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2026:CGHC:10437

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 459 of 2025

1 - Shubham Agrawal S/o Mohan Lal Agrawal Aged About 32 Years R/o Surbhi Travels, Kalibadi Chowk, P.S. City Kotwali, Raipur, Tehsil And District- Raipur (C.G.)

... appellant (s)

versus

1 - Ramkumar Singh S/o Late Jagat Pal Singh Aged About 60 Years R/o Art And Commerce College, Sector-4, Jagriti Nagar, Devendra Nagar, P.S. Devendra Nagar, Raipur, Tehsil And District- Raipur (C.G.)

... Respondent(s)

For appellant (s) : Mr. Chandradeep Prasad, Advocate
For Respondent(s) : Ms. Smita Jha, Advocate

Hon'ble Shri Justice Ravindra Kumar Agrawal

Order on Board

27.02.2026

1. The appellant, who was the complainant before the learned trial Court, has filed the present acquittal appeal under Section 419 (4) of the Bhartiya Nagarik Suraksha Sanhita, 2023 (in short " B.N.S.S. 2023"), against the impugned judgment dated 22.11.2024 passed by learned Addl. Sessions

Judge, Raipur, in Cr.A. No. 190/2023, whereby the criminal appeal filed by the respondent/ accused was allowed, and he has been acquitted from the offence of Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "N.I. Act").

2. The brief facts of the case are that the appellant/complainant prosecuted a Criminal Complaint Case No. 2299/2018 before the learned Judicial Magistrate, First Class, Raipur. It is the averment made in the complaint case by the complainant/appellant that the accused is the father-in-law of his friend Krishnakant Sharma. He borrowed Rs. 2 lakhs from him in the year 2017 for the reason of the marriage of his daughter and assured that he would return the amount within 10-12 months. Out of total amount of Rs. 2 lakhs, he repaid Rs. 30,000/- on various installments and when he repeatedly demanded his money back from the accused, he gave him a cheque of Rs. 1,70,000/- which was of Bank of Baroda, Pandari Branch, Raipur, bearing cheque No. 000112 dated 22.03.2018. when the said cheque was deposited by the complainant in his bank account on 23.03.2018, the said cheque was dishonoured by the payee bank on the ground of "funds insufficient" on 26.03.2018. The complainant served a legal demand notice through his counsel on 28.03.2018, but the said notice was not claimed by the accused, and it was returned unserved. Thereafter, the complaint case under Section 138 of N.I. Act was filed by the complainant before the learned trial Court on 26.04.2018.

3. The said complaint case was registered on 04.05.2018, and the process was issued to the accused. The accused was arrested and produced before the trial Court on 12.03.2019, and he was released on bail on the same day. At the same time, the details of the offence of Section 138 of N.I. Act was explained, which he denied and claimed trial. After recording

evidence of the complainant, statement of the accused under Section 313 of Cr.P.C. have been recorded in which he denied the circumstances that appears against him, pleaded innocence and have submitted that despite refund of entire borrowed amount, the complainant did not return his blank cheques which was given to him as a security of borrowed amount and when he threatened him, he served a notice through his counsel on 24.03.2018, thereafter, the complainant filed the false case against him. One defence witness has been examined by the accused.

4. After appreciation of oral as well as documentary evidence led by the parties, the learned trial Court, vide its judgment dated 31.07.2023, convicted the accused for the offence under Section 138 of N.I. Act and sentenced him for S.I. for 3 months, with compensation of Rs. 2 Lakh, which was payable to the complainant. The compensation was ordered to be paid within 2 months, failing which 3 months additional S.I. was also awarded to the accused.

5. The judgment of conviction and sentence dated 31.07.2023, was challenged by the accused before the learned Appellate Court, in Criminal Appeal No. 190/2023 and the learned appellate Court allowed the appeal vide its judgment dated 22.11.2024 and acquitted the respondent/ accused from the alleged offence holding that there is no any document with respect to alleged transaction of borrowed amount and the DW/1 Krishnakant has admitted that the accused had borrowed Rs. 30,000/- and he refunded Rs. 42,000/- which was including the interest and also that the complainant has failed to prove that the cheque was issued in discharge of his liability or any legally recoverable debt. The said judgment of acquittal is under challenge in the present acquittal appeal.

6. Learned counsel for the appellant would submit that the learned appellate Court has erred in acquitting the accused. There is sufficient

evidence against him, which makes him liable for the alleged offence. When the accused admitted the loan transaction between them, the statutory presumption would come into existence in favour of the complainant. The amount of the loan, though, have disputed by the accused, but he failed to prove that the borrowed amount was not Rs. 2 lakhs, but it was Rs. 30,000/-. He would further submit that the learned appellate Court has wrongly held that the complainant has not disclosed his source of income and the capacity to advance the loan of Rs. 2 lakhs to the accused. When the accused admitted that the cheque was given as a security of loan, there is no further need to prove the existence of a legally recoverable debt. It is also submitted that when the entire amount of the loan is alleged to be repaid, the steps which he had taken to get his cheque back from the complainant have not been disclosed by him. He had not even tried to stop the payment of the cheque by making his application to the Bank. All the statutory presumption of holding in due course, existence of a legally recoverable debt and that the cheque was issued for discharge of his liability and therefore, ought to have dismissed the appeal filed by the accused. The learned trial Court, after proper appreciation of evidence as well as law applicable to it, convicted the accused, and there was no scope for interference, yet the appeal filed by the applicant was allowed by the appellate Court, which is erroneous and the same is liable to be set aside.

7. On the other hand, learned counsel for the respondent/accused supported the impugned judgment of acquittal passed by the learned appellate Court and has submitted that the capacity to advance a loan ought to have been proved by the complainant and the advancement of load of Rs. 2 lakhs should also be proved by the complainant. The accused had borrowed Rs. 30,000/-, and he had given the blank cheque to the

complainant as security for a loan and even after the refund of the borrowed amount, the cheques were not returned to the accused and were misused by the complainant. There was no legally recoverable debt against the accused, and thus, no presumption could be drawn against him. Since the relation between the accused and the complainant was good, he did not demand his cheque back from the complainant and was assured that the complainant would not misuse the cheque. The well-reasoned judgment passed by the learned appellate court does not suffer from any perversity, and the acquittal appeal is liable to be dismissed.

8. I have heard learned counsel for the parties and perused the record of the learned trial court as well as the document annexed with the appeal.

9. It is the case of the complainant before the learned trial Court that in the year 2017, the accused borrowed Rs. 2 lakhs at the time of marriage of his daughter with the assurance that he will repay the amount within 10-12 months, the accused had repaid only Rs. 30,000/- through his son in law and when he demanded the remaining amount, the accused issued the subject cheque for Rs. 1,70,000/- which was dishonoured by the payee bank and ultimately, complaint case was filed. It is the defence taken by the accused that he borrowed only Rs. 30,000/- and repaid Rs. 42,000/-, including interest, and there was no legally recoverable debt against him. The subject cheque was given to the complainant as security for the borrowed amount, and since there was no liability against the accused, he cannot be convicted for dishonour of the cheque.

10. It is the evidence of the complainant (PW/1), Subham Agrawal, that the cheque issued by the accused has been dishonoured by the payee bank, and he was convicted for the alleged offence. In cross-examination, he stated that he had known the accused since 2014-15. Earlier, he was

working at a tours and travels agency, and before that, he was working as a customer relations executive at Ujjawal Jewellers. He was earning Rs. 10,000/- per month at Ujjawal Jewellers. He also admitted that he has not filed any document with respect to the ownership of Surabhi Travels and further admitted that he was running Surabhi Travels in a rented shop. He also admitted that he has not filed any document with respect to the existence of Surabhi Tours and Travels. He is earning Rs. 50 to 60 thousand per month from Surabhi Tours and Travels. He further admitted that he has not filed any document in the case, which shows that he is earning from there. He also admitted that there is no written document with respect to the loan transaction. The amount of Rs. 2 lakhs, which the accused borrowed from him, has not been mentioned in his income tax return. He further stated that in the year 2017, the accused was working as a lab technician. He further admitted that he is prosecuting the other case also against the father-in-law of the accused and his other friends. He further admitted that he also prosecuted a complaint case against Krishnakant, to whom he borrowed Rs. 7.5 lakhs in May, 2016. He also admitted that after payment of money to the accused, he also borrowed Rs. 2 lakhs to Ashish Chandrakar, against whom a complaint case is being prosecuted by him. The entire cross-examination of the complainant revolves around the fact that the complainant has not filed any document with respect to his business and earning capacity. He also admitted that the accused served a notice to him on 24.03.2018 through his counsel, by which he stated that the entire amount had been returned and the cheque given by the accused should be returned to him.

11. The DW/1 Krishnakant Sharma has stated in his evidence that he knew the complainant since 2013-14, when both of them were working at Ujjawal Jewellers. Shubham was earning Rs. 8000/- per month, and he was earning

Rs. 3500/- per month. He introduced the accused to the complainant as the accused needed money for personal reasons. The complainant gave Rs. 30,000/- to the accused on interest, and the entire amount has been repaid to him, including interest. At the time of advancing the loan to the accused, he gave a blank cheque to the complainant as security of loan. When the accused demanded his cheque back, the complainant evaded and assured him that he would return later on. Subsequently, he came to know that the complainant is prosecuting a criminal case against the accused.

12. In cross-examination, he admitted that the accused is his father-in-law and that he needed money for personal reasons. The amount paid in May of 2017, and the transaction was made in his presence. The amount of Rs. 30,000/- was returned by the accused in his presence and at his house. He further admitted that when the accused demanded his cheque back from the complainant and evaded, the accused had not sent any notice to him and had not made any police complaint.

13. From the evidence of the complainant as well as the DW/1 Krishnakant, it is clearly established that there was a loan transaction between the complainant and the accused in the month of May, 2017. The question remains whether it was for Rs. 2 lakhs or for Rs. 30,000/-. The complainant served a legal notice to the accused (Ex-P/3) in which he mentioned that the amount of Rs. 2 lakhs was borrowed, out of which Rs. 30,000/- was repaid and in lieu of repayment of the remaining amount of Rs. 1,70,000/-, the cheque was issued by the accused. The refund of Rs. 30,000/- by the accused has been admitted by the complainant, and the cheque was issued for the remaining amount. In para 38 of the cross-examination of the complainant, the defence suggested that the accused served a legal notice to the complainant through his counsel on 24.03.2018

and according to which the accused borrowed Rs. 1 lakh along with 3% interest, which was repaid by the accused and in that transaction, the accused given the cheque bearing number 000112 and 000113 which was of Bank of Baroda. It is also suggested that the complainant has not relied on the said notice of the accused. In the statement under Section 313 of Cr.P.C. of the accused, he also stated that on 24.03.2018, he served a legal notice to the complainant through his counsel; however, there is no copy of the notice which was allegedly served by the accused to the complainant on 24.03.2018, and there is completely lack of evidence in that respect.

14. Section 118 of the N.I. Act provides presumption as to negotiable instruments until contrary is proved, which reads as under:-

“118. Presumptions as to negotiable instruments.—Until the contrary is proved, the following presumptions shall be made:—

- (a) **of consideration** —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;
- (b) **as to date** —that every negotiable instrument bearing a date was made or drawn on such date;
- (c) **as to time of acceptance** —that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;
- (d) **as to time of transfer** —that every transfer of a negotiable instrument was made before its maturity;
- (e) **as to order of indorsements** —that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;
- (f) **as to stamps** —that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) **that holder is a holder in due course** —that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.”

15. Section 139 of the N.I. Act provides presumption in favour of holder which reads as under:-

“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.”

16. When the cheque was drawn by a person on account maintained by him for payment of any amount to another person for discharge of his liability is returned by the bank unpaid because of insufficient balance in the bank account such person shall be deemed to have committed the offence and shall be liable to be punished. Section 138 of the N.I. Act provides that a cheque has to be presented to the bank within a period of six months from the date on which it is drawn or within a period of its validity whichever is earlier. The period of six months has been reduced by the Reserve Bank of India to three months vide its notification dated 04-11-2011 w.e.f. 01-04-2012. After receipt of the information by the complainant from the bank regarding return of cheque as unpaid he has to serve a legal demand notice in writing to the drawer of the cheque within 30 days of receipt of such information and then the drawer of the cheque shall pay the amount of cheque within 15 days

of receipt of said notice. Section 142 of the N.I. Act provides for cognizance of the offences which provides that the Court may take cognizance of the offence punishable under Section 138 of the N.I. Act upon complaint in writing made by the payee or the holder in due course of the cheque within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138 of the N.I. Act. Section 9 of the N.I. Act gives definition of holder in due course which reads as under:-

“9. “Holder in due course”.—“Holder in due course” means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.”

17. The defence taken by the accused that he borrowed Rs. 30,000/- from the complainant and refunded the entire amount along with the interest is not supported by the evidence produced by him. As per his own defence, the amount of Rs. 1 lakh was borrowed by him from the complainant @ interest rate of 3%, and the entire amount was repaid, and he served notice on 24.03.2018. Although the learned counsel for the accused had submitted that the cheque was given as security to the complainant, the accused could not explain the steps taken by him when the said cheque was not returned to him. The accused had failed to establish his defence in such a situation; the burden shifts upon him to prove that there was no existing liability against him for the value put up on the cheque. The production of account books/ cash books or other documents to prove the amount due may be relevant in civil suits, but not so in a case under Section 138 of N.I. Act.

18. In the matter of **D.K. Chandel Vs. Wockhardt Limited and another**, (2020) 13 SCC 471 the Hon'ble Supreme Court has held in para 7 of its order that :-

“7. As held by the trial Court as well as by the High Court that the cheque was issued towards the amount due and payable by the appellant for purchase of pesticides. As rightly observed by the High Court, production of the account books/cash book may be relevant in the civil court but may not be so in the criminal case filed under Section 138 of the NI Act. This is because of the presumption raised in favour of the holder of the cheque. In view of the concurrent findings recorded by the trial court as well as by the High Court, we do not see any ground warranting interference with the conviction of the appellant under Section 138 of the NI Act.”

19. In the matter of **P. Rasiya Vs. Abdul Nazer and another**, 2022 SCC OnLine SC 1131 it has been held by the Hon'ble Supreme Court in para 7 of the order passed in the above matter that the complainant is not required to show nature of transaction or source of fund, which is reproduced hereinbelow:-

“7. Feeling aggrieved and dissatisfied with the judgment and orders passed by the Appellate Court affirming the conviction of the accused under Section 138 of the N.I. Act, the accused preferred three different Revision Applications before the High Court. By the impugned common judgment and order, the High Court has reversed the concurrent findings recorded by both the courts below and has acquitted the accused on the ground that, in the complaint, the Complainant has not specifically stated the nature of transactions and the source of fund. However, the High Court has failed to note the presumption under Section 139

of the N.I. Act. As per Section 139 of the N.I. Act, 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 discharge, in whole or in part, of any debt or other liability. Therefore, once the initial burden is discharged by the Complainant that the cheque was issued by the accused and the signature and the issuance of the cheque is not disputed by the accused, in that case, the onus will shift upon the accused to prove the contrary that the cheque was not for any debt or other liability. The presumption under Section 139 of the N.I. Act is a statutory presumption and thereafter, once it is presumed that the cheque is issued in whole or in part of any debt or other liability which is in favour of the Complainant/holder of the cheque, in that case, it is for the accused to prove the contrary. The aforesaid has not been dealt with and considered by the High Court. The High Court has also failed to appreciate that the High Court was exercising the revisional jurisdiction and there were concurrent findings of fact recorded by the courts below.”

20. In the matter of **M. Abbas Haji Vs. T.N. Channakeshava**, (2019) 9 SCC 606 the Hon’ble Supreme Court has held that it is for the accused to explain as to how his cheque entered into hands of the complainant wherein para 6 of the judgment it has been observed that:-

“6. It is urged before us that the High Court overstepped the limits which the appellate court is bound by criminal cases setting aside an order of acquittal. Proceedings under Section 138 of the Act are quasi-criminal proceedings. The principles, which apply to acquittal in other criminal cases, cannot apply to these cases. As far as the present case is concerned, in addition to three reasons, given by the High Court, we are of the view that the original appellant has not even explained how the leaves of the cheque entered into

the hands of the complainant. It is urged that in cross-examination of the complainant some suggestions were made that since the complainant was visiting the office of the original appellant, he had access to the same. The complainant had only admitted that he visited the office of the original appellant but he denied all the other suggestions. Thereafter, it was for the original appellant to prove his part of the case. The High Court, in our opinion, was right in holding the original appellant guilty under Section 138 of the Act.”

21. So far as the cheque given as security is concerned, in the matter of **Sripati Singh (since deceased) through his Son Gaurav Singh Vs. State of Jharkhand and another**, (2022) 18 SCC 614 the Hon'ble Supreme Court has held in para 28, 29 and 31 of its judgment that:-

“**28.** In the above circumstance, the cheque though issued as security at the point when the loan was advanced, it was issued as an assurance to repay the amount after the debt becomes due for repayment. The loan was in subsistence when the cheque was issued and had become repayable during June/July 2015 and the cheque issued towards repayment was agreed to be presented thereafter. If the amount was not paid in any other mode before June/July 2015, it was incumbent on the Respondent No. 2 to arrange sufficient balance in the account to honour the cheque which was to be presented subsequent to June/July 2015.

29. These aspects would prima-facie indicate that there was a transaction between the parties towards which a legally recoverable debt was claimed by the Appellant and the cheque issued by the Respondent No. 2 was presented. On such cheque being dishonoured, cause of action had arisen for issuing a notice and presenting the criminal complaint under Section 138 of the NI Act on the

payment not being made. The further defence as to whether the loan had been discharged as agreed by Respondent No. 2 and in that circumstance the cheque which had been issued as security had not remained live for payment subsequent thereto, etc. at best can be a defence for Respondent No. 2 to be put forth and to be established in the trial. In any event, it was not a case for the Court to either refuse to take cognizance or to discharge Respondent No. 2 in the manner it has been done by the High Court. Therefore, though a criminal complaint under Section 420 IPC was not sustainable in the facts and circumstances of the instant case, the complaint under Section 138 of the NI Act was maintainable and all contentions and the defence were to be considered during the course of the trial.

31. All contentions of the parties on merit are left open. We make it clear that none of the observations contained herein shall have a bearing on the main trial. The trial court shall independently arrive at its conclusion based on the evidence tendered before it.”

22. Further sending the notice in writing is provided in proviso (b) of Section 138 of the N.I. Act which reads as under:-

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.— xxxxx

xxxxxx xxxxxx

(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”

23. It is nowhere mentioned that the complainant has to prove the service of notice upon the accused. From perusal of proviso (b) of Section 138 of the N.I. Act it is only provided that the payee or holder in due course of the cheque has to make demand by giving notice in writing to the drawer of the cheque. The only giving notice in writing is provided. In the present case, by the document Ex.-A/4 and A/5 it has been proved by the complainant that he gave the notice in writing to the accused and sent it through the registered A/D post. Section 27 of the General Clauses Act, 1897 provides meaning of service by post which reads as under:-

"27. Meaning of service by post.—Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression “serve” or either of the expressions “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the times at which the letter would be delivered in the ordinary course of post."

24. If the complainant has sent a notice in writing through registered A/D post on the correct address of the accused it shall be presumed that it has been served upon him unless contrary is proved. From the documents Ex.-A/4 and A/5 when it is proved by the complainant that he sent the legal demand notice on the correct address of the applicant/accused then the burden shifts upon the applicant/accused to prove that he has not received any notice sent by the complainant.

25. In view of the above discussion, even if the accused submitted that he has not received any legal demand notice, from the document (Ex-P/4 and

P/5), the complainant has proved that he sent the legal demand notice to the accused as per the requirement of Section 138(b) of the N.I. Act.

26. In the matter of **Ajeet Seeds Limited Vs. K. Gopala Krishnaiah**, (2014) 12 SCC 685 in which in para 9 and 10 the Hon'ble Supreme Court has held that:-

“9. This Court then explained the nature of presumptions under Section 114 of the Evidence Act and under Section 27 of the GC Act and pointed out how these two presumptions are to be employed while considering the question of service of notice under Section 138 of the NI Act. The relevant paragraphs read as under: (C.C Alavi Haji case (2007) 6 SCC 555)

“13. According to Section 114 of the Act, read with Illustration (f) thereunder, when it appears to the court that the common course of business renders it probable that a thing would happen, the court may draw presumption that the thing would have happened, unless there are circumstances in a particular case to show that the common course of business was not followed. Thus, Section 114 enables the court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Consequently, the court can presume that the common course of business has been followed in particular cases. When applied to communications sent by post, Section 114 enables the court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. But the presumption that is raised under Section 27 of the GC Act is a far stronger presumption. Further, while Section 114 of the Evidence Act refers to a general presumption, Section 27 refers to a specific presumption. For the sake

of ready reference, Section 27 of the GC Act is extracted below:

‘27. Meaning of service by post.—Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve" or either of the expression "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.’

14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement 'refused' or 'not available in the house' or 'house locked' or 'shop closed' or 'addressee not in station, due service has to be presumed. (Vide Jagdish Singh v. Natthu Singh (1992) 1 SCC 647, State of M.P. Hiralal (1996) 7 SCC 523 and V. Raja Kumari v. P. Subbarama Naidu (2004) 8 SCC 774). It is, therefore, manifest that in view of the presumption available under

Section 27 of the Act, it is not necessary to aver in the complaint under Section 138 of the Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved."

10. It is thus clear that Section 114 of the Evidence Act enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. Section 27 of the GC Act gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. It is not necessary to aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business.

27. From perusal of the entire evidence available on record, the aforesaid law laid down by the Hon'ble Supreme Court, this Court is of the opinion that the learned trial court has rightly considered the evidence and rightly convicted the accused for the alleged offence under Section 138 of N.I. Act. So far as the acquittal of the appellant is concerned, it transpires that the judgment passed by the learned appellate Court is contrary and perverse to the facts of the case and law applicable to it under the statutory provisions of the N.I. Act and thus, the impugned judgment of acquittal passed by the learned appellate Court is liable to be interfered with and to set aside the same by upholding the judgment of conviction passed by the learned trial Court.

28. The law with regard to grant of compensation under Section 357(3) of the Cr.P.C. in cases arising from Section 138 of the N.I. Act is well settled.

The object of Section 138 of the N.I. Act appears to be punitive as well as compensatory in nature as it provides a single forum and single proceeding for enforcement in criminal liability (for dishonouring the cheque) and for enforcement of civil liability (for realization of cheque amount). In the matter of **R. Vijayan v. Baby and another**¹, their Lordships of the Supreme Court culled out the following principles in para 17, 18 and 19 that :-

“17. The apparent intention is to ensure that not only the offender is punished, but also ensure that the complainant invariably receives the amount of the cheque by way of compensation under Section 357(1)(b) of the Code. Though a complaint under Section 138 of the Act is in regard to criminal liability for the offence of dishonouring the cheque and not for the recovery of the cheque amount (which strictly speaking, has to be enforced by a civil suit), in practice once the criminal complaint is lodged under Section 138 of the Act, a civil suit is seldom filed to recover the amount of the cheque. This is because of the provision enabling the court to levy a fine linked to the cheque amount and the usual direction in such cases is for payment as compensation, the cheque amount, as loss incurred by the complainant on account of dishonour of cheque, under Section 357(1) (b) of the Code and the provision for compounding the offences under Section 138 of the Act. Most of the cases (except those where liability is denied) get compounded at one stage or the other by payment of the cheque amount with or without interest. Even where the offence is not compounded, the courts tend to direct payment of compensation equal to the cheque amount (or even something more towards interest) by levying a fine commensurate with the cheque amount. A stage has reached when most of the complainants, in particular the financing institutions (particularly private financiers) view the proceedings under Section 138 of the Act, as a proceeding for the recovery of the cheque amount, the punishment of the

¹ (2012) 1 SCC 260

drawer of the cheque for the offence of dishonour, becoming secondary.

18. Having reached that stage, if some Magistrates go by the traditional view that the criminal proceedings are for imposing punishment on the accused, either imprisonment or fine or both, and there is no need to compensate the complainant, particularly if the complainant is not a “victim” in the real sense, but is a well-to-do financier or financing institution, difficulties and complications arise. In those cases where the discretion to direct payment of compensation is not exercised, it causes considerable difficulty to the complainant, as invariably, by the time the criminal case is decided, the limitation for filing civil cases would have expired. As the provisions of Chapter XVII of the Act strongly lean towards grant of reimbursement of the loss by way of compensation, the courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine up to twice the cheque amount (keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss) and direct payment of such amount as compensation. Direction to pay compensation by way of restitution in regard to the loss on account of dishonour of the cheque should be practical and realistic, which would mean not only the payment of the cheque amount but interest thereon at a reasonable rate. Uniformity and consistency in deciding similar cases by different courts, not only increase the credibility of cheque as a negotiable instrument, but also the credibility of courts of justice.

19. We are conscious of the fact that proceedings under Section 138 of the Act cannot be treated as civil suits for recovery of the cheque amount with interest. We are also conscious of the fact that compensation awarded under Section 357(1)(b) is not intended to be an elaborate exercise taking note of interest, etc. Our observations are necessitated

due to the need to have uniformity and consistency in decision making. In same type of cheque dishonour cases, after convicting the accused, if some courts grant compensation and if some other courts do not grant compensation, the inconsistency, though perfectly acceptable in the eye of the law, will give rise to certain amount of uncertainty in the minds of litigants about the functioning of courts. Citizens will not be able to arrange or regulate their affairs in a proper manner as they will not know whether they should simultaneously file a civil suit or not. The problem is aggravated having regard to the fact that in spite of Section 143(3) of the Act requiring the complaints in regard to cheque dishonour cases under Section 138 of the Act to be concluded within six months from the date of the filing of the complaint, such cases seldom reach finality before three or four years let alone six months. These cases give rise to complications where civil suits have not been filed within three years on account of the pendency of the criminal cases. While it is not the duty of criminal courts to ensure that successful complainants get the cheque amount also, it is their duty to have uniformity and consistency with other courts dealing with similar cases.

29. As per the submission made on behalf of the accused, he was on bail during the trial as well as during the appeal. Taking into consideration the provisions contained in Section 138 of N.I. Act and the case of R. Vijayan (Supra), that punishment is to be awarded in Section 138 of N.I. Act cases are needed to ensure payment of money and threat of jail only to ensure recovery, and as such, imposition of jail sentence is not mandatory; this Court is of the opinion that ends of justice would be served if the accused would be punished by awarding appropriate compensation to the complainant by setting aside his jail sentence.

30. Accordingly, the acquittal appeal filed by the complainant is partly allowed. The impugned judgment of acquittal passed by the learned

appellate Court, acquitting the respondent/accused, is set aside, and the judgment of conviction passed by the learned trial court is restored. The jail sentence awarded to the accused is set aside, and the compensation of Rs. 1,70,000/- is enhanced to Rs. 1,90,000/-, which is payable to the complainant within four months from today, failing which the respondent accused shall undergo S.I. for 02 months. The amount of compensation or any part thereof paid by the respondent/ accused, if any, shall be adjusted towards the total amount of Rs. 1,90,000/- as awarded by this Court. In the eventuality of the deposition of the amount of compensation by the accused, the complainant is entitled to withdraw the entire amount of compensation awarded in his favour.

31. With the aforesaid observation and to the extent indicated hereinabove, the acquittal appeal is **partly allowed**.

32. The record of the trial Court, as well as the appellate Court be sent back along with a copy of this judgment.

Sd/-

(Ravindra Kumar Agrawal)

JUDGE

sagrika