

GAHC010013242013



2026:GAU-AS:323

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./364/2013

BIPIN GOGOI
S/O TANKESWAR GOGOI, R/O NO. 1 KOHORA, UNDER BOKAKHAT POLICE
STATION, IN THE DIST. OF GOLAGHAT, ASSAM.

VERSUS

PRADIP BORA
S/O LATE ANIL BORA, R/O TINKHON, UNDER TINKHONG POLICE
STATION.

Advocate for the Petitioner : MR.A M BORA, MR.T J MAHANTA,MR.S R BORUAH,MR.D
GOGOI

Advocate for the Respondent : MR SARFRAZ NAWAZ, AMICUS CURIAE R1, ,,

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Appellant : Mr. A. M. Bora, Advocate
Mr. M. S. Hussain, Advocate
For the Respondents : Mr. S. Nawaz, Amicus Curiae
Date of Hearing : 14-11-2025
Date of Judgment : 06.01.2026

Judgment and Order (CAV)

Heard Mr. A. M. Bora, learned Senior Counsel, assisted by Mr. M. S. Hussain, learned counsel, for the appellant. Also heard Mr. S. Nawaz, learned Amicus Curiae, appearing for the respondent.

2. The challenge in the present appeal is to the Judgment dated 30.08.2013, passed by the learned Judicial Magistrate First Class, Golaghat, Assam in CR Case No. 334/2012, dismissing the complaint filed by the appellant, herein, under Section 138 of the Negotiable Instruments (N.I) Act.

3. The facts in brief requisite for adjudication of the present appeal is noticed hereinbelow.

The appellant projects that he is the owner of Green Reed Lodge, situated at Kohara, and the respondent, who is a film director, along with his team, had stayed in the lodge of the appellant from 05-11-2011 till 10-11-2011 and then w.e.f., 25-11-2011 till 30-11-2011. The respondent was billed for an amount of Rs.43,464/- (Rupees Forty Three Thousand Four Hundred Sixty Four) for the stay, for the said periods in the lodge of the appellant. The opposite party had paid an amount of Rs.4,464/- (Rupees Four Thousand Four Hundred Sixty Four) in cash and had thereafter issued a cheque for the balance amount of Rs.39,000/- (Rupees Thirty Nine Thousand) vide cheque

bearing number 554514, dated 07-12-2011, drawn on State Bank of India, Silpukuri Branch, Guwahati. The appellant deposited the cheque in his account maintained with the Kohara Branch of State Bank of India for collection on 02-12-2012. However, the said cheque was returned unpaid along with a cheque return memo, wherein it was stipulated that the cheque was returned unpaid on account of insufficiency of funds in the account of the respondent, herein. The appellant thereafter sent a demand notice through his advocate by way of registered post with A/D on 01-02-2012 to the respondent demanding the cheque amount within 15 days of receipt of the notice. The said notice is projected to have been received on 06-02-2012 by the opposite party. However, the opposite party failed to deposit the said amount.

The appellant accordingly lodged a complaint before the Court of the learned Judicial Magistrate First Class, at Golaghat, under Section 138 of the N.I. Act and the same was registered as C.R. Case No.334 of 2012.

The learned Trial Court examined the complainant under Section 200 CrPC and thereafter on perusal of the complaint petition and the documents filed thereto, proceeded to take cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881, against the respondent herein, and issued notice to the respondent. Upon appearance of the respondent before the Trial Court, the respondent having pleaded not guilty and claimed to be tried, a Trial ensued. During the trial, the appellant, herein, examined 2(two) witnesses including himself as prosecution witnesses.

The Learned Trial Court, after examining the witnesses produced by the appellant, proceeded to record the statement of the opposite party under the provisions of Section 313 CrPC. The respondent, herein, during his examination under Section 313 CrPC categorically denied the allegations made by the appellant, herein.

The Learned Trial Court, upon completion of the Trial, proceeded vide Judgment dated 30.08.2013, to dismiss the complaint by holding that the complainant had failed to prove the charge under Section 138 of the N.I. Act beyond all reasonable

doubt against the respondent and accordingly, the respondent came to be acquitted. Being aggrieved, the appellant has instituted the present appeal after obtaining leave from this Court.

4. Mr. A. M. Bora, learned counsel for the appellant, has at the outset submitted that the learned Trial Court had misdirected itself in considering the evidences coming on record during the Trial. He submits that the issuance of the cheque, in question, and the signature, therein, of the appellant not being in dispute, the same has to be construed to have been issued by the respondent to the appellant in discharge of a legally enforceable debt or liability.

Mr. Bora, submits that the learned Trial Court, before arriving at its conclusions vide the Judgment dated 30.08.2013, had placed reliance on the decision of the Hon'ble Supreme Court in the case of **Krishna Janardhan Bhat Vs. Dattatraya G. Hegde**, reported in **(2008) 4 SCC 54** and had concluded that the provisions of Section 139 of the N.I. Act merely raises a presumption in regard to the second aspect of the condition in Section 138 of the N.I. Act, i.e., the cheque was drawn for discharge in whole or in part of any debt or other liability. He further submits that the learned Trial Court erred in concluding that the existence of a legally enforceable debt is not a matter of presumption under Section 139 of the N.I. Act, but it merely raises a presumption in favour of the holder of the cheque that the same was issued for discharge of any debt or liability. He submits that the decision of the Hon'ble Supreme Court in the case of **Krishna Janardhan Bhat** (supra) was again considered by the Hon'ble Supreme Court in the case of **Rangappa Vs. Sri Mohan** reported in **(2010) 11 SCC 441** and the Hon'ble Supreme Court had held that the presumption mandated by Section 139 of the Act, indeed include the existence of a legally enforceable debt or liability and to that extent, the impugned observations in the case of **Krishna Janardhan Bhat** (supra) was held to be not correct.

Mr. Bora, has submitted that the respondent, herein, had not adduced any evidence in the matter, however, even from the cross-examination of the appellant by the

respondent before the learned Trial Court, the issuance of the cheque as well as the signature of the respondent in the cheque, in question, is not disputed. He submits that the plea taken by the respondent of not having issued the cheque and not having stayed in the lodge of the appellant, herein, is clearly perverse and the learned Trial Court could not have placed the onus on the appellant, herein, to establish that the respondent and his team had in fact stayed in the lodge of the appellant. He submits that although the presumption under Section 139 of the N.I. Act in favour of the holder of the cheque is rebuttable, the respondent was required to prove the non-existence of a consideration by raising a probable defence. He submits that the respondent, herein, had not discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal. Accordingly, he submits that the onus could not have been shifted to the appellant in the matter by the learned Trial Court. He submits that the reverse onus applicable on the respondent is an evidentiary burden and not a persuasive burden.

5. In the above premises, Mr. A. M. Bora, learned Senior Counsel, submits that the impugned order would mandate an interference and the respondent, herein, is liable to be convicted under the provisions of Section 138 N.I. Act along with a direction for payment of compensation to the appellant, herein.

6. Mr. S. Nawaz, Amicus Curie, appearing for the respondent, submits that the evidences coming on record establishes the issuance of the cheque by the appellant, herein, and accordingly, the initial presumption under Section 139 of the Act is permissible to be drawn in the matter against the respondent, herein. He submits that the respondent during the cross-examination of the appellant as well as the Bank Officer who had deposed as PW-2 had not disputed his signature as present in the cheque, in question. He further submits that the evidence adduced by PW-2 establishes the issuance of the cheque (which was exhibited as Exhibit-1) by the respondent to the appellant on 07-12-2011. He submits that the respondent, herein, is liable to pay the cheque amount as he had not rebutted the initial presumption

permissible to be drawn under Section 139 of the N.I. Act, by bringing on record a probable defence. However, Mr S. Nawaz, submits that considering the long lapse of time occasioning in the matter, the respondent on his conviction be not sentenced to undergo a term of imprisonment and the sentencing be limited to the payment of compensation by considering the cheque amount involved.

7. I have heard the learned counsel for the parties and perused the materials available on record.

8. The learned Trial Court upon examining the evidences coming on record had drawn the following conclusions;

“ix) In Krishna Janardhan Bhat v. Dattatraya G. Hegde 2008 AIR (SC) 1325 it has been discussed that the section 139 of the Act merely raises a presumption in regard to the second aspect of condition in section 138 of the act that the cheque was drawn for discharge in whole or in part of any debt or other liability. Existence of legally enforceable debt is not a matter of presumption under section 139 but it merely raises a presumption in favour of the holder of the cheque and that the same was issued for the discharge of any debt or other liability. The Apex Court has also held in this judgment that the prosecution must prove the guilt of the accused beyond all reasonable doubt and the standard of proof so as to prove on part of the accused is preponderance of probability can be drawn not only from the materials brought on records by the parties but also by reference to the circumstances upon which he relies. It has also held that presumptions both U/S 118 and 139 of the Act are rebuttable.

(x) Now that the presumption is in favour of the complainant (PW1) it is for the accused to bring on record such facts and circumstances upon consideration of which the Court may either believe that the consideration 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 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. This opinion was held by the Apex Court in Kumar Exports V. Sharma Carpets, 2009 AIR (SC) 1518, which was referred by the defence counsel.

(xi) PW1 in his cross examination has admitted that he has not submitted any documents or evidence of any kind to prove that he is the proprietor of the Green Reed Lodge in the court. He has deposed that there is a register of the said lodge and

that he had not submitted any such register or copy of such register in the court. PW1 has further admitted that if customers visit and stay in his lodge as a team he only enters the name of the leader in the register. PW1 has also stated that the accused and his team comprising of 9 members occupied 4 rooms from 05/11/2011 till 10/11/2011 and around 17 members in 7/9 rooms from 25/11/2011 to 30/11/2011. PW1 has also admitted that he failed to mention the total number of persons who stayed in his lodge in his initial deposition U/S 200 Cr.P.C

(xii) The above admission of the complainant (PW1) that he used to enter the name of the leader in the register of the Lodge and that the accused and his crew up to 17 members occupied 7/9 rooms in his Lodge implied that the complaint (PW1) has entered the same details in his register but he has failed to produce the same register in the court as evidence to prove the consideration. Further the complainant (PW1) has averred in his complaint as well as his statement U/S 200 Cr.P.C that a bill of Rs. 26,000/- for lodging and a bill of Rs. 17064/- for fooding was drawn against the accused and has also failed to produce the bills or any duplicate copies of those bills, except a few copies of some bills, about those also he admitted that the accused has not signed in those bills. PW1 has further admitted in his cross examination that there is no bank account in the name of Green Reed Lodge.

(xiii) It is to be noted here that the accused has succeeded in bringing forth a circumstance where the complainant has only pleaded that the accused was under liability paying him Rs. 39,000/- as bill drawn for his stay in the Lodge and for food he eat during his stay but the complainant has failed to bring on recorded any such documents to prove himself as the proprietor of the said Lodge firstly and secondly to prove the stay of the accused along with his crew and their consumption of food during their stay in manner of admission register and bills. Therefore it can be hold that the accused has succeeded in raising a defence by means of preponderance of probability that there was no consideration and thereby the onus of burden shifted to the complainant to prove the consideration or the existence of a legal liability. Mere allegation cannot amount to proof. Further the presumption U/S 139 of the Act has as held by the Apex Court cannot be a proof of existence of a legal liability but only a mere presumption in favour of the holder of the cheque and that the same was issued for discharge of any dent or other liability.

xiv) From the above discussion it is seen that the accused has rebutted the presence

of consideration by leading to the circumstance that he never stayed at the Lodge of the complainant and also did not consume any food in the lodge. Further as the onus of burden to prove the presence of consideration was shifted to the complainant (PW1) he failed to prove the consideration as per his prosecution story by not adducing any document of his ownership of the Lodge and also other documents leading to the stay of the accused along with his crew in his Lodge and their consumption of the food in his lodge and for non-payment of which bills the accused was alleged to be under a legal liability by the complainant (PW1). The prosecution has failed to prove the case beyond all reasonable doubt and hence I decide the point No. A and B in favour of the accused and in the negative."

9. Based on the conclusions so drawn, the learned Trial Court proceeded to hold that the appellant, herein, had failed in proving the charge under Section 138 of the N.I. Act beyond all reasonable doubt against the appellant, herein, and accordingly proceeded to acquit him from the said charge.

10. This Court has perused the conclusions drawn by the Learned Trial Court and finds that the learned Trial Court had based its conclusions on the decision of the Hon'ble Supreme Court in the case of **Krishna Janardhan Bhat** (supra). The decision in the case of Krishna Janardhan Bhat (supra), was considered by a full Bench of the Hon'ble Supreme Court in the case of **Rangappa** (supra) and the Hon'ble Supreme Court had drawn the following conclusions;

"21. Specifically in relation to the nature of the presumption contemplated by Section 139 of the Act, it was observed: (Krishna Janardhan Bhat case, SCC p. 66, para 45)

"45. We are not oblivious of the fact that the said provision has been inserted to regulate the growing business, trade, commerce and industrial activities of the country and the strict liability to promote greater vigilance in financial matters and to safeguard the faith of the creditor in the drawer of the cheque which is essential to the economic life of a developing country like India. This, however, shall not mean that the courts shall put a blind eye to the ground realities. 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."

(emphasis supplied)

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22. With respect to the decision cited above, the counsel appearing for the respondent claimant has submitted that the observations to the effect that the "existence of legally recoverable debt is not a matter of presumption under Section 139 of the Act" and that "it merely raises a presumption in favour of a holder of the cheque that the same has been issued for discharge of any debt or other liability" (see p. 62, para 30 in Krishna Janardhan Bhat) are in conflict with the statutory provisions as well as an established line of precedents of this Court. It will thus be necessary to examine some of the extracts cited by the respondent claimant. For instance, in Hiten P. Dalal v. Bratindranath Banerjee, it was held: (Ruma Pal, J. at SCC pp. 24-25, paras 22-23)

"22. Because both Sections 138 and 139 require that the court 'shall presume' the liability of the drawer of the cheques for the amounts for which the cheques are drawn,... it is obligatory on the court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. It Introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused... Such a presumption is a presumption of law, as distinguished from a presumption of fact which describes provisions by which the court 'may presume' a certain state of affairs. 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.

23. In other words, provided the facts required to form the basis of a presumption of law exist, 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. A fact is said to be proved when,

“after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.”

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

(emphasis supplied)

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23. The respondent claimant has also referred to the decision reported as Mallavarapu Kasivisweswara Rao v. Thadikonda Ramulu Firm, wherein it was observed: (SCC p. 660, para 17)

“17. Under Section 118(a) of the Negotiable Instruments Act, the court is obliged to presume, until the contrary is proved, that the promissory note was made for consideration. It is also a settled position that the

initial burden in this regard lies on the defendant to prove the non-existence of consideration by bringing on record such facts and circumstances which would lead the court to believe the non-existence of the consideration either by direct evidence or by preponderance of probabilities showing that the existence of consideration was improbable, doubtful or illegal."

24. This decision in Mallavarapu Kasivisweswara Rao case, then proceeded to cite an extract from the earlier decision in Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal: (SCC pp. 50-51, para 12)

"12. 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 the 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

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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."

(emphasis supplied)

Interestingly, the very same extract has also been approvingly cited in Krishna Janardhan Bhat.

25. With regard to the facts in the present case, we can also refer to the following observations in M.M.T.C. Ltd. v. Medchl Chemicals & Pharma (P) Ltd.: (SCC p. 240, para 19)

"19.... The authority shows that even when the cheque is dishonoured by reason of stop-payment instructions by virtue of Section 139 the court has to presume that the cheque was received by the holder for the discharge, in whole or in part, of any debt or liability. Of course this is a rebuttable presumption. The accused can thus show that the 'stop-payment' instructions were not issued because of insufficiency or paucity of funds. If the accused shows that in his account there were sufficient funds to clear the amount of the cheque at the time of presentation of the cheque for encashment at the drawer bank and that the stop-payment notice had been issued because of other valid causes including that there was no existing debt or liability at the time of presentation of cheque for encashment, then offence under Section 138 would not be made out. The important thing is that the burden of so proving would be on the accused."

(emphasis supplied)

“26. In light of these extracts, we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.”

11. The Hon’ble Supreme Court, with regard to the reverse onus clauses had drawn the further conclusions;

“27. Section 139 of the Act is an example of a 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 such a scenario, the test of proportionality should guide the

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construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof.

28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the

presumption under Section 139, the standard of proof for doing so is that of "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 the 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."

12. Applying to a decision of the Hon'ble Supreme Court in the case of *Rangappa* (supra) to the facts of the present case, this Court notices that the complaint petition as well as the evidence adduced by the appellant, herein, as PW-1 during the Trial discloses prima facie existence of legally enforceable debt or liability and further that the respondent, herein, had not disputed his signature on the cheque and accordingly the statutory presumption against the respondent was permissible to be drawn. The said presumption is also permissible to be drawn against the respondent, even by the evidences adduced by the appellant herein, during the Trial. As held by the Hon'ble Supreme Court, the respondent, herein, was imposed with an evidentiary burden and not a persuasive burden and he was required to rebut the presumption under Section 139 of the N.I. Act by adducing a probable defence by application of the principle of "preponderance of probability".

This Court finds that the respondent, herein, had failed to raise a probable defence which would have created doubt about the existence of a legally enforceable debt or liability, even from the evidence adduced by the appellant, herein, before the learned Trial Court. Accordingly, it cannot be held that the respondent had rebutted the presumption permissible to be drawn in the matter against him under Section 139 of N.I. Act.

13. In view of the above discussions, this Court is of the considered view that the impugned Judgment and Order dated 30.08.2013 would mandate an interference and accordingly the said Judgment dated 30.08.2013 is set aside.

14. In view of the above discussion, this Court is of the considered view that the

charge against the respondent under Section 138 of the N.I. Act is established beyond all reasonable doubt and accordingly, the respondent, herein, is convicted under the provisions of Section 138 of the N.I. Act. However, considering the long lapse of time occasioning in the matter since the passing of the impugned Judgment dated 30.08.2013, this Court noticing the provisions of Section 138 of the N.I. Act which mandates punishment with imprisonment for a term which may be extended to 2 (two) years, or with fine which may extend to twice the amount of the cheque or with both, is of the considered view that ends of justice, would be made if fine is so imposed upon the respondent, herein.

Accordingly, the respondent is sentence to payment of fine of Rs.58,500/-(Rupees Fifty Eight Thousand Five Hundred) only, in default of payment of fine, the respondent shall undergo Simple Imprisonment for a period of 6 (six) months. The respondent to deposit the fine amount within a period of 2 (two) months from today.

15. The respondent not being represented before this Court and he being represented by an Amicus Curiae appointed by this Court, this Court requires the learned Trial Court i.e., the Court of the Judicial Magistrate 1st Class, Golaghat, Assam, to issue notices to the respondent for deposit of the fine amount as directed, hereinabove.

16. Registry to send down the Trial Court Records, forthwith, along with a copy of this Order for necessary compliance.

JUDGE

Comparing Assistant