

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Acquittal Appeal (C) No.13 of 2025

[Against the judgment of acquittal dated 28.11.2024 passed by learned Sessions Judge, East Singhbhum, Jamshedpur in Criminal Appeal No.150 of 2024]

Purushottam Prasad Sharma, aged about 53 years, son of Sheo Dani Sharma, resident of G1, Shree Apartment, Naya Line, P.O. & P.S. Sonari, Town-Jamshedpur, District- East Singhbhum.

.... **Appellant(s)**

Versus

1. The State of Jharkhand

2. Moushami Devi, wife of Jitendra Pandey, resident of 68 Marine Drive, Near Bindal Mall, P.O. & P.S.-Sonari, Town-Jamshedpur, District East Singhbhum

.... **Respondent(s)**

PRESENT

HON'BLE MR. JUSTICE RAJESH KUMAR

For the Appellant(s)

: Mr. Vikas Kumar, Adv.

Mr. Agnivesh, Adv.

Mr. Abhinaw Kumar, Adv.

For the State

: Mr. Bishambhar Shastri, A.P.P.

For the Respondent No.2

: Mr. Shankar Singh, Adv.

By Court:

1. Heard learned counsel for the appellant(s); learned counsel for the State and learned counsel for the Respondent No.2.

2. The present appeal has been filed against the judgment of acquittal dated 28.11.2024 passed by the learned Sessions Judge, East Singhbhum, Jamshedpur in Criminal Appeal No.150 of 2024 whereby the judgment of conviction and order of sentence dated 25.06.2024 passed by the learned Judicial Magistrate, 1st Class, Jamshedpur in connection with Complaint Case No.2117 of 2023, has been set aside.

3. The case of the Appellant/Complainant, as emerging from the complaint petition, is that the parties were well acquainted to each other. On the request of respondent no.2 for financial assistance, the complainant advanced a sum of Rs.10,00,000/- in three instalments during February–

March, 2022, with an assurance of repayment within six months. In discharge of the said liability, respondent no.2 issued cheque no.000012 dated 02.12.2022 for Rs.10,00,000/-, which was dishonoured on 27.02.2023 for the reason “funds insufficient”. Despite issuance and service of legal notice dated 25.03.2023, the respondent failed to make payment within the stipulated period of 15 days, giving rise to the present case.

4. Upon conducting inquiry under Section 202 Cr.P.C., cognizance was taken under Section 138 of the N.I. Act and summon was issued. The accusation was explained to the accused, who denied the same and claimed to be tried.

5. The complainant, in support of the case, proved the documentary evidence including money receipt (Exhibit-1), original cheques (Exhibit-2), Return memo (Exhibit-3), legal notice (Exhibit-4), postal receipt (Exhibit-5), tracking report (Exhibit-6) and reply of legal notice (Exhibit-7).

6. Further, in order to prove the case, the complainant examined sole witness, CW-1 Purshottam Prasad Sharma. He deposed that the parties were well known to each other and on the request of the accused for financial assistance, a sum of Rs.10,00,000/- was advanced in three instalments during February–March, 2022 with a promise of repayment within six months. He further proved the money receipt (Ext.-1), cheque bearing no.000012 dated 02.12.2022 (Ext.-2), which on presentation was dishonoured on 27.02.2023 for “insufficient funds” (Ext.-3), and the legal notice dated 25.03.2023 (Ext.-4) along with postal receipt (Ext.-5), tracking report (Ext.-6) and reply (Ext.-7).

In cross-examination, CW-1 reiterated the loan transaction and stated that the amount was paid in three instalments in the presence of his wife. He admitted certain omissions in the legal notice, including non-mention of the purpose of loan and money receipt, but maintained that the cheque was issued towards discharge of liability.

The defence examined D.W.-1 Moushami Devi, who denied the transaction and her signatures on the cheque and money receipt. She claimed that the cheque was given for loan sanction and has been misused, and

produced her bank statement (Ext.-A). However, in cross-examination, she admitted acquaintance with the complainant and further admitted that no complaint was lodged regarding alleged misuse of cheque.

7. The accused, in her statement under Section 313 Cr.P.C., denied the allegations and did not substantiate any probable defence.

8. The learned trial court, after appreciating the evidence on record, convicted the respondent no.2 under Section 138 of the N.I. Act and sentenced her to undergo simple imprisonment for one year along with compensation to the complainant vide judgment dated 25.06.2024 passed in C/1 Case No.2117 of 2023.

9. Being aggrieved by the said judgment of conviction and order of sentence, the respondent no.2 preferred an appeal being Criminal Appeal No.150 of 2024 in the court of learned Sessions Judge, East-Singhbhum at Jamshedpur and vide judgment dated 28.11.2024, the appellate court has acquitted the respondent No.2 on the ground that the offence under Section 138 of the N.I Act is not made out.

10. The dates and the factual matrix of the case have not been disputed by either of the parties.

11. Learned counsel for the appellant has submitted that there is a presumption in favour of the holder in due course of the cheque that it has been issued in discharge of a legal liability and the onus lies upon the opponent to prove otherwise. In the present case, the appellant is the holder in due course of the cheque. The following dates have been referred by the learned counsel:

- (i) The cheque was issued on 02.12.2022.
- (ii) Presentation of the cheque is dated 27.02.2023 and on the same day it has been dishonoured stating insufficient fund.
- (iii) 25.03.2023 is the issuance of the legal notice.
- (iv) 27.03.2023 is the receipt of the legal notice.
- (v) 05.04.2023 is the reply of the legal notice and
- (vi) 26.04.2023 is the filing of the present case.

12. Thus, the entire parameter of Section 138 of N.I. Act has been complied and on above consideration the original court had convicted the respondent No.2 but the appellate court has wrongly acquitted her assigning the reason that the appellant has failed to prove that it was in discharge of the legal duty which is otherwise onus lies upon the accused person.

13. On the other hand, learned counsel for the other side has submitted that the judgment of acquittal is wholly justified, for this he has made the following submissions:

(i) The complainant in the complaint petition has stated that it was a friendly loan given for the construction of the house and if this fact is accepted then it is not legally enforceable dues and as such no offence under Section 138 N.I. Act is made out.

(ii) The complainant himself has stated in the complaint petition that it is a friendly loan of rupees ten lakhs while in his deposition he has clearly stated that he has given rupees four lakhs and three lakhs in two different instalments as a friendly loan.

(iii) The Exhibit-1 is the money receipt which suggest that the transaction was for sale and purchase of the property.

14. Referring to the above discrepancies, it has been submitted by the learned counsel for the other side that the entire allegation is false and frivolous rather money has never been transacted and the cheque amount has been given as a security amount as because the applicant was a collecting agent and for security purpose the cheque has been issued and it is settled law that any cheque issued for security purpose cannot be utilised for the offence under Section 138 of the N.I. Act.

15. Learned counsel for the respondents has relied upon paragraph Nos.35, 36, 37, 38, 39 & 44 of the judgment of the Hon'ble Apex Court, passed in the case of ***Rajesh Jain Vs. Ajay Singh***, reported in (2023) 10 ***Supreme Court Cases 148***, which reads as under:

“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. Vs. Amin Chand Pyarela] [(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]. 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.

"38. John Henry Wigmore on Evidence states as follows: "The peculiar effect of the presumption of law is merely to invoke a rule of law compelling the Jury to reach the conclusion in the absence of evidence to the contrary from the opponent but if the opponent does offer evidence to the contrary (sufficient to satisfy the Judge's requirement of some evidence), the presumption 'disappears as a rule of law and the case is in the Jury's hands free from any rule."

39. The standard of proof to discharge this evidential burden is not as heavy as that usually seen in situations where the prosecution is required to prove the guilt of an accused. The accused is not expected to prove the nonexistence of the presumed fact beyond reasonable doubt. The accused must meet the standard of "preponderance of probabilities", similar to a defendant in a civil proceeding. [Rangappa v. Sri Mohan]

44. Therefore, in fine, it can be said that once the accused adduces evidence to the satisfaction of the Court that on a preponderance of probabilities there exists no debt/liability in the manner pleaded in the complaint or the demand notice or the affidavit-evidence, the burden shifts to the complainant and the presumption "disappears" and does not haunt the accused any longer. The onus having now shifted to the complainant, he will be obliged to prove the existence of a debt/liability as a matter of fact and his failure to prove would result in

dismissal of his complaint case. Thereafter, the presumption under Section 139 does not again come to the complainant's rescue. Once both parties have adduced evidence, the Court has to consider the same and the burden of proof loses all its importance. [Basalingappa v. Mudibasappa; see also, Rangappa v. Sri Mohan].”

16. Having heard the parties and from perusal of the records, it appears that:

(i) The law is settled that the presumption lies in favour of the holder in due course of the cheque.

(ii) The onus lies upon the accused person to rebut the presumption that means the evidence has to be brought on record justifying rebuttal by the accused person but this does not amount that evidence available on record cannot be scrutinized.

(iv) In the present case, evidence brought on record by the complainant himself suggest that his claim is full of lies.

(v) He has stated in his complaint petition that it was a friendly loan.

(vi) In his deposition, he has stated that he has given only seven lakhs that also proves that it was a friendly loan.

(vii) The document i.e. Exhibit-1 brought on record by the complainant himself suggests that it was for sale and purchase of the property.

17. Thus, the story built by the complainant is full of lies as is evident from the evidence brought on record by the complainant. The rebuttal has not to be proved beyond all reasonable doubts rather if a reasonable suspicion has been raised then the onus becomes neutral.

18. Thus, in view of above factual matrix available on record and the law laid down by the Hon'ble Apex Court, this Court finds that the judgment of acquittal requires no interference. Accordingly, the present acquittal appeal is thereby dismissed.