

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

Criminal Appeal No.239/2025
Yogesh Gupta Vs. Promod Sharma
PS C R Park
U/s 138 NI Act

Yogesh Gupta

S/o Late Sh. M L Gupta
R/o M-27, Opposite L Block Gurudwara,
Kalkaji, New Delhi 110019

.... Appellant

Versus

Sh. Pramod Sharma

S/o Sh. Devswaroop Sharma
R/o H.No. 193, Ashoka Enclave Main,
Phase 2, Sarai Khawasa, Sector 35,
Faridabad, Haryana
also Village Basai Manti
Post Manti, Block & Thana Gonda,
Tehsil Iglas, Distt Aligarh, Uttar Pradesh

.... Respondent

Date of Institution	:	19.07.2025
Date of Arguments	:	21.02.2026
Date of Judgment	:	11.03.2026
Decision	:	Appeal dismissed
		Impugned judgment of acquittal of the Ld. Trial Court stands upheld

JUDGMENT

1. Appellant namely Yogesh Gupta has filed present appeal against respondent namely Pramod Sharma thereby challenging impugned judgment of acquittal dated 17.02.2025.

2. Appellant herein was complainant before Ld. Trial Court and respondent herein was accused before Ld. Trial Court. In order to avoid confusion, parties will be referred with the same nomenclature with which they were referred before Ld. Trial Court, in my subsequent paragraphs.
3. Case of complainant in brief was that, the accused approached the complainant for friendly loan in connection with his personal requirements and assured that the amount of loan, if advanced, will be returned to the complainant within short period. Accordingly, on his specific assurances and promises, complainant advanced the accused a loan of Rs.5,90,000/- (Rupees Five Lac Ninety Thousand Only) by way of cheques and cash, without interest. That the accused in order to discharge of his legal liability towards the payment of legally enforceable debt issued one cheque bearing no. 445365, dated 20.05.2015 for a sum of Rs.5,90,000.00 (Rupees Five Lac Ninety Thousand only) drawn on Indian Overseas Bank, N. H. P. C Branch, NHPC Complex, Sector-33, Faridabad, Haryana -122003, with the assurance that the aforesaid cheque would be positively cleared on presentation. That the complainant when presented the above said cheque at par for encashment with the complainant bankers at Presenting Bank IDBI Bank Ltd., 1-1648, C. R. Park, New Delhi-110019, however, the same was returned by the accused bankers with the remarks, "Funds Insufficient" and the intimation to this effect was received by the complainant through his presenting Branch vide "Return Memo Report" banker's information dated 31.07.2015. That the aforesaid

act on the accused part clearly speaks out one thing i.e. since the beginning the accused had mala-fide intention to cheat the complainant and as such accused had never bothered to make the payment and rather accused got the dishonored the cheque with deceitful intention in order to avoid the payment of the above mentioned cheque for Rs.5,90,000.00 (Rupees Five Lac Ninety Thousand only) as accused caused loss to the complainant. That thereafter, the complainant had issued the legal notice dated: 11.08.2015 through his counsel and the same was dispatched on 11.08.2015 through speed post. That one of the said legal notices dispatched through speed post was refused deliberately with remarks "receiver is not available", and the other notice at his permanent residential address was received by the accused on 17.08.2015, and thereby he committed offence punishable u/s 138 of NI Act.

4. After filing of complaint, Ld. Trial Court took cognizance of offence and recorded pre-summoning evidence, based on which, accused was summoned. Subsequently, proceedings u/sec. 207 CrPC were completed and accused was given Notice u/sec. 251 Cr.P.C. on 20.02.2023 for the alleged offence, to which, he pleaded not guilty and claimed trial. *During, the framing of notice accused claimed that he had taken Rs.2 Lakh from the complainant. He had given the cheque in question to the complainant and complainant had transferred Rs.2 Lakh from the account of his son.* Thereafter, matter was fixed for post summoning complainant evidence.

5. **In his evidence, complainant examined himself as CW1** and tendered in evidence his affidavit Ex.CW1/9 & Ex.CW1/C in which, he reiterated the contents of his complaint. Same are not repeated here for the sake of brevity. He relied upon documents viz. statement of account of complainant Ex.CW1/A and Ex.CW1/B, cheque in question Ex.CW1/1; return memo Ex.CW1/2; copy of legal demand notice Ex.CW1/3; original postal receipt Ex.CW1/4 and Ex.CW1/5; returned envelope Ex.CW1/6; delivery of legal notice at the permanent address of accused Ex.CW1/7; complaint Ex.CW1/8; original cheque bearing no.705449 Ex.CW1/X1; original cheque bearing no.803526 Ex.CW1/X2 and statement of account of Ms. Rita Gupta from period 01.04.2015 to 02.05.2015 as Ex.DW1/C1. After examining, himself, complainant closed his evidence 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 25.09.2023. *During the aforesaid statement accused deposed that “ I have not taken any loan from the complainant. I used to provide him work and he used to give me commission in lieu of work. I have given the cheque in question as a blank signed cheque as security cheque to the complainant. The complainant gave me Rs 2 lakhs from the account of his son into my account for that the son of the complainant has filed another case which is pending in the Court of Ms. Moksha Bains, Ld. MM. Since, complainant has not done his work properly, I stopped him giving further work and annoyed by that, complainant has filed a false case against me.*

6. Defence evidence was led by accused/respondent and examined

himself as DW1 deposed that “*I am engineer by profession and I was doing job in private company. Complainant is my friend and I used to provide him work/business in my company and he used to give me commission for that work. I have no liability towards the complainant, I have given blank signed cheque to complainant as a security for loss work given by me. Complainant never told me about any loss to me so I have no liability towards the complainant. The complainant got transferred about Rs.2 lakhs in my account as commission from account of his son. Complainant never had not transferred any money in my account directly. When I have stopped giving him business then he misused my security cheque by filling them without any liability.*” and the same was closed on 11.12.2023 and thereafter final arguments were heard on 04.01.2023 thereafter vide impugned judgment the accused was acquitted.

7. After hearing final arguments, Ld. Trial Court acquitted the accused vide impugned judgment.
8. Subsequently, present appeal was preferred by accused.

GROUND OF CHALLENGE

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

A. That the Ld. Trial Court did not consider that the complainant/appellant must have written document of loan, without appreciating the facts that it is admitted case of both

parties that they were friend, however, complainant was not aware that accused will deceive him in future after taking friendly loan without interest. It is also not disputed by accused/respondent that cheque in question signed and issued by accused/respondent in favour of complainant /petitioner, therefore, presumption U/s 118/139 N I Act lies in favour of Complainant/petitioner.

B. That the Ld. Trial Court did not consider that complainant is a Senior Citizen aged about 66 years could not state exact date of loan as loan was given in the year 2014-15 and the statement of complainant was recorded in before Ld. Trial Court in the month of May and July 2023 after a gap of approximately 9 years of lending loan, It is relevant to mention herein that accused delayed the proceeding by concealing himself from the process of Court and he was declared absconder w.e.f. 16.03.2019 to 27.09.2022.

C. That the Ld. Trial Court did not consider that there is presumption U/s 139/118 of NI ACt in favour of holder of cheque that cheque has been issued in order to discharge legal liability, therefore there is no legal requirement in law that complainant/petitioner has to state the mode and bifurcation of money given to accused/respondent.

D. That the Ld. Trial Court did not consider that previous cheques i.e. Ex. CW1/X1 and CW1/X2 issued by accused in favour of complainant were not relevant for adjudication of the impugned complaint case as it was given previously by accused for the liability of that relevant time, however, later loan amount has changed, therefore consolidated cheques in question was given by accused to complainant, therefore, said cheques details not given complaint case. That the Accused counsel did not put any question

to complainant in cross examination, why consolidated cheque in question was issued after Ex.CW1/X1 to X2, therefore no explanation for same given by complainant.

E. That the Ld. Trial Court did not consider that accused did not lodge any complaint to Police official regarding misusing of security cheque as alleged or given any intimation to his Banker to stop the payment against cheque in question as no liability or accused has filed any legal civil or criminal litigation, when he is alleging that his cheque has been misused by the complainant.

F. That the Ld. Trial Court did not consider that accused/ respondent never demanded his cheque back, when he has no liability against the complainant/petitioner, specially, when it is admitted by the accused/ respondent that cheque was dishonor on 31.07.2015 and he has received the legal notice U/s 138(b) of NI Act on 17.08.2015.

G. That the Ld. Trial Court did not consider that as per case of accused, he was providing business to complainant and complainant used to give commission to accused, Ld. Trial Court failed to understand that then why accused will issue cheque in favour of complainant, therefore, the defence of accused is illogical and impractical.

H. That the Ld. Trial Court did not consider that why a person (accused) will give security cheque in favour of complainant on behalf of his employer for loss work done by employer.

I. That the Ld. Trial Court did not consider that accused has not brought any material/documentary evidence or oral evidence to prove his defense of giving cheque against commission against any loss would be incurred by his employer against work given on his

recommendation.

J. That the Ld. Trial Court did not consider that accused has improved his defence at every stage of Trial at the time of framing of notice u/s 251 Cr.P.C, cross of complainant, U/s 313 Cr.P.C, U/s 315 Cr.P.C, at the time of framing the notice he has admitted taken money from complainant but Rs. 2,00,000/-, later accused changed his defence deposing that it was a security cheque against commission in cross examination of complainant. That it is admitted facts that accused did not produced any legal evidence on judicial file what was commission settled between the parties.

K. That the Ld. Trial Court did not consider that accused has no probable defence and defense of raised by accused is a moonshine, contradictory and improving version in notice framed u/s 251 Cr.P.C, 313 Cr.P.C, 315 Cr.P.C and final argument. That accused/respondent is not trustworthy person as in the statement u/s 251 Cr.P.C. stated he has taken money from complainant, wherein in statement u/s 315 Cr.P.C, accused deposes that cheque in question was security cheque given to complainant to secure the loss.

L. That the Ld. Trial Court did not consider that accused/respondent is not trustworthy person as accused has denied receiving legal notice u/s 138(b) of NI Act in framing of notice U/s 251 and statement u/s 313 Cr.P.C, wherein later he has admitted in his cross examination U/s 315 Cr.P.C that he has received the legal notice U/s 138 (b) of NI Act. That Bank Statement and ITRS records were old 9 year back and not kept by complainant, therefore complainant could not produce said record after a gap of 8-9 years.

M. That the Ld. Trial Court did not consider that in cases U/s 138 of NI Act, the complainant is not required to prove financial capacity of complainant /petitioner to give loan amount in view of presumption U/s 138/118 of NI Act, Even, in the present case, capacity of giving loan has not been disputed by accused during the trial either in framing of notice U/s 251 Cr.P.C. or in cross of complainant or statement u/s 313 Cr.P.C or statement U/s 315 Cr.P.C.

N. That the Ld. Trial Court did not consider that the settled law laid down in case *"Basalingappa Vs Mudibasappa" cited in 2019(5)SCC418*, wherein it is held that "once execution of cheque admitted u/s 139 NI Act mandate a presumption that the cheque was for the discharge of debt or any other liability", said presumption can be rebut by accused raised probable defence, standard of proof for rebutting the presumption is that of preponderance of probabilities and said presumption can be rebut by relying as evidence laid by him.

10. During the course of arguments, Ld. Counsel for appellant relied upon the judgment in case *Ashok Singh Vs. State of Uttar Pradesh & Anr. 2025 LAW PACK (SC) 70793* in para no.22 & 23 wherein it has been held that:-

"22. The High Court while allowing the criminal revision has primarily proceeded on the presumption that it was obligatory on the part of the complainant to establish his case on the basis of evidence by giving the details of the bank account as well as the date and time of the withdrawal of the said amount which was given to the accused and also the date and time of the payment made to the accused,

*including the date and time of receiving of the cheque, which has not been done in the present case. Pausing here, such presumption on the complainant, by the High Court, appears to be erroneous. The onus is not on the complainant at the threshold to prove his capacity/financial wherewithal to make the payment in discharge of which the cheque is alleged to have been issued in his favour. Only if an objection is raised that the complainant was not in a financial position to pay the amount so claimed by him to have been given as a loan to the accused, only then the complainant would have to bring before the Court cogent material to indicate that he had the financial capacity and had actually advanced the amount in question by way of loan. In the case at hand, the appellant had categorically stated in his deposition and reiterated in the cross-examination that he had withdrawn the amount from the bank in Faizabad (Typed Copy of his deposition in the paperbook wrongly mentions this as 'Firozabad'). The Court ought not to have summarily rejected such stand, more so when respondent no.2 did not make any serious attempt to dispel/negate such stand/statement of the appellant. Thus, on the one hand, the statement made before the Court, both in examination-in-chief and cross-examination, by the appellant with regard to withdrawing the money from the bank for giving it to the accused has been disbelieved whereas the argument on behalf of the accused that he had not received any payment of any loan amount has been accepted. In our decision in *M/s S. S. Production v. Tr. Pavithran Prasanth*, 2024 INSC 1059, we opined:*

'8. From the order impugned, it is clear that though the contention of the petitioners was that the said amounts were given for producing a film and were not by way of return of

any loan taken, which may have been a probable defence for the petitioners in the case, but rightly, the High Court has taken the view that evidence had to be adduced on this point which has not been done by the petitioners. Pausing here, the Court would only comment that the reasoning of the High Court as well as the First Appellate Court and Trial Court on this issue is sound. Just by taking a counter-stand to raise a probable defence would not shift the onus on the complainant in such a case for the plea of defence has to be buttressed by evidence, either oral or documentary, which in the present cases, has not been done. Moreover, even if it is presumed that the complainant had not proved the source of the money given to the petitioners by way of loan by producing statement of accounts and/or Income Tax Returns, the same ipso facto, would not negate such claim for the reason that the cheques having being issued and signed by the petitioners has not been denied, and no evidence has been led to show that the respondent lacked capacity to provide the amount(s) in question. In this regard, we may make profitable reference to the decision in [Tedhi Singh v Narayan Dass Mahant](#), (2022) 6 SCC 735:

‘10. The trial court and the first appellate court have noted that in the case under [Section 138](#) of the NI Act the complainant need not show in the first instance that he had the capacity. The proceedings under [Section 138](#) of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused

has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.’ (emphasis supplied)’ (underlining in original; emphasis supplied by us in bold)

23. In the present case, on an overall circumspection of the entire facts and circumstances of the case, we find that the appellant succeeded in establishing his case and the Orders passed by the Trial Court and the Appellate Court did not warrant any interference. The High Court erred in overturning the concurrent findings of guilt and consequential conviction by the Trial Court and the Appellate Court.”

11.Ld. Counsel for appellant further relied upon the judgment in case of ***Bhupesh Rathod Vs. Dayashankar Prasad Chaurasia & Anr. Passed by Hon’ble Supreme Court of India decided on 10.11.2021*** in para no.17 & 18 wherein it has been held that

“17. We must say at the inception that the respondent not having disputed his signatures on the cheques, it was for the respondent to show in what circumstances

the cheques had been issued, i.e. why was it not a cheque issued in due course. The words of Section 139 of the NI Act are quite clear that unless the contrary is proved, it shall be presumed that the holder of the cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability. The respondent has not set up a case that the nature of transaction was of the nature which fell beyond the scope of Section 138. Other than taking a technical objection, really nothing has been said on the substantive aspect.

18. The only eligibility criteria prescribed under Section 142(1)(a) is that the complaint must be by the payee or the holder in due course.”

12. It has been argued on behalf of appellant that he was known to the accused/respondent and had given friendly loan by way of cheque as well as cash to the accused. Subsequently, the amount was not returned and for the same accused issued a cheque for an amount of Rs.5,90,000/-, to discharge his legal liability. Further, the cheque in question was dishonoured due to fund insufficient. Upon the aforesaid facts he had filed the complaint. It has been argued that the issuance of cheque and signatures on the cheque is already admitted by the accused and therefore, statutory presumption is against the accused. It has been argued that the accused has not discharged the burden of proof and therefore, he is liable to be convicted and the impugned order and judgment dated 17.02.2025,

acquitting the accused is liable to be set aside.

ARGUMENTS ON BEHALF OF RESPONDENT

13. On the other hand, it has been argued on behalf of accused/respondent that the accused has been falsely implicated and that he had never taken any loan from the complainant. It has been argued that the cheque in question was a security cheque given by respondent/appellant to the complainant as they were having financial transaction between them. It has been argued that the accused used to give work to the appellant in his company and the commission used to be shared with the respondent/accused. Further, that for the loss of business and any loss incurred by the complainant, the accused had indemnified him by issuing a security cheque which was misused by the appellant in the present matter. It has been argued that accused has categorically stated that he had taken an amount of Rs.2 Lakhs from the son of the complainant for which a separate case has been filed by his son which is pending trial. It has been argued that despite giving opportunity to the complainant, the complainant has failed to establish his financial capacity to extend the loan of Rs.5,90,000/- and has also failed to show if he had mentioned the same in his income tax return. It has been argued that the present appeal is devoid of merit and is liable to be dismissed and that the judgment regarding acquittal of the accused passed by Ld. Trial Court is liable to be upheld.

14. Hence, it is submitted that since the reasonable doubt with respect to the existence of the legally enforceable debt has been created,

the presumption under Section 139 read with Section 118 of the Negotiable Instruments Act, 1881 stands rebutted, and the burden to prove the existence of such legally enforceable debt shifts from the shoulders of the Accused of the Section 138 proceedings falls upon the shoulder of the Complainant of such proceedings. It is further submitted that once the presumption under Section 139 read with Section 118 of the Negotiable Instruments Act, 1881 stands rebutted, and the Complainant of the proceedings fails to prove the existence of the debt, the case under Section 138 is liable to be dismissed.

15. It has further been argued that, the Appellant herein has miserably failed in proving the existence of the legally enforceable debt, which has been categorically recorded by the Ld. Trial Court in Paragraph No.18 and 24 of the Impugned Judgment, and hence, it is abundantly clear that the Respondent has successfully created the doubt towards the existence of the Legally Enforceable Debt, which is a crucial aspect of the prosecution under Section 138 of the Negotiable Instruments Act, 1881, and once such doubt is created, the presumption of the existence of such debt under Section 139 stands rebutted, and once the same is rebutted, the Appellant burden to prove the existence of the such legally enforceable debt falls upon the Appellant, and in this case, the Appellant has failed miserably in the same, and hence, the Ld. Trial Court has rightly dismissed the complaint of the Appellant herein.

16.Ld. Counsel for respondent in support of the aforementioned contentions rely upon the findings of the judgements passed by the Hon'ble Supreme Court of India *K.N. Beena vs. Muniyappan* [(2001) 8 SCC 458]; *Basalingappa vs. Mudibasappa* [(2019) 5 SCC 418]; *K. S. Ranganatha vs. Vittal Shetty* [(2022) 16 SCC 683]; *Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel & Anr.* [(2023) 1 SCC 578].

FINDINGS

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

18.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.”*

19. 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.....”

20. 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.”

21. 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.

22. 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”.

23. 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.”

24. 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."

25. 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.”

26. 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.”

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

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

28.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.

29. Reverting back to the facts of the present case, I find that case of complainant/appellant is that he had extended friendly loan to the accused / respondent who was his friend. It has been averred that the aforesaid loans for an amount of Rs.5,90,000/- was given by the complainant by way of cash as well as bank transfers. Further, in discharge of legal liability the accused/respondent issued a cheque bearing no.445365 dated 20.05.2015 for an amount of Rs.5,90,000/-.

30. Upon dishonour of cheque the complainant/appellant issued a legal notice dated 11.08.2015 and the same was purposely not received by the respondent/accused and thereafter, he filed the present complaint before the Ld. Trial Court. The complainant relied upon his evidence by way of affidavit Ex.CW1/9 and Ex.CW1/C. He also relied upon document Ex.CW1/1 which was cheque in question, previous cheques dated 02.02.2015 and 15.04.2014 Ex.CW1/X1 and Ex.CW1/X2 respectively, legal notice Ex.CW1/3, his complaint Ex.CW1/8, speed post receipts Ex.CW1/4 and Ex.CW1/5, bank account statement Ex.CW1/A dated 02.12.2015 and Ex.CW1/B and speed post return envelope Ex.CW1/6 and tracking report Ex.CW1/7 in support of his claims.

31.Ld. Counsel for complainant has primarily taken the grounds of appeal, stating that the Ld. Trial Court did not take into consideration that the cheque was issued by the accused/respondent and had admitted his signature on the same and therefore, the complainant has discharged the burden of proof regarding the liability upon the accused and since it was upon the accused to rebut the same, which he has failed in the present matter and therefore, he was liable to be convicted.

32.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 not taken any amount from the complainant/appellant and the cheque in question was a security cheque.

33.The complainant/appellant during cross examination had stated that he was supplier of goods which was used for interior decoration and that he was filing his income tax return. He did not remember if he had filed the ITR return for the period between 2014-15. He was aware about the transactions made through RTGS and NEFT in his business and that he had no business relations with the accused but was having personal relations. During cross examination the complainant/appellant could not produce the pass book to show if he had transferred any amount to the accused by way of bank transfer and admitted that there was no entry regarding transfer of any money from his account to the account of accused. Further, that he had not got his ITR for the year 2014-15.

Further, the complainant was unable to specify if he had mention the exact date on which he had advanced loan to the accused. Also that he had not mention regarding the same in his complaint. Further, for the cheques Ex.CW1/X1 and Ex.CW1/X2 he had never filed any complaint against the accused as the accused had subsequently given a consolidated cheque in place of aforesaid cheques. Further, that he had never entered into any written document or agreement while extending loan to the accused. He also admitted that he had not mentioned in the legal demand notice as well as in his complaint regarding any cash withdrawal from his bank to give the same to the accused.

34. In the present matter, the complainant during his cross examination mentioned regarding the fact of issuing a consolidated cheque, which he had not mentioned in his complaint. Further, he had annexed the previous cheques with the documents relied upon by him, however, failed to mention regarding the relevance of the same and it is only during cross examination the same was explained by the accused. The complainant failed to mention regarding the date, time or place when such loan was extended to the accused and also did not mention the name of any person in whose presence such friendly loan was extended. Though the complainant in the present matter has claimed that he had extended loans by withdrawing cash from his account, the same does not find mention in his complaint and it is only when the complainant placed on record his bank account statements, he has relied upon the withdraws made by him but the same does not prove that the amount was withdrawn by him for the purpose of extending loan to

the accused. Further, it is difficult to believe the complainant that he had extended loan to the accused without entering into any written agreement and it would have been prudent for him to extend the loan by way of a bank transfer, rather than withdrawing cash and then handing over the same to the accused/respondent. The aforesaid facts have already been appreciated by the Ld. Trial Court in the impugned judgment and the same are not repeated for the sake of brevity. 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 his cross-examination, complainant was asked questions with regard to his income and occupation, with regard to his businesses and regarding him filing Income Tax Return (In short 'ITR'). He was also asked questions regarding different transactions for which complainant stated that there were monetary transactions between the accused prior to filing of the present complaint, however, the same were not substantiated by the complainant by leading any cogent evidence. He was also questioned with regard to the mode of payment of loan amount to accused, for which he stated that he had paid in cash, and by way of bank transfer, however, no document with respect to the same was ever executed by the complainant. 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 his claim that all the amounts during the period were handed over to the accused.

35. 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 was issued as a security cheque. While cross-examining complainant, accused did specifically ask and confront the complainant with regard to the manner in which cheque amount in question was handed over to him. Infact, complainant failed to explain in his cross-examination the questions put to him regarding being known to the accused and the mode and manner of handing over the alleged cash amount during the alleged period to the accused/respondent. 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 loan amount in question to 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.

36. The net result is that complainant was unable to prove his case beyond reasonable doubt on the basis of his 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 appeal with respect to the judgment of acquittal stands dismissed.**

37. Impugned judgment passed by Ld. Trial Court is hereby upheld.

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

Announced in open Court

[Sheetal Chaudhary Pradhan]
ASJ-02/South East District
Saket Courts/New Delhi/11.03.2026 (vk)