman R/o D-31, Pocket A, DDA Flats, Sukhdev Vihar, New Delhi-110025, who is authorized vide resolution/letter of authority dated 23'd October, 2008 passed by the Board of Directors, of the complainant company to file the instant complaint and do all such acts on behalf of the complainant. That the Complainant Company is engaged in the business of sales and distribution of garments and accessories under the name Aye "GAVO" The business of the Complainant extends throughout the territory of India and enjoys a immense reputation and goodwill in the market. That vide appointment letter dated 1st August 2007 the accused had been appointed as "General Manager-Finance & Accounts" by the complainant company. As per the terms of letter of appointment, the accused person was to cost to the company an exorbitant sum of Rs.9,00,000/- p.a. approx. Rupees Nine Lakhs Only). That in terms of the letter of appointment dated 01 August 2007 and especially in terms of the clause 4 the accused was prohibited to engage him in any other simultaneous business activity. It was in view of his agreeing and strictly abiding by the terms of the employment that the complainant agreed to employ him in the sensitive and demanding position of General Manager - Finance & Accounts. During the course of employment, it was expected out of the accused to dedicate his time effort and energy to further the interest of the company. Even part time employment was not permissible. Since the job profile required disclosure of financial details among other sensitive information it was expected and agreed that the accused would maintain highest standards of ethics

and confidentiality. On account of huge emoluments being paid and nature of business it was also expected and agreed that the accused person will devote quality time towards the diligent discharge of official duties and responsibilities with high standards of efficiency and secrecy, keeping in mind the interest of the company. That for the first three months period i.e. the probation period the accused was always punctual and was diligent in work and looking at diligent and responsible attitude of the accused person, his services with the complainant company was confirmed. But soon thereafter his attitude changed and it was found that he was not punctual, both in reporting to the office, during the office hours and in work. That the accused person started coming late to the office and used to leave early before the closing hours. He stopped performing, observing and confirming such duties and directions as were instructed to him by the management of the complainant company and when he was reprimanded by the complainant, false excuses Citing personal family problems were made and based on such false assurances a sympathetic approach was taken and his services were not terminated at that time. That however contrary to the assurances and to the utter surprise of the complainant company, instead of changing his attitude and being more responsible, the accused person persisted with his lack of devotion towards job and neglected duties and responsibilities. His commitment level towards the organization deteriorated to the worse and he even started making commitments to complainant company's dealers on behalf of the management (needless to say without any instructions from the management). The accused person also started making supplies of goods to the said dealers in

proportions which was way beyond his sanctioned limit and looking into his dubious, doubtful and improper conduct, the complainant did some fact finding and was shocked to discover accused's misdeeds. On a preliminary enquiry conducted, it came to the knowledge of the complainant that the accused person was working with some other organizations apart from the complainant which was in complete violation of letter of appointment. It was also discovered that the accused person in connivance with two other ex-employees of the complainant company viz. Mr. Sanjeev Arora and Mr. Prateek Mukherjee had deliberately dispatched goods to one such dealer; M/s Chorus Mercantile to a tune of more than Rs. 47,00,000/-. **That due to such irresponsible and careless attitude towards the organization, the complainant faced several problems and incurred losses under several heads some of which were on account of non finalizing of the balance sheet within the statutory period, improper maintenance of accounts, purchase, sales etc. by the accused person. That when the accused person was confronted with such illegal and nefarious acts, he acknowledged his fault, that in connivance with two other said ex-employees the accused had deliberately dispatched goods to the said dealer to a tune of more than Rs.47,00,000/- knowing the fact that there was a limit of Rs.6,00,000/- against the said dealer. The accused also acknowledged and revealed that he had mislead the management of the complainant company by confirming the said supply as an outright purchase whereas he were aware of it being on an consignment basis. The accused also admitted that he had been associated/working with other organizations while in employment with the complainant. The accused person**

acknowledged his fault of connivance with other ex-employees and took all the responsibility of the loss caused to the company by such mis-deeds. That to compensate the monetary loss caused to the complainant by such acts of being irregular during the job, not maintaining accounts, balance sheets, non-finalising of sales reports, excessive supplies to dealers and allowing dispatch of goods to a tune of Rs.47,00,000 on credit, the accused person tendered cheque bearing no.140314, dated 17.07.08, drawn on Axis Bank, G.K-II, New Delhi for an estimated liability/loss caused to the complainant which was calculated to be Rs.4,96755/- (Rupees Four Lakhs Ninety Six Thousand Seven Hundred Fifty Five Only) in favour of the complainant with the assurances and undertaking that the cheque would be duly honored on its presentation. That the said cheque bearing no. 140314 dated 17.07.2008 drawn on the Axis Bank GK-II, New Delhi for Rs.4,96755/-Rupees Four Lakhs Ninety Six Thousand Seven Hundred Fifty Five Only) was presented in the complainant's bank Axis Bank, however contrary to assurances, the said cheque was dishonored on its presentment with the endorsement "Insufficient Funds" vide memo dated 22.12.2008 and since then the accused has become totally incommunicado. The complainant vide legal notice dated 21.01.2009 sent on the 22.01.09, vide Red AD/UPC put the accused person to notice that the accused is required to make payment of the aforesaid cheque amount to the Complainant within 15 days of receipt of the said notice. It was specifically informed vide the said legal notice that in the event of failure to comply with the legal notice, the same will constitute an offence under the provisions of Section of the Negotiable Instruments Act.

That the said legal notice was returned back on 23.01.09 due to the deliberate act of avoidance of service by the accused person, further he did not take any steps either to reply to the legal notice or to pay the Cheque amount as called for in the said legal notice. Furthermore, till date no steps have been taken by the accused to pay the amount against which the Cheque was issued. In the circumstances, the Accused has committed an offence under Section 138 of the Negotiable Instruments Act, 1881 (As amended till date). The Original Envelope containing the legal notice and the AD card is annexed as Annexure G (Colly). It is also pertinent to mention here that the complainant has sent the notice at the last known correct address, which was given by the accused to the complainant at the time of his employment. That the accused person has avoided making any payment and did not take any steps to pay the cheque amount as called for in the said legal notice. Therefore, the accused has committed an offence under Section 138 of the Negotiable Instruments Act, 1881 (As amended till date). That the statutory period of fifteen days since the service of the legal notice to the accused has expired and the accused has not made the payment of the amount of the said Cheque. That the said Cheque having been issued and signed by the accused person in discharge of an admitted debt and liability and the accused not making payment within the statutory period of fifteen days, inspite of demand being raised within the prescribed time, all the ingredients of Section 138 of the Negotiable Instruments Act, 1881 are satisfied and the accused is liable to be punished, as specified therein.

PROCEEDINGS BEFORE THE LD. TRIAL COURT

5. The complainant filed complaint u/s 138 NI Act before the Ld. Trial Court on 03.03.2009 in all the three matters for dishonour of cheque bearing no.140314 dated 17.07.2018 for an amount of Rs.4,96,755/- drawn on AXIS Bank GK-II, and for another cheque bearing no.140312 dated 17.07.2018 for an amount of Rs.93,400/- drawn on AXIS Bank GK-II and third cheque bearing no.140313 dated 12.07.2018 in the sum of Rs.2,80,200/- drawn on AXIS Bank GK-II.
6. After filing of complaint, **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 21.11.2012 in CC No.1003/2009 and 03.07.2013 (in CC No.391/1/12 and CC No.390/1/12) for the offence u/s 138 NI Act, to which, the accused/respondent pleaded not guilty and claimed trial.

PLEA OF THE ACCUSED DURING FRAMING OF NOTICE BY LD. TRIAL COURT

7. During, the framing of notice accused claimed that *“I have no liability to pay any amount to the complainant against the cheque in question. The cheque in question had been wrongly collected by the complainant from me by adopting pressure and coercive tactics. No legal notice U/s 138 of NI Act issued by the complainant was ever received by me.”*
8. The accused in the notice served u/s 251 Cr.P.C. in cc No.3901/12

AND cc No.391/1/12 stated *the cheque in question was got issued by complainant from me under intimidation of causing injury to me. I was working as an employee with the complainant handling charge of GM (Accounts). There is a dispute between us because the complainant had not paid me salary for two months and also not paid the leave encashment. However, the complainant under intimidation got the cheque in question from me to show that I had not worked in the company during the certain period and hence, I am liable to pay the amount . I have also filed civil suits for my claims for around Rs.3 Lakhs. I have nothing else to say*". Thereafter, matter was fixed for post summoning complainant evidence.

POST SUMMONING EVIDENCE

9. **In its evidence, complainant examined Ms. Anjali Thukral, AR of the complainant as CW1 and tendered her evidence affidavit Ex.CW1/A in which, she reiterated the contents of the complaint. Same are not repeated here for the sake of brevity. She relied upon documents annexed with her complaint in all the three matters which were**

- 1. Letter of appointment of accused as General Manager Finance and Accounts, Cost to company Rs.9 Lakhs p.a.,**
- 2. Original cheque,**
- 3. Cheque returning memo**
- 4. Legal notice dated 20.01.2009**
- 5. Original envelope containing legal notice**
- 6. Copy of complaint**

10. Since, the contents of the complaint in all the three matters were identical the evidence of the witness was recorded simultaneous in all the three matters by the trial court on 02.05.2018.

11. Complainant tender evidence by way of affidavit and relied upon aforesaid documents and was duly cross examined by accused.

CROSS EXAMINATION OF CW-1

12. **During cross-examination, CW-1 deposed that** *“she was an employee of one of the group company “Dimensions Corporate Finance Services Pvt Ltd” of the complainant company since February 2005. She was not the employee in the complainant company but she was authorised through Board Resolution to represent the complainant company. In the year 2007, her office was at Noida and from March 2008, her office was at Gurgaon.*

Question: What was the mode of recording attendance, arrival and departure time from office of the employee of the complainant company in the year 2007-2008?

Answer: The records were maintained but I am not sure whether it was through register or computer. I will have to check from the complainant company for the records available. No memo was ever issued to the accused by the complainant company for his conduct. (Vol). As he himself admitted vide his apology letter dt. 17.07.2008 that he was working half day with other company and he was not completing the work assigned by the complainant company. (Apology letter is in CC no. 840/09/16 and resignation letter in CC No.839/09/16). It is wrong to suggest that the complainant company never issued memo to the accused or has not

placed attendance record of the accused as accused never reported late or left early from office of the complainant company. There is no letter to show that the accused was ever reprimanded by the complainant company. (Vol). I have to check from the complainant company. It is correct that complainant company has not placed any document on the record to show that the accused while employment with the complainant company was also working with some other company. (Vol) the same has been admitted by the accused vide his apology letter. It is wrong to suggest that accused did not work with any company while in employment with the complainant company. It is correct that complainant company has not placed any document on record to show that accused was ever warned for not performing or observing or confirming duties and directions by the complainant company. She stated that accused was appointed in the complainant company in the capacity of General Manager, Finance & Account. The job of the accused included to look after over all finances of the company i.e accounts, supply of goods to dealers within sanction limits, filing returns and finalization of accounts etc. Clause 3 of appointment letter dt. 01.08.2007 of accused authorizes the management to direct, instruct and assign the accused to perform any task related to his designation and the said job description is part of the same. She was not aware whether the management of company has directed, instructed or assigned the task in writing, of looking after the over all finances of the company and supply of goods to dealers within sanction limits etc, to the accused. It is correct that it was not the job of the complainant to make sale on behalf of the complainant company to any of the dealers of the complainant.

(Vol) Accused job was to check that goods were supplied within sanction limit to the dealer and to report to the management if the same were not within sanction limit. I have not placed any document on record to show the sanction limit of accused for different dealers. She had not placed any document on record to show that accused ever confirmed any order for any limit for any of the dealers of the complainant company. She was not aware about any documents which could show that accused has made any commitment or supply of goods to any of the dealers on behalf of the complainant company. Vol. I can check the same from the records. It is wrong to suggest that accused neither made any commitment nor supplied any goods to any of the dealers of the complainant on behalf of complainant company. It is correct that we have not placed on record any document to show that accused was asked to come for handing over charge of Finance and Accounts to other employees of complainant. She is presently working with Dimensions Corporate Finance Services Pvt. Ltd. and it is in business of corporate finance and is a group company. It is correct that presently the office of the company in which I am working and the office of complainant company is not the same. Vol. It was same earlier in 2007-2008 for sometime at Sector-18, Noida, however, I do not remember the complete address now. It is correct that I was and I am not incharge of Finance and Accounts of complainant company. It is correct that she has no personal knowledge of the transactions related to the accused and complainant. She was deposing as per records of complainant company and discussions with its employees. She is deposing as per records of the complainant company submitted on record of

present case and on basis of some documents which may have been shown to me during discussions, however, I can not tell what were those documents. She has not been authorized to file this complaint and depose on behalf of complainant”.

STATEMENT OF ACCUSED/RESPONDENT U/S 313 CRPC.

13. 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 06.02.2019, in all the three matters, *during the aforesaid matters accused respondent Rajesh Rohilla stated “I was appointed General Manager, Finance and Accounts as per mark "A". I did my job diligently. I never worked with any other organization or with any person. I was punctual in my duties, therefore, no notice of any sort of impunctuality etc. was ever given to me, though the complainant could have fired me from my job on one month's notice. I was only looking after the accounts and I had no concern with the supply/sales department for which there was separate department of the complainant. So, there was no question of making commitments to any dealers on behalf of complainant or supplying material to them excess of their credit by me. I was posted here and there during my tenure with complainant and on July 17, 2008, I was called for routine meeting at Karol Bagh office of complainant where I was threatened and my signatures on three letters and three cheques were taken forcibly. I immediately tried to contact PS Karol Bagh on which I was told by complainant's officials that I have done nothing and my cheques would be returned if I complete the work of the*

complainant. I worked for complainant for three more months and completed all the unfinished work. My salary of month of July, 2008 was released to me in September, 2008 which shows that I had to pay no dues to the complainant. I have no liability towards complainant. My salary is due towards complainant for which I have already filed a suit against the complainant.”

DEFENCE EVIDENCE

14. Defence evidence was led by respondent/accused and he examined himself as DW1 and led defence.

15. **DW-1 Sh. Rajesh Rohilla S/o Sh. Shyam Sunder** deposed that *“I am a qualified fellow chartered accountant (FCA) and was appointed as General Manager (Accounts & Finance) by the complainant company vide appointment letter dated 01.08.2007. I was kept on probation for a period of three months which was successfully completed by me but no separate letter was issued to me for confirmation in that regard. My services was verbally confirmed by the official of the complainant company. After joining the complainant company I discharged my duties and functions and served it with utmost sincerity and honesty without any fault, misdoing and complaint. Soon I became aware after few months of joining the complainant that there was an established and long prevailing practice in the complainant company to harass its employees without any fault of theirs and made them victim of circumstances and to force them resign suddenly and without their salaries. I continued to work with the complainant company undisturbed till 17.07.2008 when one of the directors of the*

complainant company Ajay Srivastava called a meeting in a routine manner but on completion of the meeting he without any rhyme and reason, threatened me including false implication in a criminal matter and thereby forced and compelled me to sign my resignation letter and also to hand over three cheques one for Rs.93,400/- cheque no.140312 dated 17.07.2008 drawn on Axis Bank, GK Part II, New Delhi branch against one months notice period salary and second cheque of Rs.2,80,200/- cheque no.140313 dated 17.07.2008 drawn on Axis bank, GK Part II, New Delhi towards thr months salary by wrongly saying that I had worked in the last three months only for ha day and further forced to write a letter saying I was involved in the supply of goods beyond limit to one of the dealer of the complainant company at Guwahati, Assam M/s Chorous Merchantile and further forced me to give a further blank cheque bearing no.140314 dated 17.07.2008 drawn on Axis Bank, GK Part II, New Delhi. All the aforesaid three cheques, resignation letter and other letters have been extracted from me by Mr. Ajay Srivastava aforesaid director of the complainant company under force and compulsion exercise by him and under threat and fear of false implication in a criminal matter and there was no element of voluntariness or self will. I never indulge in any wrong doing and malpractice while working with the complainant company in any manner whatsoever and discharged my duties with utmost sincerity, hardwork and honesty. But the complainant company keeping with its tradition and practice of illegally and unlawfully harassing and victimizing its employees wrongly leveled the charges of alleged wrong doing and insufficient attendance against me in order to make me

succumb to its illegal tactics and illegally misappropriated my funds and earnings by making me a victim of circumstances. I felt very dismayed and disappointed by the treatment of the director of the complainant company and decided not to continue with the complainant company any further and also to lodge a complaint against said director with the police authority in the incident relating to issuance of illegal threat to me and of illegally extorting and collecting cheques, resignation and other letters from me.

That after regaining my world on 18/07/2008, as I was about to leave for Karol Bagh Police Station to submit a complaint against said director of complainant Ajay Srivastava in the incident dt. 17/07/2008, I received a telephonic call from him wherein he apologized from me for his misbehavior with me day before and further asked me to come down to the office and meet him. Certified copy of Police Complaint dated 05/11/2008 is Exh. DW1/1. That I went to office of the complainant and straightway went to Ajay Srivastava, Director of the complainant, who told me that he was not in good mood yesterday and I should forget about the incident of yesterday and should concentrate on my work as nothing had happened at all. That when I asked him about the aforesaid three cheques collected by him from me, he told me that they are in his custody and he is not going to use the same in any manner and would return all of them to me at the earliest. That, I however refused to work with the complainant any further and insisted that the aforesaid cheques be restored to me and I be relieved from the services of the complainant with immediate effect as I was very much apprehensive about my safety and well being because of high threat perception from the complainant and

its said director Mr. Ajay Srivastava. That Ajay Srivastava, director of the complainant however insisted upon me that as the Balance Sheets of the complainant for the financial year 2007-08 was yet to be finalized and as I had been in-charge of the entire accounts for that matter, therefore I had to finalize the balance sheet for the said period before leaving the complainant company and till that time the aforesaid three cheques would remain in his custody and would be restored to me only at the time of cessation of my service and till then I should keep on working for the company. That the complainant and Ajay Srivastava, its director by employing the aforesaid black mailing and arm twisting tactics against me got prevailed upon me to continue with complainant against my will and wishes, and under duress and compulsion. I further state that during the relevant time, I had categorically told director of complainant Ajay Srivastava, that from here onwards, I would be working for the complainant till the time the balance sheet, as aforesaid, is finalized and thereafter I should be immediately relieved from the services of the complainant and all the three cheques collected from me should be returned back to me. That I thereafter continued with the complainant and finalized the balance sheet and sent a copy of the same for being signed by the complainant company's auditors. That however, the conduct of the complainant company towards me, despite I working hard for the complainant company, remained quite harsh and my salary for the month of July, 2008 was only released and credited to my account in the month of September, 2008 only i.e. on 05th Sept., 2008 and that too on my repeated requests, representations and reminders in that behalf to the complainant. Certified copy of my

Bank statement for the relevant period issued by my Banker Axis Bank is Exh. DW1/2. That after finalizing the balance sheet and completion of the Annual General Meeting of the complainant company on 30.09.2008, I requested the complainant to relieve me and restore to me all the three cheques collected from me under force and compulsion. I further state that however the response and reply of complainant's director Ajay Srivastava was not very positive and he simply asked me to continue to report for duties till he meets me some day in that regard. I further state that I was also very much apprehensive that the complainant and his said director would ruin my future career prospects and misuse the cheques lying with them. That however, the conduct and behavior of the complainant towards me had got changed altogether and neither was I being given audience nor full and settlement of my account was being done and I was being made to continue with the complainant under duress and compulsion. I further state that the complainant had already engaged fresh hands in my place and had already appointed one Sh. Lalit Saxena as G.M. (Finance). That as I was being meted out an unfair treatment and further because my salary for the month of August, 2008 had not been released to me despite good one month passing by and no positive response was coming forward from the complainant company, I decided to call it a day and therefore I resigned from the services of the complainant company vide resignation letter dated 30/09/2008 sent to complainant's director Ajay Srivastava via E-mail on 30.09.2008 with a request to settle my accounts and at the same time I also handed over the company's Laptop, Mobile phone with sim card etc. to Sh. Lalit Saxena against acknowledgement. I lastly worked

with the complainant company till 30/09/08 as an employee. Certified copy of my duly acknowledged letter addressed to complainant towards handing over of Laptop and Mobile is Exh. DW1/3. That at the time of resignation from the services of complainant company I had not been paid my salaries for the months of August and Sept., 2008, LTA/ Medical Allowance @ Rs. 6000/- per month for the period running from September 2007 to July 2008 totaling to Rs. 66000/- (Rs. 6000x11). That I had also issued a Legal Notice dated 27/05/2011 to the complainant and its Director Sh. Ajay Srivastava, inter alia, demanding my pending dues but neither the same was replied with nor any amount was paid to me. Certified copy of Legal Notice dt. 27/05/2011 along with corresponding postal receipts is Exh. DW1/4. That I have also filed a suit for recovery against the complainant and its Director Ajay Srivastava for recovery of a sum of Rs.2,35,800/- with interest @ 12% per annum w.e.f. October 2008 with pendente lite and future interest, titled "Rajesh Rohilla Vs. Givo Retail Ltd. & Anr.", being CS DJ/ 615932/2016, presently pending before the Court of Sh. Sanjeev Kumar-I, Addl. District Judge, Central, Tis Hazari Courts, Delhi. That being apprehensive about the conduct and bonafides of the complainant and its Director Ajay Srivastava, after resigning from the complainant company, I took prompt steps and submitted a complaint dt. 05/11/2008, certified copy of which is already Exh. DW1/ 1, relating to the incident dated 17th July, 2008 to the police authorities PS Karol Bagh, New Delhi on 05/11/2008 and at the same time also took care to instruct my Banker i.e. Axis Bank Ltd. Kapil Vihar, Pitampura, New Delhi on 26.12.2008 to stop payment of aforesaid three cheques as had been

extracted from me by the director of the complainant Ajay Srivastava under duress and compulsion from me. Certified copy of Letter dated 26/12/2008 issued by me to my Banker is Exh. DW1/5. That my employment and working for the Complainant for the period August to 30th September 2008 is duly established and proved from the e-mail communications/trail which I had/transacted with the various officials of the complainant, in connection with the work of the complainant. Print outs of such mail trail/communications are Exh. DW1/6(Colly.) That I always performed my duties and discharged my work with the complainant company with utmost sincerity, devotion and hard work and never contravened any of the terms of my appointment letter of the complainant. I further state that I always remained punctual and diligent in discharging the work and duties towards the complainant. I further state that I never reported late to office. I further state that I never left early before the closing hours of office. I state that I never stopped performing, or observing or confirming to any such duties and directions as had been instructed to me by the management of the complainant. I deny that I was ever reprimanded by the complainant in any manner or for any reasons. I further deny that I was ever required to change my attitude and become more responsible to the complainant company or that I ever exhibited lack of devotion towards job or ever neglected my duties and responsibilities in any manner whatsoever. I further deny that my commitment level towards the organization ever deteriorated in any manner. I deny that I ever made any commitment of any kind to any of the complainant company's dealers on behalf the management of the complainant

company. I further state that my job profile with the complainant was limited to accounts work of the complainant and I was neither my part of duty nor I ever made any sales or confirmed any orders or made any commitment to any of the dealers of the complainant. I further deny that that I ever made any supplies of goods to any of the dealers in proportions way beyond any sanctioned limit or that my conduct was ever improper or dubious and doubtful necessitating any fact finding inquiry against me by the complainant company. I further deny that I ever worked with any other organization apart from the complainant company during my service tenure with it. I state that I was well aware of my duties and responsibilities as General Manager (Finance & Accounts) and never acted either in contravention of the same or beyond the same. I deny that I ever exhibited any irresponsible and careless attitude towards the complainant organization. I further deny that I did not finalize balance sheets of the complainant company within the statutory period or maintained accounts purchased / sale etc improperly or that the complainant company ever faced any problem or / and incurred any loss under any head. I deny that I ever indulged in any illegal and nefarious acts or that I voluntarily tendered my resignation from the services of the complainant company on 17.07.2008 or ever committed any violation of any of the terms of the employment letter. I deny that I had ever tendered any assurances regarding the aforesaid cheques to the complainant company. I state that complainant extracted the aforesaid 3 cheques by way by force, threat, coercion and pressure tactics, without I having any liability against the same in any manner. I deny that as I did not have any liability against any of the three

cheques in question, therefore complainant had no authority or reason to present the same for encashment or to issue a demand notice to me either for the dishonour of the same or to file the present complaint. I deny that any of the three cheques were issued by me in favour of the complainant towards any admitted liability in any manner. I state that the complainant extracted the aforesaid 3 cheques in an illegal and wrongful manner; by way of force, threat, coercion and pressure tactics and I am not having any liability against the same in any manner and no liability could be fastened upon me vis a vis the same. I deny that I ever made any request to the complainants in any manner or for not taking legal action or action for recovery. I deny that I had ever been dilly dallying in discharging my liability or that I had ever under taken to complete the long pending work or I ever asked to be paid in September by when I could do the needful or that believing any assurances of me legal action was deferred and I was duly paid on the agreed date or about which I had never raised any objection. I deny that after 17/07/2008 I worked under my own volition or to make good any nuisance and loss caused to the complainants. I state that that printouts of the e- mails Exh. DW1/6 (Objected to by the counsel for the complainant as the same is not accompanied with certificate u/s 65 B Indian Evidence Act) have been taken by me from my computer which is being used regularly by me to store and process information and I have been using the said computer over which I have full and singular control. During the relevant period many e-mails were sent and received by me and the same were fed into and stored into my computer in the ordinary course of my employment activities and that throughout the period

till I took the printouts, my computer had been operating properly and nothing had affected the electronic record and or the accuracy of the e mails and other records stored in my computer and the information contained in the Page 97/7 e-mail reproduced and is derived from such information fed into the computer in the ordinary course of my activities.

- 16. In cross-examination of DW-1 deposed that** *I have not placed on record to show that I am a fellow chartered accountant. I was appointed as General Manager (accounts & Finance) vide appointment letter dated 01.08.2007. Only one or two persons were working with complainant company in Finance and Accounts, when I joined the company as it was a startup company. Although I was appointed as General Manager (Accounts & Finance) with the complainant but I was dealing with only accounts work of the complainant and finance related duties were not assigned to me. My job profile in the complainant company included maintenance of accounts of the company and to supervise the other requirement of regular statutory deposits on behalf of the complainant including finalization of balance sheet of complainant. It is wrong to suggest that I was the whole sole incharge of the finance and accounts of the complainant company and all decision pertaining to finance and accounts, dealer reconciliation, dealer dispatch, dealer payments were being handled by me only. It is also wrong to suggest that I was authorized to sign all documents with regard to these works. It is correct that at the time of joining complainant company appointment letter dated 01.08.2007 was issued to me by the complainant and the same was signed and accepted by me after*

going through the contents of the same. It is correct that as per appointment letter I was required to perform observe and confirm such duties, directions and instructions assigned or communicated to me by the management and those in authority over me. It is also correct that I was prohibited from carrying any business or enter for any part of my time in any capacity in the services of the company to take employment in any other firm or company without written permission of the complainant. I was also required to devote my whole time and attention in discharging my duties with high standard initiative efficiency and economy. It is correct that if at any time in the opinion of complainant company I was found guilty of dishonesty, disobedience, disorderly behaviour, negligence or indiscipline of any other conduct consider by the complainant as detrimental to their interest my services were liable to be terminated without notice. It is also correct that in case of misconduct my service would have been dispensed with without giving any notice or payment of salary in lieu thereof. It is also correct that in case I was also having option of leaving the services of complainant by giving one month notice in writing to the company or payment of one month salary in lieu thereof. At the time when I joined the complainant I was residing at the address B166, Prashant Vihar, Sector 14 Rohini, Delhi. It is correct that at the same address the present complaints were filed by the complainant. From the address B166, Prashant Vihar, Sector 14 Rohini, Delhi I have shifted to new address i.e. D106, Prashant Vihar, Sector 14, Rohini, Delhi in month of February 2008 and from there I shifted to another address Flat no.517, Sector 2, Pocket 6, Rohini, Delhi-85 in 2009 and from there I shifted to my

present address which is 27-28, 1st Floor, Sector 24, Pocket 12, Rohini, Delhi-84. It is correct that I have not filed any documentary proof of my living at the address D106, Prashant Vihar, Sector 14, Rohini, Delhi and 27-28, 1st Floor, Sector 24, Pocket 12, Rohini, Delhi-84. It is correct that my voter card whose copy I had handed over to the police official who came to my place for execution of BW was issued to me on 18.07.2012. It is also correct that I have only intimated 213Page 33/7to the court of my shifting to the address 27-28, 1st Floor, Sector 24, Pocket 12, Rohini, Delhi-84 and I never intimated about the address D106, Prashant Vihar, Sector 14, Rohini, Delhi. It is wrong to suggest that I was continuously living at my address B166, Prashant Vihar, Rohini, Delhi at the time of issuance of legal notice and filing the present complaints. It is wrong to suggest that for the same reason my address in my Axis Bank account whose statement Ex.DW1/2 mentions my address as B166, Prashant Vihar, Sector 14, Rohini, Delhi-85 in the month of March 2009. (Vol. As I was not using the said account therefore I did not got my address in the said account with the bank changed or modified). I have not closed said account with Axis Bank till date. (Vol. It has become inactive on its own). I do not know as to when the said account became inactive. I can try to get the details from the bank as to the date time and year when the said account became inactive. It is wrong to suggest that I am deposing falsely and at the material time I was very much living at my address i.e. B166, Prashant Vihar, Sector 14, Rohini, Delhi-85. I do not remember the name of the two sales employees of the complainant who have been wrongly sacked by the complainant without paying them their due salary and other

entitlements. I do not know the exact reason for which the said two employees has been sacked by the complainant. It is wrong to suggest that they must have been legally and validly terminated by the complainant in terms of their appointment letters. It is wrong and denied that I have falsely alleged in my defence that complainant company used to harass or suppress their employees or withholding any salary. When I joined the complainant I was first given my office at Givo Ltd near toll Plaza, Gurugram and there I worked till 2 – 3 months. Thereafter I was asked to report at the office of sister company of the complainant at Sector 18, Noida, UP where I worked with other 2-3 employees of the complainant. Where I worked for 2 to 3 months and thereafter I was asked to report at complainant office at Ajmal Khan Road, Karol Bagh. It is correct that as per clause 9 of my appointment I was liable to be transferred to any existing or future department, office or establishment forming part of complainant organization or to any associate in India or abroad or such posting would have been governed by rules as related to such appointment. My office hours were from 10 am to 6:30 pm. I was reporting to Ms. Shobhna Ahuja and Mr. Ajay Srivastava, directors of the company. Both of the aforesaid directors did not use to sit in the same office from where I was working. It is wrong to suggest that I was the senior most official of the complainant at its Noida office. (Vol. Ms. Anjali Thukral working for the sister concern of the complainant was looking after entire affairs relating to management in Noida office). It is correct that in Karol Bagh office of the complainant I was senior most officer of the complainant in accounts. There was no manual /biometric system

in the complainant office at the time for marking the attendance and the attendance was used to be sent through emails for all the location to the management. Such attendance through email was being sent to the management of the complainant by one Mr. Pradeep Arora and copy of the same was being marked to me and other official of the company. Daily attendance sheet through email was usually sent by Mr. Pradeep Arora to the management by 10:30 am. In that attendance sheet reporting and leaving time of an employee was not mentioned. I need to check if am having entire emails relating to attendance of the employees of the complainant for the relevant time. It is correct that I have not placed any record to prove my regular attendance with the complainant. As per the terms of the appointment letter 01.08.2007 apart from my basic salary I was entitled to HRA, special allowance, petrol/conveyance reimbursement, LTA/medical reimbursement and also entitled to mobile bill reimbursement upto Rs.1500/- per month. Out of aforesaid heads I was required to submit bills for petrol/conveyance reimbursement, medical reimbursement and mobile bill reimbursement and rest were being paid in my account by the complainant on its own. LTA was being paid annually. I must have submitted bills to the complainant for petrol/conveyance reimbursement, medical reimbursement and mobile bill reimbursement till 30.09.2008. I need to check from my records if I am having duly acknowledged copies of bills submitted by me to the complainant for reimbursement. It is wrong to suggest that I started coming to office for half a day since April 2008. It is wrong to suggest that I was employed with other company simultaneously with my employment with complainant

company because of which I used to come office half a day for around 3 to 4 months. It is wrong to suggest that I did not discharge my duties and functions and served it with utmost sincerity and honesty without any fault, misdoing and complaint. Neither was I authorized nor was it a part of my official duty to take or confirm any sales order for the complainant company. (Vol. It was the job of the sales staff under authorization from the management of the complainant). It is wrong to suggest that I was looking after confirmation of sales order and making dispatches for the complainant. It is wrong to suggest that I had created liabilities for the complainant by over invoicing unauthorizedly beyond my sanctioned goods of the complainant company. It is wrong to suggest that when I was confronted by the management of the complainant with the lapses committed by me relating to late arrival in office, working only half a day and supplying goods beyond my sanctioned limits and in unauthorized manner, it is correct that for the aforesaid misconduct, my services were liable to be terminated by the 219Page 66/7complainant immediately. It is wrong to suggest that I had ever apologized from the management for anything. It is further wrong to suggest that I had on my own tendered my resignation letter dated 17.07.2008 and apology letter dated 17.07.2008. (Vol. Apology letter dated 17.07.2008 and resignation letter dated 17.07.2008 are in my handwriting and had been signed by me under coercion and duress and for the same I had submitted a complaint to the police Ex.DW1/1). It is correct that I had also issued and handed over a cheque to the complainant for Rs.93,400/- bearing no.140312 in lieu of one month salary for notice period for resigning without

serving notice period. It is also correct that I had issued one more cheque bearing no.140313 for Rs.2,80,200/- as compensation along with apology letter 17.07.2008. It is correct that I had also issued one more cheque bearing no.140314 dated 17.07.2008 Rs.4,96,755/- as compensation in lieu of excessive billing. (Vol. All of the aforesaid three cheques have been extracted from me by the complainant company under force, duress and compulsion. I never reported late for the duties, I never worked half a day and I never confirmed or supply any goods for the complainant. Cheque no.140314 was given by me to the complainant without filling amount therein).It is wrong to suggest that aforesaid three cheques have been handed over by me to the complainant voluntarily and without any force or compulsion on the part of the complainant.It is correct that police complaint Ex.DW1/1 was submitted by me to the police station Karol Bagh on 05.11.2008 much after the incident dated 17.07.2008. I am not aware if any investigation was under taken by the police. (Vol. As I had been assured by the director of the complainant Sh. Ajay Srivastava that my cheques will not be misused and would be returned back to me, therefore in place of submitting the same on 17.07.2008 I had 221Page 77/7submitted the complaint later on 05.11.2008). I was orally assured by Sh. Ajay Srivastava, director of the complainant. It is wrong to suggest that the complaint dated 17.07.2008 is an after thought and false and based on concocted story just to avoid my liabilities towards the complainant company. It is wrong to suggest that I had filed this complaint after dishonored of the cheques no.140313 for Rs.2,80,200/- on account of insufficiency of funds on 20.10.2008. It is further wrong to suggest that because of the

reason above I had not diligently pursued the complaint and no criminal action has been taken against complainant. It is wrong to suggest that I filed bogus and vague complaint. Further cross examination is deferred for want of documents. RO & AC at 12:48 pm. I have not brought any fresh emails regarding my attendance with the complainant company. (Vol. I have already given whatever record of attendance I was having with me). It is wrong to suggest that I am not having the record of my attendance with the complainant company and that is why I am not producing the same. It is correct that I have not placed any record of the telephone call received by me from Sh. Ajay Srivastava on 18.07.2008. It is correct that I have received my salary for the month of July 2008 from the complainant on 05.09.2008. I have orally requested the complainant for the return of the three cheques in question taken from me by the complainant. It is correct that I have not issued any email or other letter to the higher official of the complainant regarding forcible extraction of cheques and misbehavior with me on 17.07.2008. It is correct that I had submitted the complaint Ex.DW1/1 on 05.11.2008. It is correct that I have submitted letter Ex.DW1/5 to my banker instructing him to stop payment against the three cheques in question on 26.12.2008 and prior to that I have not issued any instruction to my banker. It is correct that Ex.DW1/3 do not anywhere either the date or bear the stamp and seal of the complainant. It is wrong to suggest that Ex.DW1/3 is forged and fabricated document. My certificate u/s 65 B Indian Evidence Act is now exhibited as Ex.DW1/7. In the year 2008 I was maintaining my bank account with Axis Bank Ltd, GK-II branch, New Delhi. (Vol. The same

was got opened for me by the complainant for my salary purposes). At the relevant time net banking facility was not available in the said branch of Axis Bank. It is correct that I was required to visit GK branch of Axis Bank if I needed to do any banking in said account. (Vol. Apart from the aforesaid account in Axis bank I was also maintaining a bank account with HDFC Bank, NN Tower, Pitampura, Delhi). It is correct that I had not given stop payment instruction against the cheques in question to my parent branch of Axis Bank i.e. GK -II. (Vol. I had given request of stop payment on 26.12.2008 to Axis bank, Kapil Vihar, Pitampura). I did not inquire from the bank after giving stop payment instruction. (Vol. Giving of stop payment instruction in writing was enough and no follow up was required). I had not checked from the bank if they have stopped payment against the cheques in question on my letter dated 26.12.2008. It is wrong to suggest that Ex.DW1/5 i.e. stop payment instruction letter has been filed by me in the record just in order to hogwash and mislead the Hon'ble Court and by way of after thought as cheques in question has already been dishonored on being presented by the complainant. It is also wrong to suggest that for the same reason I did not follow up with the bank as to action taken on my stop payment request letter dated 26.12.2008. It is wrong to suggest that from the email Ex.DW1/6 it is not proved or shown that I had been working with the complainant company after 17.07.2008. I was not having any official email ID and my email ID is rajesh.givo@gmail.com was allowed by the complainant to be used by me as my official ID. I do not remember as to whom the email ID "rajesh@givolttd.com" belongs. It is wrong suggest that extract Ex.DW1/6 have been done on my

personal level by me and the same were nothing to do with the complainant. Presently I am working with M/s Seven Seas Hospitality Pvt. Ltd. After leaving complainant on 30.09 2008 I joined M/s Oma Retails and I worked there for almost two and half months. Thereafter I joined M/s Cantabil Retail India. The exact date of joining M/s Cantabil I do not remember. It is correct that the resignation letter dated 17.07.2008 and apology letter have been written by me and bears my signature at point A and point B respectively. (Vol. The same have been got written from me and extracted from me by the complainant's official under force, threat, coercion and were not volunteered). It is correct that all the three cheques in question have been signed by me on 17.07.2008. (Vol. The cheques have been got signed and taken from me and extracted from me by the complainant's official under force, threat, coercion and were not volunteered). It is wrong to suggest that I am deposing falsely as to issuance of resignation letter, apology letter and cheques in question not being given voluntarily by me. It is wrong to suggest that I am deposing falsely”.

17. Thereafter, DE was closed on 09.10.2019 and thereafter final arguments were heard on 18.12.2019, and thereafter vide impugned judgment dated 16.01.2020 the accused was acquitted.

GROUND OF CHALLENGE

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

A. That the appellant/complainant had produced sufficient

evidence to prosecute and punish the respondent/accused for his misdeed, misconduct and non-performance in pursuance to mandate demanded by appointment letter. It is submitted that the documents relied upon by the appellant/complainant viz., Ex.CW1/1 to Ex.CW1/6 Original Cheque bearing no. 140313 dated 17.07.2008 for a sum of Rs. 2,80,200/- return memo dated 26.12.2008, Legal Demand Notice dated 19.01.2009 and resignation letter and apology letter dated 17.07.2008 were produced during the trial of the present matter which were sufficient to establish and prove the guilt/offence of the respondent. The respondent had issued the cheque Ex-CW-1/1 to compensate the loss incurred to the appellant due to the negligent act, violation of statutory clauses of the appointment letter 01.08.2007 dated as simultaneously working respondent/accused had been with other organization for half of the working hours as acknowledged in his apology letter and due to the said un-professional act of the respondent, the appellant Incurred heavy losses.

B. That the Ld. Trial Court did not consider that respondent/accused had stated in his defense that he served to Appellant/complainant Company till 30.09.2008, however, in his cross examination recorded on 09.10.2019, the respondent had stated *"Presently I am working with M/s Seven Seas Hospitality Pvt. Ltd. After leaving Complainant on 30.09.2008 I joined M/s Oma Retails and I worked there for almost two and half months. Thereafter I joined M/s Cantabil Retail India. The exact date of joining M/s Cantabil I do not remember."* Whereas he had deposed in another civil suit bearing no. 720 of 2014 (New No. CS

DJ/0615932/2016) titled as Rajesh Rohilla Vs. GIVO Private Limited &Ors. Pending disposal before Sh. Rajinder Singh, Ld. AD), Tis Hazari Court, Delhi and stated that *"after leaving M/s GIVO Retail Limited, I joined M/s. Oma Retail as General Manager (Accounts & finance), in Nehru Place, Delhi, immediately. I worked there for 3-4 months. Thereafter I Joined Cantabil Retail India Limited as General Manager (Accounts and Finance)." From above two admissions of respondent/accused, it is clear that after leaving Complainant/respondent Company, respondent/accused had joined "M/s Oma Retails" where he had worked for 3-4 months and aftermath he joined M/s Cantabil Retail India, whereas he had deliberately and to him. consciously concealed the date of joining of "M/s Cantabil Retail India Limited", best known Appellant/complainant craves leave of this Hon'ble High Court that Respondent/accused had joined "M/s Cantabil Retail India Limited" on "01.11.2008" the same had stated In Prospectus" a public document filed by "M/s Cantabil Retail India Limited" before SEBI, Securities Exchange Board of India and Registrar of Companies, where respondent/accused mentioned a "Key Managerial Person" and his date of joining was as "01.11.2008". Relying on the "Date of Joining" of respondent/accused mentioned in the "Prospectus" of Independent party i.e. "M/s Cantabil Retail India Limited" w.e.f. 1st November 2008 and his employment with M/s OMA Retails 2-3 months prior to M/s Cantabil Retail India Limited i.e. Aug-Oct 08 Respondent/Accused claim of working Complainant/Appellant till September'08 is false and baseless.*

C. That the Ld. Trial Court did not consider that there is Prima

Facie presumption should be construed in favour of the appellant and the onus to rebut the presumption under section 118 and 139 of the NI Act, 1881 was on the respondent/accused, however, the respondent/accused didnot produce any cogent evidence to rebut the same. Appellant/complainant craves leave of this Hon'ble High Court to refer the Judgment had passed by the Hon'ble Apex Court in the matter of M/s Shree Daneshwari Traders Vs. Sanjay Jain & Another [Criminal Appeal No. 61-62 of 2011]"18. Applying the definition of the word "proved" in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable Instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.

D. That the use of the phrase "until the contrary is proved" in Section 118 of the Act and use of the words "unless the contrary is proved" in Section 139 of the Act read with definitions of "may presume" and "shall presume" as given In Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised

under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over."

E. That the Ld. Trial Court did not consider that the factum of delay of almost 4 months in lodging of police complaint dated 05.11.2008 for the Incident of 17.07.2008 and legal demand notice from to respondent/accused Appellant/complainant dated 27.05.2011 which were after thought and were Issued only to create a pressure upon the appellant/complainant for withdrawal of the instant complaint case which judgment is under appeal.

F. That the Ld. Trial Court did not consider that the accused had resigned on 17.07.2008 vide resignation letter dated 17.07.2008 I.e. Ex-CW-1/2 and to compensate the loss caused to the Appellant/complainant because of the negligent attitude and non-finalizing of assigned work he had issued the cheque i.e. Ex.CW1/3 for Rs.2,80,200/-. However, the Ld. Trial Court has wrongly observed that *"the complainant company has not placed on record the attendance register or any memo/notice or reprimand issued to the accused person for reporting late or leaving early from office for taking alternate employment. The complainant company through its AR deposed that the attendance was maintained through email which was recorded at 10.30 a.m. every morning, however, no such register was placed on record the Id. Trial court has further wrongly observed that the complainant has as per appointment letter fixed the salary of the accused at Rs.*

83,400 per month Including all emoluments and perks, however, the three month's salary cheque was taken for Rs. 2,80,200/- (Rs, 93,400/- per month), moreover, no salary account or statement was placed on record to show what gross salary was drawn by the accused". Whereas the respondent/accused himself admitted his fault and offer to compensate the losses vide letter dated 17.07.2008 i.e. Ex.CW1/2. The respondent/accused has not denied or disputed that the factum of drawing gross salary of Rs. 93,400/- per month by him, during the entire trial and in absence of denial of the fact the question of proving of such fact does not arises.

G. That the Ld. Trial Court did not consider that placed reliance on baseless, concocted and frivolous defense set up by the respondent/accused that apology letter, resignation letter and 3 cheques were obtained by the Complainant/appellant under the duress which is so far from the reality of the case and it is highly Improbable that a person who is Chartered accountant by profession and was working at the post of General Manager-Finance and Accounts had issued 3 Cheques, an apology letter and resignation all in his own hand writing & duly signed, under coercion but he did not took pain to approach the police for alleged illegal act of the appellant/complainant, moreover, the respondent/accused had not disclosed that which type of coercion/duress were putted by the appellant to get resignation, apology letter and cheques. Appellant craves leave of this High Court to refer the Judgment had passed by the Hon'ble Apex Court in the matter of Bir Singh v. Mukesh Kumar that the presumption under Section 139 of the Act is a presumption of law. The Court held as: *"23. Section 139 introduces an exception to the general rule as to the burden of*

proof and shifts the onus on the accused. The presumption under Section 139 of the Negotiable Instruments Act is a presumption of law, as distinguished from presumption of facts. Presumptions are rules of evidence and do not conflict with the presumption of Innocence, which requires the prosecution 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 and presumptions of fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact as held in Hiten P. Dalal [Hiten P. Dalal v. Bratindranath Banerjee, (2001) 6 SCC 16: 2001 SCC (Cri) 960].

I. That the Ld. Trial Court did not consider that the proposition of law which emerges from the judgements referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be postdated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Act. That a meaningful reading of the provisions of a Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the Cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

J. That the Ld. Trial Court did not consider that if a signed blank cheque is voluntarily presented to a payee, towards some payment,

the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence. That it is not the case of the respondent-accused that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondent-accused that the unfilled signed cheque had been stolen. The existence of fiduciary relationship between the payee of a cheque and its drawer, would not dis-entitled the payee to the benefit of presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.

K. That the Ld. Trial Court did not consider that even the blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under sec 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

L. That the Ld. Trial Court did not consider that the respondent had himself admitted in his Cross Examination dated 31.07.2019 that he hand handed over a cheque bearing 140313 alongwith apology Letter dated 17.07.2008 and signature on the cheque are sufficient to convict the respondent/accused under section 138 of NI Act.

M. That the Ld. Trial Court did not consider that in a certain catena of judgments laid down by the Hon'ble Supreme Court it has been held that the onus for refuting the presumptions provided under sections 118 read with 139 of NI Act is on the respondent/accused which can only be discharge by producing the direct evidence.

N. That the Ld. Trial Court did not consider that there is Law of presumption which runs in favour of holder of the due course of such instrument under section 139 of NI Act that the cheque was received by the appellant/complainant was for discharge of a legally enforceable Debt or liability incurred in such transaction. If in these circumstances, accused fails to discharge his onus then he is liable to be convicted under section 138 of NI Act.

O. That the Ld. Trial Court did not consider that the respondent/accused had not denied the consideration of cheque, however, he had brought a false defense that the resignation letter i.e. Ex.CW1/2 and cheque i.e. Ex.CW1/3 was executed under duress, however he did not prove by the respondent/accused. The bare denial of the consideration apparently does not appear to be defense. Something which is probable has to be brought on record for getting the benefit of shifting the onus proving to the appellant/complainant. To disprove the presumption, the respondent had failed to bring on record such fact and circumstances upon consideration of which the Ld. Trial court may believe that the consideration did not exist, or its nonexistence was so probable. Appellant/complainant craves leave of this Hon'ble High Court to refer the Judgment had passed by the Hon'ble Apex Court in the matter of *Bir Singh Vs. Mukesh Kumar* "27. In *K.N. Beena vs. Munlyappan and Another* 9, this court held that in view of the provisions of Section 139 of the Negotiable Instruments Act read with Section 118 thereof, the court had to presume that the cheque had been issued for discharging a debt or liability. The said presumption was rebuttable and could be rebutted by the accused by proving the 8 (2009) 2 SCC 513 9 (2001) 8 SCC 458 contrary.

But mere denial or rebuttal by the accused was not enough. The accused had to prove by cogent evidence that there was no debt or liability. The Court clearly that the High Court had erroneously set aside the conviction, by proceeding on the basis that denials/averments in the reply to the accused were sufficient to shift the burden of proof on the complainant to prove that the Cheque had been issued for discharge of a debt or a liability. This was an entirely erroneous approach. The accused had to prove in the trial by leading cogent evidence that there was no debt or liability."

P. That the Ld. Trial Court did not consider that bare denial of the consideration can help the respondent/accused for rebuttal of the presumption raised in favour of the appellant/complainant. Appellant/complainant craves leave of this Court to refer the Judgment had passed by the Hon'ble Apex Court in the matter of Anup Kumar Sinha vs. State &Anr. W.P.(S) 4103/2009 "24. *that Judicial statements have differed as to the quantum of rebutting evidence required. In Kundan Lal Rallaram vs. Custodian Evacuee Property, Bombay AIR 1961 SC 1316, this Court held that the presumption of law under Section 118 of Negotiable Instruments Act could be rebutted, in certain circumstances, by a 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 Dhanvantral Balwant Rai Desai vs State of Maharashtra AIR 1964 SC 575, where this Court reiterated the principle enunciated in State of Madras vs Vaidya Nath 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 if drawn may be rebutted by an explanation which "might reasonable by true and which is consistent with the Innocence" of the accused. On the other hand, In the case of a 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 the provision cannot be said to be rebutted"

"11. Both the courts have recorded concurrent findings that the complainant has been able to prove that on the date of issuance of the cheque, there was legally enforceable debt and the petitioner has failed to rebut the legal presumption as no probable defence was raised to discharge the onus of proof by showing non-existence of consideration. Rather, the defence put forward by the petitioner was found to be false. It was thus held that the petitioner had failed to discharge the onus and the presumption under Section

118A and 139 of NI Act remained unrebutted."

Q. That the Ld. Trial Court did not consider that the appellant/complainant has provided the full and true version of the Incident of the present case. That the appellant/complainant has very well established the guilt of the Respondent/Accused through her testimony and the documents produced in support thereof. That the documents relied upon by appellant/complainant for corroborating its oral testimony is sufficient to bring home the guilt of the Accused/Respondent as reading them as a whole obviously fulfill the requirements of 138 of the NI Act.

R. That the Ld. Trial Court did not consider that as per the version of the accused/respondent he had handed over the aforesaid cheque under duress, however, he had failed to establish that which type of alleged duress caused by the appellant/complainant to get the resignation, apology and cheques. The Ld. trial court has further failed to appreciate the cheque in question was obtained 17.07.2008, allegedly under duress but the respondent/accused lodged a police complaint after a significant time span of almost 4 months i.e. on 05.11.2008 from the said incidentally mentioning date thereon a date of 18.07.2008 with malicious intent to calibrate his story of Duress for his fictitious defense.

ARGUMENTS ON BEHALF OF APPELLANT

19.It has been argued by Ld. Counsel for appellant that the respondent/accused has not been able to successfully rebut the presumption under Section 118 & 139 of the NI Act read with

Section 58 & Section 101 of the Indian Evidence Act and therefore, the impugned judgment dated 16.01.2020 is ex facie perverse, contrary to settled law, and founded on a complete misreading of material evidence available on record. The Appellant is challenging the findings of the Ld. Trial Court in considering the contentions of the parties qua consideration. It is argued that the Ld. Trial Court has completely misread the evidence. The Trial Court wrongly recorded that CW1 stated the cheque was blank and amount unascertained. This is factually incorrect; CW1 nowhere states this. Testimony of CW1 clearly records at page 80 that “It is wrong to suggest that cheque for Rs.4,96,755/- was extracted from the accused under force and compulsion in blank signed form and was not voluntarily given.” The preliminary enquiry conducted by the Company merely established that the Respondent, along with others, was responsible for financial irregularities; the Company never quantified the loss. It is argued that it was the Respondent, being GM (Accounts & Finance), who voluntarily calculated the exact loss and issued the cheque to compensate it. The consistent evidence is that the Respondent was confronted, admitted his wrongdoing, disclosed the loss amount himself, and personally filled and issued the cheque. Therefore, as per Section 58 of the Indian Evidence Act, the admissions of the Respondent need not be proved. Hence, the finding in paragraph 12.4 of the impugned judgment contrary to the record and liable to be set aside. The Respondent’s plea that one cheque out of three was given “blank” is wholly demolished by his own admissions and the document itself. He simultaneously states that he filled the amounts in the other two cheques for an

amount of Rs.93,400/- and Rs.2,80,200/-, all issued on the same day, and a bare perusal of the cheque in question shows it is entirely filled in his own handwriting, in the same ink and style as the others. Thus, the cheque was not blank, nor filled later by the Company. This self-contradiction makes his defence legally untenable.

20.As held in *Bir Singh v. Mukesh Kumar (ABC 2019 (II) 235 SC)*, even a voluntarily signed blank cheque attracts the statutory presumption under Sections 118 and 139 NI Act; here, the cheque was not even blank, making the presumption stronger.

21.It has been argued that the record clearly shows that the cheques were filled entirely by the Respondent in his own handwriting, including the amounts of Rs.4,96,755/-, Rs.2,80,200/- and Rs.93,400/- and was issued only after he admitted his misconduct and self-assessed the loss caused by him. The Respondent's defence collapses on its own contradictions. He has taken mutually destructive stands, which cannot stand in law: a. That the cheque was obtained under coercion; and simultaneously b. That it was a "security cheque" for an unascertained future loss. These two defences cannot mutually co-exist, a cheque cannot be both forced and voluntarily issued as security at the same time. This contradiction alone renders the plea of coercion a fabricated afterthought. Further, the Respondent admits in cross-examination that he never issued any stop-payment instructions until 26.12.2008, after the cheque had already been dishonoured. A person acting under genuine coercion would immediately instruct

the bank; the Respondent did nothing for months. Most importantly, the so-called police complaint was lodged after a delay of nearly 110 days, on 05.11.2008. As held in multiple precedents, such delayed, uncorroborated allegations are wholly inconsistent with coercion. The Respondent has produced no contemporaneous protest, no call records, and no communication showing he attempted to resist or report the alleged duress. A person who claims coercion would immediately instruct the bank, not wait five months. This timing clearly shows the stop-payment letter is an afterthought to manufacture a defence. Accordingly, the Ld. Trial Court's acceptance of these self-contradictory and legally impermissible defences is erroneous and deserves to be set aside.

22. Further, the burden was on the accused to rebut the statutory presumption, not on the complainant to disprove his shifting allegations. The Company's case rests on the accused's own admissions, and therefore the Trial Court's observations on salary, conduct, and comparative bargaining power are irrelevant and unsustainable.

23. Further the Hon'ble *Delhi High Court, in Nuovopignone International Srl v. Cargo Motors Pvt. Ltd.* has explained, that "duress/coercion" is made out only where the victim shows: (i) illegitimate pressure, (ii) that such pressure was a substantial cause inducing the act, and (iii) absence of any reasonable alternative, which must be tested through concrete indicia such as a prompt protest, steps taken to avoid the transaction at the earliest, resort to available legal remedies and the speed with which the victim

sought to resile.

24. In the present case, even on the standard of preponderance of probabilities, the accused has not produced a single maker. The Trial Court, however, avoided meaningful discussion of these documents, thereby ignoring the strongest proof in the case. Under ***K.N. Beena v. Muniyappan (Appeal (crl.) 1066 of 2001)***, the ***Hon'ble Supreme Court*** held that, there is no burden of proof on the complainant to prove consideration by virtue of the mandatory presumptions under Sections 118 and 139 NI Act. The law is clear that the Court must presume that the cheque was issued for consideration and for discharge of a debt or liability, unless the accused proves otherwise. This presumption is rebuttable, but the burden lies squarely on the accused to show that no liability existed. Mere allegations are not sufficient to rebut the statutory presumption. The Trial Court ignored this settled position.

SUBMISSIONS ON BEHALF OF RESPONDENT/ ACCUSED

25. It is argued that the appeal is liable to be dismissed and the order of the Ld. Trial Court be upheld. It has been argued on behalf of accused that the appellant/complainant has filed three appeals against the judgment of acquittal. It has been argued that the complainant and the accused were in employer employee relationship, with the accused being employed with the complainant and the payments were bound to be made by the complainant to the accused and not by accused to the complainant. The complainant being in a strong bargaining position had taken blank/partially filled up cheques from the accused, under force,

coercion and pressure and has subsequently misused the same. That there cannot be any presumption of there being any debt due to the complainant from the accused on the basis of the cheques given to the complainant by the accused and further that complainant has itself stated in the complaint that the cheque of Rs.4,96,755/- was given by the accused purportedly for certain alleged losses caused to the complainant wherein goods worth Rs.47 Lacs had been sold and supplied to one of its party having limit worth Rs.6 lacs only. However in the complaint itself the complainant/appellant has not stated that it suffered any loss whatsoever on account of the said sale being made by the accused. It has been very categorically stated by the accused in his defence that his job was limited to the accounts work of the complainant and he was neither authorized nor had he anything to do with the sales of the complainant. Further, complainant/appellant miserably failed to prove the same by showing/ placing on record any authorization letter issued in favour of the accused authorizing it to either make sale or confirm orders to any of its parties, apart from accounting work, or any email or confirmation order or bill or any other document, whatsoever, to even show that the accused was involved or had a role to play in the alleged sale. Further the accused/respondent was neither handling sales of the complainant nor had he ever made any sales for the complainant at any point of time of his tenure with the complainant and all allegations of the complainant of alleged loss caused to it by the accused due to alleged over billing by him.

26.It has further been argued that case filed by the complainant

against the accused in relation to the notice pay is also baseless as the accused had never resigned from services on 17.07.2008 itself and rather served till 30.09.2008 and the said aspect has also been put to the complainant in the cross examination of the witness.

27. It has been argued that salary to the accused for the month of July, 2008 was released by the complainant in the month of September, 2008 that is after extraction of three cheques in question from the accused along with resignation and other letters in July, 2008 at the time of forced resignation of the accused from the complainant's services. Complainant had failed to explain as to why the accused was paid salary for the month of July, 2008 in September, 2008 when it had alleged claims against the accused towards so called alleged loss, for improper/ short attendance at its office and Notice Pay for sudden resignation on 17.07.2008 and it could have adjusted his salary for the same paid to him in July, 2008. It has been argued that this was only for the reasons that all the allegations of the complainant against the accused regarding alleged improper working, short attendance, working somewhere else simultaneous to working with it and loss due to alleged overbilling were false, concocted and malicious one.

28. That furthermore the transactions alleged by the complainant in the three complaints is against the provisions of the law and the amounts claimed by the complainant are extremely odd numbers and the complainant has not shown what loss whatsoever has been caused to the complainant. It is submitted that the claim of damages is very different from outstanding debt which can be

claimed by a party in this regard reference is made in the judgment of the Hon'ble Delhi High Court in *"Tower Vision India Pvt. Ltd. & Ors. V/s Procall Pvt. Ltd. & Ors. MANU/DE/4958/2012"* wherein the Hon'ble Delhi High Court has differentiated between damages and debt and held that the claim for damages does not give rise to a debt until the liability is adjudicated and the damages assessed by a decree or order of the Court or other adjudicatory authority.

29. In the present matter no adjudication whatsoever has happened and without the same complainant had sought to recover amounts from the accused. That furthermore the accused being the employee of the complainant there could have been no deductions on the basis of any alleged losses caused to the complainant in terms of the Payment of Wages Act, 1936, which is also applicable upon the complainant. In terms of Section 8 of the said Act no fine can be imposed on any employee without the prior approval of the appropriate government and the complainant has failed to show any such approval taken from the appropriate government by it.

30. In the present matter there has been no claim of the complainant either of issuing any show cause notice to the accused or even indicating any loss caused to it and the best case scenario of the complainant is that a certain procedural aspect was not followed and there is no statement of any loss caused to the complainant and entitling it to recover any amounts from the accused.

31. It is also pertinent to point out that while the complainant alleges

that the cheques were given to it in early July 2018 the same were admittedly not deposited till December, 2008. The complainant has failed to give any reasonable account of why there was a delay of five months by a company in depositing the amounts that had allegedly been paid to it by the accused and therefore, accused has rightly been acquitted.

LAW PERTAINING TO OFFENCE U/S 138 NI ACT

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

33. 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 which 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.”*

34. 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, whichever 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.....”

35. 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 holder –

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

36. 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.

37. 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”.

38. 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.”

39. 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.”

40. 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.”

41. 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.”

42. 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 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.....”

43. 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

44. 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. Further that the accused was an employee with complainant company and it has been alleged that during course of discharge of his duties he caused loss to the complainant company. It has further been alleged that the accused was not punctual in attending his duties and would often come late to the office and even left office early and for the same

the company of the complainant was under loss. The aforesaid behaviour of the accused was confronted and he apologized for his aforesaid conduct and allegedly admitted that he had caused loss to the company and on his own calculated the loss and thereafter, undertook to pay the same and executed three cheques in favour of the complainant company. Subsequently, the cheques were presented by complainant company and the same was dishonoured due to insufficient funds. Subsequently complainant served legal notice to accused but the accused failed to repay the amount and hence three complaints were filed U/s 138 NI Act.

45. Upon appearing before the Ld. Trial Court, during framing of notice, accused prima facie admitted his signatures on the cheque in question but stated that the complainant company and its officials had forcefully made the complainant sign the aforesaid cheques and the same were done under fear and coercion and that accused/respondent is not legally liable to pay an amount to the complainant company.

46. In support of the complaint, complainant examined one witness and relied upon documents which are already mentioned above and are not repeated for the sake of brevity.

47. The arguments on behalf of the complainant are primarily that the accused being the employee of the complainant caused loss to the complainant as he did not work diligently and therefore, the accused issued three cheques in question which were dishonoured due to “*insufficient funds*” and thereafter, the complainant filed the

present complaints before the Ld. Trial Court for the offence u/s 138 NI Act.

48. On the other hand on behalf of respondent, the respondent had refuted the claims made by the complainant and has categorically stated that he had never given any cheques in discharge of his legal liability and the same were procured by the complainant by putting the accused under fear and coercion. It has also been argued that the complainant has failed to substantiate any of the allegation and therefore, accused has been rightly acquitted in the present matter by the Ld. Trial Court.

49. The complainant/appellant has claimed that he had employed accused as General Manager, Finance and Accounts, vide appointment letter dated 01.08.2007 and during the business activities for some time the accused was punctual. However, subsequently, the accused made false commitments to the companies dealers on behalf of the management without instructions and further started making supply of goods on behalf of the management without instructions beyond the sanction limits. Further, during the aforesaid tenure the accused worked in some other organization and due to the aforesaid behaviour of the accused, complainant incurred losses as the accused had dispatched goods to one dealer to the tune of Rs.47 Lakhs whereas his limit was only Rs.6 Lakhs. Upon being confronted accused sought pardon and tendered his resignation and also issued the cheques in question to repay the loss. However, the aforesaid cheques were dishonoured due to funds insufficient. The accused

did not reply to legal notice and thereafter, complaint was filed.

50. However, in my considered view the aforesaid allegations of the complainant have not been substantiated by leading any cogent evidence as rightly mentioned by Ld. Trial Court in its impugned judgment in para 12.4 on-wards and the same is not repeated for the sake of brevity. The complainant herein prima facie failed to establish by placing on record any document from its office regarding the attendance schedule qua the accused, during the time he remained employed with the complainant till 17.07.2008. Since, the complainant failed to place on record the attendance schedule and alleged office timing which were not adhered to by the accused, the complainant company failed to establish that during the employment of the accused between 01.08.2007 to 17.07.2008. The complainant failed to prove the allegation that the accused / respondent was not regular in discharge of his duties and therefore, it cannot be said that during the aforesaid employment period the accused did not attend office as expected by the complainant.

51. The other allegations of the complainant company was that during the employment with the complainant company, the accused was working with other organization which was against the appointment letter issued to the accused and also for the same reason, the company suffered losses. The contention raised on behalf of the complainant company that the losses were exorbitant is also not supported by any document or account statement or ledger. The complainant failed to place on record any document to substantiate the aforesaid allegation regarding the loss suffered and

the manner in which the loss was calculated. The complainant/appellant did not mention regarding the manner in which the loss was ascertained. The appellant also did not mention in the complaint regarding the exact loss caused to the company due to the aforesaid act of the accused and therefore, the aforesaid allegation of the complainant/appellant was not proved and hence discarded.

52.The third contention raised on behalf of the complainant/company /appellant is regarding the fact, that the cheques were issued by the accused in discharge of his legal liability. It is a settled principal of law that the complainant is required to prove the aforesaid fact by leading cogent evidence and therefore, it was incumbent upon the complainant to prove that the cheques were issued by the accused in discharge of his legal liability. However, in my considered view the complainant/appellant failed to substantiate the same as the complainant company did not disclose as to how the accused was legally liable to pay for the losses of the company in discharge of his duty, as no such mention of condition can be seen in the appointment letter relied upon by the complainant. Further, there is no communication between the complainant and the accused regarding the aforesaid legal liability, even during his employment. Further the complainant company failed to even place on record if any show cause notice was served upon the accused during his employment with the complainant company, with respect to losses caused in discharge of his duty.

53.The complainant/appellant miserably failed to substantiate the

aforesaid allegation by examining any witness, manager, senior officer of the company, under whom the accused was reporting / working, to have deposed regarding the contention in the complaint filed. The complainant did not examine any witness in support of sweeping claims made in the complaint regarding non performance of the accused or that he had sanctioned the amount for the goods beyond his capacity. The complainant never placed on record any document regarding such sanction of huge amount which was not in the capacity of the accused to be sanctioned during his employment.

54. Therefore, the complainant failed to dislodge the case of the accused/respondent by leading any evidence in this regard, and therefore, the respondent/accused succeeded in showing that he did not have any legal liability towards the complainant. The presumption against the accused/respondent, was substantially shaken by the respondent against the case of the complainant. For proving the said fact, accused examined himself as a witnesses in his defence. Since, complainant had moved the court, so as per sec. 101 Indian Evidence Act, burden rested upon him for proving his case beyond reasonable doubt. In cross-examination, complainant was asked questions with regard to the aforesaid contentions of the accused regarding accounts/ledger of the company showing the losses as well as other documents, but the complaint failed to bring the same on record. All those aspects were relevant, for the reason that accused had taken the same as his defence in his statement recorded u/s 251 Cr.P.C. at the time of framing of notice and even subsequently, during the cross examination of CW1 and in his

statement u/sec. 313 CrPC. The complainant did not examine any witness in support of its claim of losses incurred by leading any cogent evidence and that the cheques were issued in discharge of legal liability.

55. Presumptions u/sec. 118 and 139 NI Act, therefore, were not raised against accused. Accused while cross-examining complainant gave specific suggestion, to the effect that he had not issued the cheque in question towards any legal liability but the same was issued under coercion and threat and that the complainant filed the present complaint in the trial court only in March, 2009 which was a delay as the alleged cheques were issued in the month of August, 2008 and that is when the accused continued to work with the complainant company till September, 2008 and was given salary till September, 2008. In fact, complainant failed to explain in cross-examination the questions put to her regarding being known to the accused and the mode and manner of handing over the cheques in question.

56. So, accused/respondent succeeded to cull out any relevant fact pertaining to absence of his liability to pay cheque amount in question or with regard to repayment of losses incurred by the complainant. Testimony of complainant, as such failed the test of cross-examination. I did not believe the testimony of complainant/appellant to be trustworthy and reliable.

57. The net result is that complainant was unable to prove its case beyond reasonable doubt on the basis of evidence. Accused

succeeded to raise probable defence and rebut presumptions u/s 118 read with Section 139 N.I. Act. Ld. Trial Court rightly acquitted the accused/respondent vide impugned judgment. As such, impugned judgment needs no interference. **Present appeals bearing no.402/2025, 403/2025 & 404/2025 with respect to the judgment of acquittal stands dismissed.**

58.Impugned judgments passed by Ld. Trial Court are hereby upheld.

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

**Announced in open Court
On 15.05.2026**

[Sheetal Chaudhary Pradhan]
ASJ-02/South East District
Saket Courts/New Delhi/15.05.2026 (vk)