



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.G.S. KAMAL

CRIMINAL APPEAL NO. 1091 OF 2021 (A)

BETWEEN:

M/S SRIMATHA MAHILASAHAKARI
BANK NIYAMITHA
NO. 403/803, VIII MAIN ROAD,
X CROSS, SHASTHRYNAGAR,
BSK II STAGE,
BENGALURU - 560 070,
REP BY ITS MANAGER
SHARADA M.K.,

...APPELLANT

(BY SRI. ANOOP HARANAHALLI.,ADVOCATE)

AND:

SRI B S MANJUNATH
PROPRIETOR,
M/S. NRS TRAVELS,
R/AT NO. 332, II STAGE,
4TH BLOCK, 8TH MAIN,
BASAWESWARNAGAR,
BENGLAURU - 560 079.

...RESPONDENT

(BY SRI. VISHWANATH R. HEGDE.,ADVOCATE)

THIS CRL.A FILED U/S 378(4) OF CR.PC BY THE
ADVOCATE FOR THE APPELLANT PRAYING TO SET ASIDE THE
JUDGMENT OF ACQUITTAL DATED 26.03.2021 PASSED BY THE
XXVI A.C.M.M., BENGALURU CITY IN C.C.NO.22049/2016,
ACQUITTING THE RESPONDENTS/ACCUSED FOR THE OFFENCE
P/U/S 138 OF THE N.I ACT.





THIS APPEAL, COMING ON FOR FURTHER HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE M.G.S. KAMAL

ORAL JUDGMENT

This appeal is by the complainant under Section 378 of Criminal Procedure Code, 1973, being aggrieved by the judgment and order dated 26.03.2021, passed in C.C.No.22049/2016 on the file of XXVI Additional Chief Metropolitan Magistrate, Bangalore City, (hereinafter referred to as 'the Trial Court') by which the accused-respondent has been acquitted of the offences punishable under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'the N.I. Act').

2. The facts of the case are ;

2.1 That complainant-appellant namely, M/s. Srimatha Mahila Sahakari Bank Niyamitha, is a Co-Operative Bank registered under the Karnataka Co-operative Societies Act. Accused-respondent is its member. That one Smt. Shobha had applied for sanction of overdraft facility in a sum of Rs.20,00,000/- from the appellant-Society for the purpose of



business i.e., for purchase of vehicles vide application dated 19.10.2010.

2.2 That the said loan was sanctioned and a sum of the Rs.20,00,000/- was disbursed on 27.10.2010. Accused-respondent has stood as a guarantor to the said loan facility. Necessary loan documents were executed.

2.3 That the borrower-Smt. Shobha defaulted in repayment of the loan amount, despite several requests and demands and issuance of notice. Appellant-Society therefore initiated the proceedings before the Joint Registrar of Co-operative Societies, Bangalore for recovery of loan dues vide dispute No.UBF/682/2015-16.

2.4 That the accused-respondent herein was arrayed as respondent No.2 in the said dispute. Accused-respondent who appeared in the said proceedings admitted the claim of the appellant-Society and had undertaken to repay the loan, in furtherance thereof, he had issued a Cheque bearing No.084463 dated 30.07.2016 drawn on M/s. Tumkur Grain Merchants Co-operative Bank Ltd., Basaveshwaranagar Branch, Bengaluru for sum of Rs.15,14,180/-, towards discharge of



liability, which was the total outstanding payable by the borrower-Smt. Shobha as of the said date.

2.5 That on presentation of the said cheque for encashment, the same returned with an endorsement dated 04.08.2016 as "funds insufficient".

2.6 That the appellant-Society issued statutory notice on 06.08.2016 through Registered Post Acknowledgment Due which was duly served on the Accused-respondent. Despite receipt of the said notice, he has neither replied nor paid the cheque amount.

2.7 Consequently, complaint under Section 200 came to be filed. Cognizance was taken. Sworn statement was recorded. Summons were issued. Accused-respondent who appeared was enlarged on bail. Since he pleaded not guilty, matter was set down for trial.

3. One Smt. Premakala, the Branch Manager of the appellant-Society was examined on behalf of the complainant-Society as PW.1 and exhibited 18 documents marked as Ex.P1 to Ex.P18. The statement of accused-respondent was recorded



under Section 313 Cr.P.C, wherein he has denied the incriminating evidence brought against him. Accused-respondent did not lead any evidence and four documents were confronted on behalf of the accused-respondent, which is marked as Exs.D1 and D4.

4. The Trial Court framed the following points for its consideration:

" 1) Whether the Complainant society proves that, the accused to discharge of legally recoverable debt or other liability issued the alleged cheque bearing No.084463 dated 30.07.2016 drawn on M/s. Tumkur Grain Merchants Co-operative Bank Ltd. Basaveshwaranagar Branch, Bangalore for Rs.15,14,180/-?"

2) Whether the Complainant society proves that, on presentation of said cheque, same was returned unpaid as "Funds insufficient" and despite of giving legal notice, he failed to pay the cheque amount, thereby he committed an offence punishable under Section 138 of NI Act?

3) What order? "

5. On appreciation of evidence, trial Court answered point Nos.1 and 2 in the negative, consequently passed the impugned judgment and order acquitting the accused-respondent. Being aggrieved, the present appeal.

6. Learned counsel for the appellant-Society reiterating the grounds urged in the memorandum of appeal submits;



(a) that the impugned judgment and order passed by the trial Court acquitting the accused-respondent is contrary to the settled principles of law, when the issuance of cheque is not disputed by the accused-respondent. The statutory presumption contemplated under Section 118 of the N.I. Act, ought to have been drawn by the trial Court instead of casting the burden on the appellant-Society to prove its case.

(b) That the trial Court has misread the documents to arrive at a wrong conclusion of PW1 not having authority to represent the appellant-Society, despite production of documents namely, Exs.P1, P17 and P18 evidencing PW1 having been duly authorized to represent and prosecute the case.

(c) The trial Court has unnecessarily gone into the loan documents which were produced by the appellant-Society in justification of their claim and has come to erroneous conclusion of said loan documents not justifying the claim made by the appellant-Society.

(d) That the trial Court has also erroneously found that there was no prior notice issued by the appellant-Society to the



accused before presenting the cheque for encashment which is neither the requirement of law nor of the facts of the present case.

(e) When the cheque in question has been admittedly issued by the accused-respondent, the trial Court ought not to have held that appellant-Society has not produced relevant documents to show issuance of the cheque, merely, because in the order sheet of the dispute No.UBF/682/2015-16 produced at Exs.P12 and P13, there is no mention of the cheque. The trial court ought not to have held that no cheque was issued at all contrary to the very defence setup by the accused-respondent.

(f) That the trial court has further erred in holding that the accused-respondent could not have been burdened to pay the entire amount in one go and the cheque ought to have been issued in installments, which is unfounded and contrary to the material evidence.

7. In support of the submissions, he relies upon the judgment of the Hon'ble Apex Court in the case of ***United Bank of India Vs. Naresh Kumar and others*** reported in



(1996) 6 SCC 660, on the point of authorization to represent a company and the defect which is curable in nature.

8. He further relies upon judgment of the High Court of Gauhati in the case of **M/s. Amprolisa Construction and Marketing Pvt. Ltd., Vs. Gupta Hardware Pvt. Ltd., and another** in **Crl.Pet.No.1263/2022** decided on **03.12.2025** to contend that absence of board resolution or authorization for filing a complaint under Section 138 of the N.I. Act is a curable defect and not a ground to quash the proceedings.

9. He also relies upon the judgment of the **ICDS Ltd. Vs. Beena Shabeer and another** reported in **(2002) 6 SCC 426**, on the point of maintainability of complaint against the guarantor under Section 138 of the N.I. Act.

Thus, he submits that the trial Court has erred in acquitting the accused-respondent. Hence, seeks for allowing of the appeal.

10. Learned counsel appearing for the accused-respondent submits;



(a) that the defect in the nature of lack of authorization to file and prosecute a complaint under Section 138 of the N.I. Act is not curable as it has a severe penal consequences and the same cannot be construed lightly.

(b) That PW1-Bank Manager in the cross examination recorded on 08.03.2017 in C.C.No.22063/2016, has admitted regarding she not having been duly authorized at the time of filing of the complaint. Further, she has admitted that there was no authorization in her favour to present the complaint and that no board resolution was passed authorized in her name, appointing her to represent the appellant-Society.

(c) That she has also admitted Ex.P1 to be a back dated document clearly establishing that a appellant-Society has resorted to fabricating the document, which the trial Court has rightly taken note of.

(d) He relies upon the judgment of the Co-ordinate Bench of this Court, in the case of ***Dr. Uma Gangadhar Vs. Classic Coffee and Spices Pvt. Ltd., Chikkamagaluru*** reported in ***(2001)6 Kant LJ 193***, referring to paragraph Nos.8 and 9 of the said judgment, he submits that a valid sanction and



authorization is essential to launch a prosecution without which the entire proceeding stands vitiated.

(e) That the trial Court apart from the issue of authorization has also adverted to merits of the case. That the loan documents furnished by the appellant-society had inherent defects in the nature of differences in the signature of the borrower and some of the loan documents did not contain the name of accused-respondent to be the guarantor. Some of the documents where the name of accused-respondent was shown as a guarantor were incomplete.

(f) That in the order sheet maintained by the Additional Registrar of Cooperative Society, there is no mention of the cheque number or the amount to which the cheques having been issued. Even in the authorization at Ex.P1 or in the resolution, there is no details of the cheques issued by the accused- respondent.

(g) All that the accused required is to make out a probable defence and he need not even enter the witness box, which the accused-respondent herein has done successfully in



the instant case and the trial Court is justified in acquitting him warranting no interference at the hands of this Court.

Hence seeks for dismissal of the appeal.

11. Heard and perused the records.

12. Points that arise for consideration are;

(i) Whether the accused-respondent had issued the Cheque bearing No.084463 dated 30.07.2016 towards discharge of legally recoverable debt?

(ii) Whether the judgment and order passed by the trial Court acquitting the accused-respondent is justified?

(iii) What Order?

13. The facts of the case narrated above do not require reiteration.

14. The trial Court in the impugned judgments while acquitting the accused-respondent has held;

(a) that PW1 was not duly authorized by the CEO of the appellant-Society. That though subsequent board resolution extracts were produced, there was no specific resolution in favour of the Manager of the appellant-Society to file the case



on hand. As such, it is held PW1-Manager at the appellant-Society was not authorized as she did not have valid authorization.

(b) That though the PW1 has admitted in the cross examination regarding accused-respondent having given the cheque after filing of the dispute before the ARCS, she has not produced document to show that the accused-respondent had given the alleged cheque towards discharge of the liability as a guarantor.

(c) That the appellant-Society ought to have issued a notice to the accused-respondent before presenting the cheque, calling upon him to maintain the sufficient balance to honor the cheque. That in the absence of issuance of such cheque, appellant-Society could not have expected the accused-respondent to maintain the cheque amount.

(d) That the appellant-society had not followed the proper procedure while granting the loan. That it had not verified the vehicle details and its earlier hypothecation. It has not followed the terms and conditions while sanctioning the loan. It has not produced the records to show the date of sanction of the loan.



(e) Thus, there are irregularities in sanctioning the loans and disbursement of the amount. As such, the appellant-Society cannot fix the criminal liability on the accused-respondent for a huge cheque amount of Rs.15,14,180/-. That the cheques were taken blank for the security purpose, it cannot be utilized for discharge of the liability.

(f) That since the appellant-Society has not issued notice before presenting the cheque for encashment of entire loan and there is no agreement between accused-respondent and the appellant-Society to fill the blank cheques, the accused-respondent cannot be burdened for payment of huge amount of Rs.15,14,180/-.

(g) That the above circumstances would prove the defence putforth by the accused-respondent that he did not issue the cheque towards discharge of the debt to be probable and convincing.

Based on the above reasoning, trial Court has proceeded to acquit the accused-respondent.



15. Before advertng to the submissions and the reasoning assigned by the trial Court as noted above, it is relevant to encapsulate few judgments of the Hon'ble Apex Court on the settled position of law regarding the statutory presumptions available to the appellant-Society. In the case of ***Sanjabji Tari Vs. Kishore S. Borcar and another*** reported in ***(2025) SCC Online 2069***, the Hon'ble Apex Court at paragraph Nos.11 to 18, 29 and 30 has held as under:

"11. Having heard learned counsel for the parties, this court is of the view that it is essential to first outline the scope and intent of Chapter XVII (sections 138 to 148) of the Negotiable Instruments Act, which has been inserted by Act, 66 of 1988 with effect from April 1, 1989.

12. The Statement of Objects and Reasons of Act, 66 of 1988 states, "... to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of funds in the accounts or for the reason that it exceeds the arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers."

13. The provisions contained in Chapter XVII provide that where any cheque drawn by a person for the discharge of any liability is returned by the bank unpaid for the reason of the insufficiency of the amount of money standing to the credit of the account on which the cheque was drawn or for the reason that it exceeds the arrangements made by the drawer of the cheque with the banker for that account, the drawer of such cheque shall be deemed to have committed an offence. In that case, the drawer, without prejudice to the other provisions of the said Act, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

14. Consequently, this court is of the view that the intent behind introducing Chapter XVII is to restore the credibility of cheques as a trustworthy substitute for cash payment and to promote a culture of using cheques. Further, by criminalizing the act of issuing cheques without sufficient funds or for other specified reasons, the law promotes financial discipline, discourages irresponsible practices and allows for a more efficient and timely resolution of disputes compared



to the previous pure civil remedy which was found to involve the payee in a long-drawn out process of litigation.

Once execution of cheque is admitted, presumptions under sections 118 and 139 of the Negotiable Instruments Act, arise

15. In the present case, the cheque in question has admittedly been signed by respondent No. 1-accused. This court is of the view that once the execution of the cheque is admitted, the presumption under section 118 of the Negotiable Instruments Act, that the cheque in question was drawn for consideration and the presumption under section 139 of the Negotiable Instruments Act, that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability arise against the accused. It is pertinent to mention that observations to the contrary by a two-judge Bench in Krishna Janardhan Bhat v. Dattatraya G. Hegde [(2008) 141 Comp Cas 665 (SC); (2008) 4 SCC 54; (2008) 2 SCC (Cri) 166; 2008 SCC OnLine SC 106.] have been set aside by a three-judge Bench in Rangappa v. Sri Mohan [(2010) 11 SCC 441; (2010) 4 SCC (Civ) 477; (2011) 1 SCC (Cri) 184; 2010 SCC OnLine SC 583.] .

16. This court is further of the view that by creating this presumption, the law reinforces the reliability of cheques as a mode of payment in commercial transactions.

17. Needless to mention that the presumption contemplated under section 139 of the Negotiable Instruments Act, is a rebuttable presumption. However, the initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused/drawer of the cheque (see : Bir Singh v. Mukesh Kumar [(2019) 5 Comp Cas-OL 560 (SC); (2019) 4 SCC 197; (2019) 2 SCC (Cri) 40; (2019) 2 SCC (Civ) 309; 2019 SCC OnLine SC 138.] .

18. The judgment of this court in APS Forex Services P. Ltd. v. Shakti International Fashion Linkers [(2020) 12 SCC 724; (2020) 4 SCC (Cri) 505; 2020 SCC OnLine SC 193.] relied upon by learned counsel for respondent No. 1-accused only says that the presumption under section 139 of the Negotiable Instruments Act is rebuttable and when the same is rebutted, the onus would shift back to the complainant to prove his financial capacity, more particularly, when it is a case of giving loan by cash. This judgment nowhere states, as was sought to be contended by learned counsel for respondent No. 1-accused, that in cases of dishonour of cheques, in lieu of cash loans, the presumption under section 139 of the Negotiable Instruments Act does not arise.

Approach of some courts below to not give effect to the presumptions under sections 118 and 139 of the Negotiable Instruments Act, is contrary to mandate of Parliament

29. Furthermore, the fact that the accused has failed to reply to the statutory notice under section 138 of the Negotiable Instruments Act, leads to an inference that there is merit in the appellant-complainant's version. This court in Tedhi Singh v. Narayan Dass Mahant [(2022) 6



SCC 735; (2022) 2 SCC (Cri) 726; (2022) 3 SCC (Civ) 442; 2022 SCC OnLine SC 302.] has held that the accused has the initial burden to set up the defence in his reply to the demand notice that the complainant did not have the financial capacity to advance the loan. The relevant portion of the said judgment is reproduced hereinbelow [See page 740 of (2022) 6 SCC.] :

"10. The proceedings under section 138 of the Negotiable Instruments 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."

30. This court in *M.M.T.C. Ltd. v. Medchl Chemicals and Pharma P. Ltd.* [(2002) 108 Comp Cas 48 (SC); (2002) 1 SCC 234; 2002 SCC (Cri) 121; 2001 SCC OnLine SC 1364.] has specifically held that when a statutory notice is not replied, it has to be presumed that the cheque was issued towards the discharge of liability."

16. In the case of **Ashok Singh Vs. State of Uttar**

Pradesh reported in **2025 Live Law (SC) 383**, at paragraph

Nos. 15 to 17 has held as under:

"15. There can be no dispute that in matters relating to alleged offences under Section 138 of the Act, the complainant has only to establish that the cheque was genuine, presented within time and upon it being dishonoured, due notice was sent within 30 days of such dishonour, to which re-payment must be received within 15 days, failing which a complaint can be preferred by the complainant within one month as contemplated under Section 142 (1)(b) of the Act."



16. On the other hand, the foremost defence available to the accused is to deny the very liability to pay the amount for which the cheque was issued on the ground that it was not a 'legally enforceable debt' under the Act.

17. In the present case, there is no denial apropos the signature on the cheque by the respondent no.2 and, as noted hereinbefore, the stand taken is that the said cheque was lost. This is the reason given by the respondent no.2 to have advised the bank to stop payment due to which the cheque in question was not honoured/encashed. However, the relevant dates beg to tell a different tale. The cheque in question dated 17.03.2010 was presented within time but returned un-encashed on 07.05.2010 with the endorsement 'payment stopped by drawer'. A Legal Notice was also sent by the appellant on 18.05.2010 through Registered Post, i.e., within the stipulated thirty days period, intimating about the dishonour of the cheque. As no reply was proffered by respondent no.2, thus, an inference, albeit rebuttable, could arise that he had no sustainable/valid defence to justify why the cheque in question was dishonoured. Be that as it may, the respondent no.2 avers that no reply was sent as he had not received any Legal Notice. "

17. In the case of **Rajesh Jain Vs. Ajay Singh** reported in **(2023) 10 SCC 148**, at paragraph Nos.28, 29 and 32 to 37 has held as under:

" Burden of proof and presumptions : Conceptual underpinnings

28. There are two senses in which the phrase "burden of proof" is used in the Evidence Act, 1872 ("the Evidence Act" hereinafter). One is the burden of proof arising as a matter of pleading and the other is the one which deals with the question as to who has first to prove a particular fact. The former is called the "legal burden" and it never shifts, the latter is called the "evidential burden" and it shifts from one side to the other. [See *Kundan Lal Rallaram v. Custodian (Evacuee Property)* [*Kundan Lal Rallaram v. Custodian (Evacuee Property)*, 1961 SCC OnLine SC 10 : AIR 1961 SC 1316] .]

29. The legal burden is the burden of proof which remains constant throughout a trial. It is the burden of establishing the facts and contentions which will support a party's case. If, at the conclusion of the trial a party has failed to establish these to the appropriate standards, he would lose to stand. The incidence of the burden is usually clear from the pleadings and usually, it is incumbent on the plaintiff or complainant to prove what he pleaded or contends. On the other hand, the evidential burden may shift from one party to another as the trial progresses according to the balance of evidence given at any particular stage; the burden rests upon the party who would fail if no evidence at all, or no further evidence, as the case may be is



adduced by either side (see Halsbury's Laws of England, 4th Edn. para 13). While the former, the legal burden arising on the pleadings is mentioned in Section 101 of the Evidence Act, the latter, the evidential burden, is referred to in Section 102 thereof. [G. Vasu v. Syed Yaseen Sifuddin Quadri [G. Vasu v. Syed Yaseen Sifuddin Quadri, 1986 SCC OnLine AP 147 : AIR 1987 AP 139] affirmed in Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal [Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal, (1999) 3 SCC 35] .]

32. The Evidence Act provides for presumptions, which fit within one of three forms: "may presume" (rebuttable presumptions of fact), "shall presume" (rebuttable presumption of law) and conclusive presumptions (irrebuttable presumption of law). The distinction between "may presume" and "shall presume" clauses is that, as regards the former, the Court has an option to raise the presumption or not, but in the latter case, the Court must necessarily raise the presumption. If in a case the Court has an option to raise the presumption and raises the presumption, the distinction between the two categories of presumptions ceases and the fact is presumed, unless and until it is disproved. [G. Vasu v. Syed Yaseen Sifuddin Quadri [G. Vasu v. Syed Yaseen Sifuddin Quadri, 1986 SCC OnLine AP 147 : AIR 1987 AP 139]]

Section 139, NI Act-Effect of presumption and shifting of onus of proof

33. The NI Act provides for two presumptions : Section 118 and Section 139. Section 118 of the Act inter alia directs that it shall be presumed, until the contrary is proved, that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that "unless the contrary is proved, it shall be presumed, that the holder of the cheque received the cheque, for the discharge of, whole or part of any debt or liability". It will be seen that the "presumed fact" directly relates to one of the crucial ingredients necessary to sustain a conviction under Section 138. [The rules discussed hereinbelow are common to both the presumptions under Section 139 and Section 118 and are hence, not repeated—reference to one can be taken as reference to another]

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

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



Drum Mfg. Co. v. Amin Chand Payrelal [Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal, (1999) 3 SCC 35]]

36. Recently, this Court has gone to the extent of holding that presumption takes effect even in a situation where the accused contends that a blank cheque leaf was voluntarily signed and handed over by him to the complainant. [*Bir Singh v. Mukesh Kumar [Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197 : (2019) 2 SCC (Civ) 309 : (2019) 2 SCC (Cri) 40]]. Therefore, mere admission of the drawer's signature, without admitting the execution of the entire contents in the cheque, is now sufficient to trigger the presumption.*

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

18. In the case of **Hithan B. Dalal Vs. Brathindranath Banerjee** reported in **(2001) 6 SCC 16**, wherein at paragraph Nos.21 to 24 has held as under:

" 21. The appellant's submission that the cheques were not drawn for the "discharge in whole or in part of any debt or other liability" is answered by the third presumption available to the Bank under Section 139 of the Negotiable Instruments Act. This section provides that:

"139. 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."

The effect of these presumptions is to place the evidential burden on the appellant of proving that the cheque was not received by the Bank towards the discharge of any liability.

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, as noted in *State of Madras v. A. Vaidyanatha Iyer [AIR 1958 SC 61 : 1958 Cri LJ 232]* 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." (*Ibid.* at p. 65,



para 14.) 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" [Section 3, Evidence Act] .

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".

24. Judicial statements have differed as to the quantum of rebutting evidence required. In Kundan Lal Rallaram v. Custodian, Evacuee Property [AIR 1961 SC 1316] this Court held that the presumption of law under Section 118 of the Negotiable Instruments Act could be rebutted, in certain circumstances, by a presumption of fact raised under Section 114 of the Evidence Act. The decision must be limited to the facts of that case. The more authoritative view has been laid down in the subsequent decision of the Constitution Bench in Dhanvantrai Balwantrai Desai v. State of Maharashtra [AIR 1964 SC 575 : (1964) 1 Cri LJ 437] where this Court reiterated the principle enunciated in State of Madras v. Vaidyanatha Iyer [AIR 1958 SC 61 : 1958 Cri LJ 232] 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 the accused. On the other hand in the case of a mandatory presumption

"the burden resting on the accused person in such a case would not be as light as it is where a presumption is raised under Section 114 of the Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The words 'unless the contrary is proved' which occur in this provision make it clear that the presumption has to be rebutted by 'proof' and



not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted". (AIR p. 580, para 12)"

19. Thus as seen above, settled principle of law repeatedly reiterated by the Hon'ble Apex Court is that once signature and issuance of a cheque is admitted, the statutory presumption has to be necessarily drawn in favour of the complainant. Though the accused is entitled for rebuttal of the same, the rebuttal has to be specific, cogent, acceptable and true. It cannot be a mere denial or in the nature of general suggestions.

20. The aforesaid enunciation of law by the Hon'ble Apex Court also emphasizes that the accused is required to place his defence at the earliest, i.e., in response to the notice that is issued.

21. In the instant case, there is no dispute of accused-respondent being a guarantor to the loans borrowed by the original borrower. There is also no dispute of the fact that the accused-respondent has indeed issued the cheque. There is also no dispute of the fact that the appellant-Society had



initiated proceedings under Section 70 of the Co-operative Societies Act against the principal borrower as respondent No.1 and accused-respondent herein as respondent No.2, in a case No.UBF No.682/2015-16, in which the amount of recovery sought for is Rs.13,43,788/-. The Principal borrower as well as the accused-respondent appeared and represented through their respective counsel, the daily order sheet maintained in the said proceeding, more particularly, of 04.03.2016 read as under:

"ಪ್ರಕರಣ ಕರೆಸಲಾಯಿತು. ವಾದಿ ಹಾಗೂ ಪರ ವಕೀಲರು ಹಾಜರಿ. ಪ್ರತಿವಾದಿ-2 ಹಾಗೂ ಪರ ವಕೀಲರು ಹಾಜರಿ. ಉಳಿದವರು ಗೈರು. ಆರ್-2ರವರು ಕಾಲಾವಕಾಶ ನಿಡಿದ್ದಲ್ಲಿ, ಪೂರ್ಣ ಸಾಲ ಪಾವತಿಸುವುದಾಗಿ ತಿಳಿಸಿದ್ದರ ಮೇರೆಗೆ, ಆರ್.ರವರ ಆಕ್ಷೇಪಣೆಗಾಗಿ ಹಾಗೂ ವಾದಿಯ ಸ್ವಾಸ್ಥ್ಯಕ್ಕಾಗಿ ಪ್ರಕರಣವನ್ನು ದಿನಾಂಕ: 16.03.2016ರ ಮಧ್ಯಾಹ್ನ 3.00 ಗಂಟೆಗೆ ಮುಂದೂಡಲಾಯಿತು".

22. There is no dispute with regard to the aforesaid Order passed by the Additional Registrar of Cooperative Society.

23. Clearly, the accused-respondent who participated in the dispute under Section 70 of the Karnataka Cooperative Societies Act, before the Additional Registrar of Cooperative Society was conscious of the submissions made and undertaking given by him for repayment of the outstanding loan amount.



24. The notice issued as required under Section 138 of N.I. Act, has admittedly been received by the accused-respondent and he has not issued any reply to the same.

25. These admitted facts supported by the documents compel the Court to draw the mandatory presumption available under the law, regarding accused-respondent having issued the cheque towards the discharge of legally recoverable debt.

26. The lengthy line of cross-examination adopted by the accused-respondent indicate that the dispute raised by him is predominantly with regard to the lack of authorization by the appellant-Society in favour of PW1.

27. Learned counsel for the accused-respondent referred to the portions of deposition of PW1 recorded on 01.03.2017 in and cross-examination recorded on 19.05.2018 and 08.06.2018, the said portions are extracted hereunder for immediate perusal:

Cross-examination recorded on 01.03.2017:

" It is true that resolution has not been passed in the board meeting authorizing me to file complaint and conduct the case. It is not true to suggest that I have not been given proper authorization to conduct the case."



Cross-examination recorded on 19.05.2018:

" ಸ್ವ ಇಚ್ಛಾ ಹೇಳಿಕೆಯ ಜೊತೆಗೆ ಅಧಿಕಾರ ಪತ್ರವನ್ನು ಹಾಜರುಪಡಿಸಿದ್ದೇನೆ. ಸದರಿ ಅಧಿಕಾರ ಪತ್ರವು ದೂರು ದಾಖಲಿಸುವ ಸಂದರ್ಭದಲ್ಲಿ ಇದ್ದಿದ್ದರೆ ಅದನ್ನು ದೂರಿನ ಜೊತೆಗೆ ಹಾಜರುಪಡಿಸುತ್ತಿದ್ದೆ ಎಂದರೆ ಸಾಕ್ಷಿ ಆ ಸಮಯಕ್ಕೆ ಅಧಿಕಾರ ಪತ್ರ ಇರಲಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ನಂತರ ಸ್ವ ಇಚ್ಛಾ ಹೇಳಿಕೆಯ ಸಮಯದಲ್ಲಿ ಅಧಿಕಾರ ಪತ್ರವನ್ನು ಪಡೆದುಕೊಂಡು ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹಾಜರುಪಡಿಸಿದ್ದೇನೆ ಎಂದರೆ ಸರಿ. ಸದರಿ ಅಧಿಕಾರ ಪತ್ರವನ್ನು ದಿ.05.09.2016 ಎಂದು ಹಿಂದಿನ ದಿನಾಂಕವನ್ನು ನಮೂದಿಸಿ ಪಡೆದುಕೊಂಡಿದ್ದೇನೆ ಎಂದರೆ ಸರಿ."

Cross-examination recorded on 08.06.2018:

".. ಕೇಸು ದಾಖಲು ಮಾಡುವಾಗ ಬೋರ್ಡ್ ರೆಸಲ್ಯೂಶನ್ ಅಥವಾ ಬೋರ್ಡ್ ರೆಸಲ್ಯೂಶನ್ ಎಕ್ಸಾಕ್ಯೂಟ್ವನ್ನು ಹಾಜರುಪಡಿಸಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಸಾಕ್ಷಿಯು ಮುಂದುವರೆದು ನಂತರ ಆತರೈನೇಶನ್ ಹಾಜರುಪಡಿಸಿದ್ದೇವೆ, ಬೋರ್ಡ್ ರೆಸಲ್ಯೂಶನ್ ಹಾಜರುಪಡಿಸಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ಆ ದಿನ ಬೋರ್ಡ್ ರೆಸಲ್ಯೂಶನ್ ನಮ್ಮ ಬಳಿ ಇದ್ದಿದ್ದರೆ ಅದನ್ನು ಪಿರ್ಯಾದು ಜೊತೆ ಲಿಸ್ಟ್ ಆಫ್ ಡಾಕ್ಯುಮೆಂಟ್ಸ್ ನ್ನು ನಮೂದಿಸಲು ತೊಂದರೆ ಇರಲಿಲ್ಲ ಎಂದರೆ ನಮ್ಮ ಬಳಿ ದಾಖಲೆ ಇತ್ತು, ಆದರೆ ದಾಖಲೆಗಳ ಪಟ್ಟಿಯಲ್ಲಿ ನಮೂದಿಸಿಲ್ಲ ಎಂದು ನುಡಿಯುತ್ತಾರೆ."

28. Thus referring to the aforesaid three portions of the deposition, learned counsel for the accused-respondent vehemently submits that document at Ex.P1 is backdated and fabricated and cannot be relied upon. He also submitted that the witness has admitted there being no resolution in her name.

29. This Court is not persuaded to accept the said submission, inasmuch as there is no dispute with regard to the resolution dated 27.01.2015 produced at Ex.P18 as well as the resolution dated 12.05.2015 produced at Ex.P17. In the



resolution dated 27.06.2015, after discussion of issue, the following is recorded:

"Resolved that CEO can authorise manager to represent bank to sign, give evidence, present or take back documents in legal proceedings. The meeting concluded with vote of thanks."

30. This Resolution indicates that CEO has been authorized to further authorize manager to represent the Bank.

31. Ex.P17-Resolution dated 12.05.2015, relevant portion read as under:

" It was decided to file suit against all 16 vehicle loan borrowers, also against Mr. Manjunath B. S. and Vasanth Kokil, who have given cheque as guarantors to other loan borrowers."

32. All that the witness PW1 has stated is that the resolution is not been passed in the board meeting authorizing her to file the complaint. True it is that her name is not mentioned in the said resolution. Instead, it is resolved that the CEO to authorize the Manager. The said answer may have to be read only to that extent and not beyond.

33. Ex.P1 is a letter of authority in the letterhead of the appellant-Society issued by the CEO. The date of the said authorization is 05.09.2016. Sworn statement by way of an



affidavit is defined on 26.09.2016. It is in this context, the deposition regarding earlier date of Ex.P1 as deposed by PW1 has to be viewed. Even if it is assuming that PW1 has stated about she obtaining authorization as per Ex.P1, subsequent to the sworn statement with the prior date, in the considered view of this Court, same would not amount to an admission of purported fabrication of document as sought to be made out.

34. It is necessary to note that the complainant is a Co-operative Society incorporated exclusively for the empowerment of the women.

35. Apart from this there are ten other appeals arising out of similar facts situation and in all these appeals, accused-respondent is the guarantor. On a specific query of this Court, learned counsel for the appellant submits that all the borrowers are his family members and relatives and the vehicles to which the loan was borrowed were attached to the proprietary firm being run by the accused-respondent.

36. Clearly, public money has been utilised by the borrowers and the respondent-accused. Being conscious of his liability to repay has undertaken to pay the same as noted in



the daily order sheet maintained in the ARCS dispute. Having issued the cheque in furtherance to said undertaking, it is not justified for the accused-respondent to take up a contrary stand on a hyper technical issue of appellant-Society not being represented by a duly authorized representative despite production of Exs.P1, P17 and P18 as noted above.

37. It is relevant at this juncture to refer to the judgment of the Hon'ble Apex Court in the case of ***Haryana State Co-operative Supply and Marketing Federation Ltd., Vs. Jayam Textiles and Another*** reported ***AIR 2014 SCC 1926***, wherein at paragraph Nos.6 and 7 it is held as under:

" 6. Having heard the learned counsel for the parties and after perusing the material on record, we find that admittedly authorisation by the Board of Directors of the appellant Federation was not placed before the courts below. But, we may notice that a specific averment was made by the appellant Federation before the learned Judicial Magistrate that the said general power of attorney had been filed in connected case being CC No. 1409 of 1995, which has neither been denied nor disputed by the respondents. In any case, in our opinion, if the courts below were not satisfied, an opportunity ought to have been granted to the appellant Federation to place the document containing authorisation on record and prove the same in accordance with law. This is so because procedural defects and irregularities, which are curable, should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use.

7. In view of the fact that in spite of arbitration award against the respondents, there was non-payment of amount by the



respondents to the appellant Federation, and also in the light of authorisation contained in Annexure P/7, we are of the opinion that, in the facts and circumstances of the case, an opportunity should be given to the appellant Federation to produce and prove the authorisation before the trial court, more so, when money involved is public money. We, therefore, set aside the judgments of the courts below and remit the matters back to the trial court with a direction to conduct trial afresh taking into consideration the authorisation placed before us and dispose of the matter as expeditiously as possible in accordance with law."

38. Thus the procedural defects and irregularities, if any, should not be allowed to defeat the substantive rights and to cause injustice. In the aforesaid case though the Hon'ble Apex Court has remanded the matter, there is no need in the instant case inasmuch as the documents were made available, therefore there is no question of remanding the matter.

39. The trial Court in the considered view of this Court has misread the facts of the case and has wrongly applied the principles of law, causing burden on the appellant-Society and has further erred in going into the appreciation of the contents of the loan documents, which is unwarranted.

40. The complainant has produced accounts statement pertaining to loan transactions at Ex.P11 indicating disbursement of the loan. Loan documents in the nature of loan agreement at Ex.P14 and hypothecation agreement at Ex.P15. These documents have been signed by both the



borrower as well as accused-respondent as guarantor. In the Cross-examination of PW.1, except general denial nothing is elicited. The accused-respondent has not led any evidence to discredit the version of complainant-Society. Accused-respondent has also not denied that the vehicles purchase of which these loans were advanced were used by the accused-respondent for his business.

41. The trial Court in the absence of any serious dispute with regard to the loan transactions and in the light of categorical admission of disbursement of loan by the complainant-Bank in favour of the borrower to which the accused-respondent herein was the guarantor ought not to have gone into question of mode and manner of repayment of loan amount. Particularly as on the date when the cheque was issued, proceedings were already initiated by the complainant-Bank under Section 70 of the Karnataka Co-operative Societies Act, before the ARCS, in which accused-respondent herein was arrayed as respondent No.2. The trial Court in the absence of production of any cogent evidence by the accused-respondent herein to displace proof of execution of loan documents at Exs.P11, P14 and P15



ought not to have discredited the case of the complainant-Bank.

42. The trial Court erred in holding that there was no agreement between the appellant-Society and the accused-respondent for payment of outstanding as he was a guarantor. As such, the cheque issued was not towards discharge of liability. Necessary to note the judgment of the Hon'ble Apex Court in the case of **ICDS Pvt Ltd.,** (Supra), wherein at paragraph Nos.8 to 11 held as under:

"8. The High Court, as noticed above, did allow the petition upon a categorical finding that being a cheque from the guarantor it could not be said to have been issued for the purpose of discharging any debt or liability and the complaint under Section 138 of the Negotiable Instruments Act, 1881, thus cannot be maintained.

9. As noticed hereinbefore, the principal reason for quashing of the proceeding as also the complaint by the High Court was by reason of the fact that Section 138 of the Act provides for issuance of a cheque to another person towards the discharge in whole or in part of any debt or liability and on the factual context, the High Court came to a conclusion that issuance of the cheque cannot be correlated for the purpose of discharging any debt or liability and as such complaint under Section 138 cannot be maintainable.

10. The language, however, has been rather specific as regards the intent of the legislature. The commencement of the section stands with the words "Where any cheque". The above noted three words are of extreme significance, in particular, by reason of the use of the word "any" — the first three words suggest that in fact for whatever reason if a cheque is drawn on an account maintained by him with a banker in favour of another person for the discharge of any debt or other liability, the highlighted words if read with the first three words at the



commencement of Section 138, leave no manner of doubt that for whatever reason it may be, the liability under this provision cannot be avoided in the event the same stands returned by the banker unpaid. The legislature has been careful enough to record not only discharge in whole or in part of any debt but the same includes other liability as well. This aspect of the matter has not been appreciated by the High Court, neither been dealt with or even referred to in the impugned judgment.

11. The issue as regards the coextensive liability of the guarantor and the principal debtor, in our view, is totally out of the purview of Section 138 of the Act, neither the same calls for any discussion therein. The language of the statute depicts the intent of the law-makers to the effect that wherever there is a default on the part of one in favour of another and in the event a cheque is issued in discharge of any debt or other liability there cannot be any restriction or embargo in the matter of application of the provisions of Section 138 of the Act. "Any cheque" and "other liability" are the two key expressions which stand as clarifying the legislative intent so as to bring the factual context within the ambit of the provisions of the statute. Any contra-interpretation would defeat the intent of the legislature. The High Court, it seems, got carried away by the issue of guarantee and guarantor's liability and thus has overlooked the true intent and purport of Section 138 of the Act. The judgments recorded in the order of the High Court do not have any relevance in the contextual facts and the same thus do not lend any assistance to the contentions raised by the respondents."

43. The trial Court has also found that the issuance of a cheque as a security could not have been used by the appellant-Society. This findings of the trial Court also contrary to law laid down by the Hon'ble Apex Court in the case of ***Sripathi Singh Vs. State of Jharkhand and another*** reported in ***(2022) 18 SCC 614***, wherein at paragraph Nos.21 held as under:



"21. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. "Security" in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified time-frame and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of the NI Act would flow."

44. For the aforesaid reasons and analysis and the documentary and oral evidence produced by the complainant-Bank, this Court is of the considered view that the complainant-appellant-Society has proved and established that the cheques in question were issued by the accused-respondent before discharge of the loan. The trial Court is not justified in acquitting the accused-respondent.

Point raised are answered accordingly.

45. Accordingly, following:



ORDER

(i) Appeal is ***allowed***. Judgment and order dated 26.03.2021, passed in C.C.No.22049/2016 on the file of XXVI Additional Chief Metropolitan Magistrate, Bangalore City is set-aside.

(ii) Accused-respondent is convicted for the offences punishable under Section 138 of the N.I. Act.

(iii) Accused-respondent shall pay the fine amount of Rs.15,20,000/-, in default accused-respondent shall undergo simple imprisonment for a period of one year.

(iv) Out of the fine amount, cheque amount shall be paid to the appellant-Society remaining shall be paid to the State.

**Sd/-
(M.G.S. KAMAL)
JUDGE**

RL
List No.: 1 Sl No.: 27