



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION NO. 1379 OF 2018

(397(Cr.PC) / 438(BNSS))

BETWEEN:

MR U HARISHCHANDRA THAMANKAR
AGED ABOUT 56 YEARS,
S/O LATE ULPE MAHADEVA THAMANKAR,
R/AT ULPE BANADATHOTA HOUSE,
PILLYA VILLAGE & POST,
BELTHANGADY TALUK,
D.K.DISTRICT-574214.

...PETITIONER

(BY SRI. K RAVISHANKAR, ADVOCATE)

AND:

MR VENKAPPA KOTIAN
S/O LATE KOOKRA POOJARY,
AGED ABOUT 43 YEARS,
YERMALA HOUSE,
INDABETTU VILLAGE,
BANGADY POST,
BELTHANGADY TALUK,
D K DISTRICT-574214.

...RESPONDENT

(RESPONDENT SERVED)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C.
PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF
CONVICTION DATED 04.11.2017 PASSED IN C.C.No.191/2014
PENDING ON THE FILE OF PRINCIPAL SENIOR CIVIL JUDGE
AND JMFC, BELTHANGADY AND ITS CONFIRMATION IN
CRL.A.No.161/2017 DATED 10.09.2018 PENDING ON THE FILE





OF THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K. MANGALORE AND CONSEQUENTLY ACQUIT THE PETITIONER FOR THE OFFENCE P/U/S 138 OF N.I ACT.

THIS PETITION, COMING ON FOR FINAL HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

Heard Sri K. Ravishankar, learned counsel for the revision petitioner. None appears for the respondent.

2. Accused who suffered an order of conviction for the offence punishable under Section 138 of the Negotiable Instruments Act in C.C.No.191/2014, confirmed by the First Appellate Court in CrI.A.No.161/2017 is the revision petitioner.

3. There is no dispute as to the issuance of cheque as the defence taken by the accused that the cheque is stolen is not established by placing necessary material evidence on record.

4. Pertinently, no action has been taken for the alleged issues. In another breath, the accused has also taken stand that the cheque in question was issued towards the security.



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5. Learned Trial magistrate after recording the oral evidence of PW1 permitted the defence to cross examine even in the absence of an application under Section 145(2) of the Negotiable Instruments Act, without following the principles of law enunciated in the case of ***Indian Bank Association and others vs Union of India and others*** reported in **(2014) 5 SCC 590**.

6. Nevertheless, the contents of the reply was put across to the complainant, which has been denied by him.

7. For the reasons best known to the accused, he failed to enter into the witness box and lead defence evidence.

8. Therefore, presumption available to the complainant under Section 139 of the Negotiable Instruments Act stood un rebutted.

9. Further, the plea that has been taken by the accused that the cheque was stolen in one breath and cheque was given as a security which has been misused at another breath stands not proved by placing any material evidence on record.



10. No normal prudent person would keep quiet if a cheque is misused especially when he has engaged the services of an Advocate who has extensively cross examined PW1.

11. Pertinently, cheque is in a sum of Rs.4,00,000/- and the same is issued in the year 2011.

12. Taking note of these aspects of the matter order of conviction recorded by the learned Trial Magistrate, confirmed by the First Appellate Court needs no interference.

13. However, learned counsel for the petitioner placed on record following judgments and wants to establish that the reasoning established by learned Trial Magistrate, confirmed by the First Appellate Court is incorrect.

- "1. (2025) Supreme SC 682-N Vijaya Kumar Vs. Vishwanath Rao N - Para 1, 3, 5, 6.3, 8, 9, 11 and 12.
2. (2024) 8 SCC 573-Dattatreya Vs. Sharanappa - Para 22 to 32
3. (2019) 5 SCC 418-Basalingappa Vs. Mudibasappa para 20, 23 to 26, 29 and 32
4. CrI.A. No.533/2015 dated 03/02/2025-HV Jagannatha Vs Prabhakar B J-para 3, 5, 10, 11, 13 and 17



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14. Relevant portions of those judgments are culled out hereunder for ready reference:

(i) ***N VIJAY KUMAR v. VISHWANATH RAO N, 2025 SCC ONLINE SC 873***

The present appeal is filed assailing the judgment dated 21st December 2020 passed by the High Court of Karnataka at Bengaluru in Criminal Appeal No. 94 of 2011, whereby the High Court reversed the order of acquittal passed by the Court of XV Additional Chief Metropolitan Magistrate, Bangalore City¹ and convicted the appellant-accused under Section 138 of the Negotiable Instruments Act, 1881.

3. *In the present special leave petition, while passing order on the application seeking exemption from surrendering, learned Judge in Chambers vide order dated 15th March 2021 directed Rs. 11,00,000/- (eleven lakh rupees) to be deposited with the Registry without prejudice to the rights and contentions. Notice was issued on 12th April 2021, and the remaining amount of Rs. 9,00,000/- (the total disputed amount being, allegedly, twenty lakh) was directed to be deposited within eight weeks. The operation of the impugned judgment was stayed. The amount stood deposited in the Registry of this Court.*

5. *The N.I. Act raises two presumptions, one under Section 118; and the other in Section 139 thereof. The Sections read as under:*

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

(a) of consideration:—that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

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139. Presumption in favour of holder.— *It shall be presumed, unless the contrary is proved, that the*



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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.”

6.3. A three-Judge Bench of this Court in Rangappa (*supra*) had the occasion to consider Section 139 elaborately. The Court reiterated that where the signature on the cheque is acknowledged, a presumption has to be raised that the cheque pertained to a legally enforceable debt or liability, however, this presumption is of a rebuttal nature and the onus is then on the accused to raise a probable defence. It was further stated that:

"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 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



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conceivable that in some cases the accused may not need to adduce evidence of his/her own."

8. *Now, in the instant facts, let us consider whether the presumption stands sufficiently rebutted or not. In the cross-examination of DW-1 (appellant) it has been stated that he had issued two blank signed cheques for availing the hand loan of Rs. 3,50,000/- (three lakh fifty thousand rupees) from the complainant. Further, the accused in the affidavit, submitted in the Trial Court, stated as under:*

"At that time I have approached the complainant for hand loan of Rs. 3,50,000/- (Rupees Three Lakhs Fifty Thousand only). At the time of giving the above said amount the complainant was took two blank cheques signed by me for security purpose and both the cheques were drawn on Canara Bank, SampangiRamanagara, Bangalore- 560 027."

9. *Very clearly, therefore, it can be seen that the cheques issued were against an enforceable debt and held by the complainant as such, even though there was no paperwork to that effect. The onus, as such, was shifted upon the other party, i.e., the accused, to raise a probable defence against such presumption.*

11. *Considering the sum total of the above, we find that the probable defence on the part of the accused has been established. Once such a defence is established, the burden again shifts upon the complainant to now establish his case beyond a reasonable doubt, for after all, the effect of Section 138 of the N.I. Act is a criminal conviction. Reference may be made to Rajesh Jain v. Ajay Singh¹² and, more particularly Para 44 thereof, which reads as under:*

"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*



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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 (Basalingappa v. Mudi basappa, (2019) 5 SCC 418 : (2019) 2 SCC (Cri) 571 : AIR 2019 SC 1983] ; see also, Rangappa v. Sri Mohan [Rangappa v. Sri Mohan, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184 : AIR 2010 SC 1898)]"

12. *In our considered view, the complainant has failed to discharge this burden. In his cross-examination, the complainant has stated as follows:*

"During the year 2002, I have paid loan to the accused on 7-8 times. I have maintained the account on which dates I have paid the loan to the accused. In that regard, I have subscribed my signatures in the book which was with the accused. Accused issued cheques for having obtained 7-8 times loan from me. I have paid the amount to the accused two times in my house and 5-6 times in my lodge. I have not obtained the receipt for having received the loan amount by the accused."

It has also come on record that the cheque, subject matter of controversy, was given to the complainant in the presence of common well-wishers. However, none of the above statements stands scrutiny. The alleged well-wishers who could have proved the discussion and context in which the cheque was given, remained unexamined. As stated by the complainant himself, there is no official record, such as income tax documents which would show that such an amount was extended by way of a loan to the accused, neither have the books of account, which the complainant allegedly maintained, being produced to evidence the seven or eight transactions inter se the parties totalling the claimed amount.



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(ii) (2024) 8 SCC 573 – Dattatreya vs. Sharanappa – Paragraphs 22 to 32:

22. *Therefore, it may be said that the liability of the defence in cases under Section 138 of the NI Act, 1881 is not that of proving its case beyond reasonable doubt.*

23. *In light of the aforesaid discussion, and as underscored by this Court recently in the decision of Rajesh Jain v. Ajay Singh [Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148 : (2023) 4 SCC (Civ) 567 : (2024) 1 SCC (Cri) 1] , an accused may establish non-existence of a debt or liability either through conclusive evidence that the cheque concerned was not issued towards the presumed debt or liability, or through adduction of circumstantial evidence vide standard of preponderance of probabilities.*

24. *Since a presumption only enables the holder to show a prima facie case, it can only survive before a court of law subject to contrary not having been proved to the effect that a cheque or negotiable instrument was not issued for a consideration or for discharge of any existing or future debt or liability. In this backdrop, it is pertinent to make a reference to a decision of three-Judge Bench in Bir Singh v. Mukesh Kumar [Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197 : (2019) 2 SCC (Civ) 309 : (2019) 2 SCC (Cri) 40] , which went on to hold that if a signature on a blank cheque stands admitted to having been inscribed voluntarily, it is sufficient to trigger a presumption under Section 139 of the NI Act, 1881, even if there is no admission to the effect of execution of entire contents in the cheque.*



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25. *It is therefore apposite to make a reference to the provision of Section 140 of the NI Act, 1881, which ruminates mens rea to be immaterial while dealing with proceedings under Section 138 of the NI Act, 1881. The said legislative wisdom of Parliament which is imbibed in the bare text of the provision is reproduced as below:*

"140. Defence which may not be allowed in any prosecution under Section 138.—*It shall not be a defence in a prosecution for an offence under Section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section."*

26. *Through this legal fiction adopted by the legislature vide Amendment Act of 1988 to the NI Act, 1881 it has barred the drawer of a cheque, which was dishonoured, to take a defence that at the time of issuance of the cheque in question he or she had no reason to believe that the same will be dishonoured upon being presented by the holder of such a cheque, especially and specifically for the reasons underlined in Section 138 of the NI Act, 1881.*

27. *A comprehensive reference to Sections 118, 139 and 140 of the NI Act, 1881 gives birth to a deemed fiction which was also articulated by this Court in K.N. Beena v. Muniyappan [K.N. Beena v. Muniyappan, (2001) 8 SCC 458 : 2002 SCC (Cri) 14] as follows : (SCC p. 459, para 6)*

"6. ... Under Section 118, unless the contrary was proved, it is to be presumed that the negotiable



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instrument (including a cheque) had been made or drawn for consideration. Under Section 139 the court has to presume, unless the contrary was proved, that the holder of the cheque received the cheque for discharge, in whole or in part, of a debt or liability. Thus in complaints under Section 138, the court has to presume that the cheque had been issued for a debt or liability. This presumption is rebuttable. However the burden of proving that a cheque had not been issued for a debt or liability is on the accused. The Supreme Court in Hiten P. Dalal v. Bratindranath Banerjee [Hiten P. Dalal v. Bratindranath Banerjee, (2001) 6 SCC 16 : 2001 SCC (Cri) 960] has also taken an identical view.”

28. *Furthermore, on the aspect of adducing evidence for rebuttal of the aforesaid statutory presumption, it is pertinent to cumulatively read the decisions of this Court in Rangappa [Rangappa v. Sri Mohan, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184] and Rajesh Jain [Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148 : (2023) 4 SCC (Civ) 567 : (2024) 1 SCC (Cri) 1] which would go on to clarify that the accused can undoubtedly place reliance on the materials adduced by the complainant, which would include not only the complainant's version in the original complaint, but also the case in the legal or demand notice, complainant's case at the trial, as also the plea of the accused in the reply notice, his Section 313CrPC, 1973 statement or at the trial as to the circumstances under which the promissory note or cheque was executed. The accused ought not to adduce*



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any further or new evidence from his end in the said circumstances to rebut the statutory presumption concerned.

29. *Applying the aforementioned legal position to the present factual matrix, it is apparent that there existed a contradiction in the complaint moved by the appellant as against his cross-examination relatable to the time of presentation of the cheque by the respondent as per the statements of the appellant. This is to the effect that while the appellant claimed the cheque to have been issued at the time of advancing of the loan as a security, however, as per his statement during the cross-examination it was revealed that the same was presented when an alleged demand for repayment of alleged loan amount was raised before the respondent, after a period of six months of advancement. Furthermore, there was no financial capacity or acknowledgment in his income tax returns by the appellant to the effect of having advanced a loan to the respondent. Even further the appellant has not been able to showcase as to when the said loan was advanced in favour of the respondent nor has he been able to explain as to how a cheque issued by the respondent allegedly in favour of Mr Mallikarjun landed in the hands of the instant holder, that is, the appellant.*

30. *Admittedly, the appellant was able to establish that the signature on the cheque in question was of the respondent and in regard to the decision of this Court in Bir Singh [Bir Singh v. Mukesh Kumar, (2019) 4 SCC*



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197 : (2019) 2 SCC (Civ) 309 : (2019) 2 SCC (Cri) 40] , a presumption is to ideally arise. However, in the aboveresferred context of the factual matrix, the inability of the appellant to put forth the details of the loan advanced, and his contradictory statements, the ratio therein would not impact the present case to the effect of giving rise to the statutory presumption under Section 139 of the NI Act, 1881. The respondent has been able to shift the weight of the scales of justice in his favour through the preponderance of probabilities.

31. *The trial court had rightly observed that the appellant was not able to plead even a valid existence of a legally recoverable debt as the very issuance of cheque is dubious based on the fallacies and contradictions in the evidence adduced by the parties. Furthermore, the fact that the respondent had inscribed his signature on the agreement drawn on a white paper and not on a stamp paper as presented by the appellant, creates another set of doubt in the case. Since the accused has been able to cast a shadow of doubt on the case presented by the appellant, he has therefore successfully rebutted the presumption stipulated by Section 139 of the NI Act, 1881.*

32. *Moreover, affirming the findings of the trial court, the High Court observed [Dattatraya v. Sharanappa, 2023 SCC OnLine Kar 235] that while the signature of the respondent on the cheque drawn by him as well as on the agreement between the parties herein stands admitted, in case where the concern of financial capacity of the creditor is*



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raised on behalf of an accused, the same is to be discharged by the complainant through leading of cogent evidence.”

(iii) (2019) 5 SCC418 – Basalingappa Vs. Mudibasappa paragraphs 20, 23 to 26, 29 and 32:

20. A three-Judge Bench of this Court in Rangappa v. Sri Mohan [Rangappa v. Sri Mohan, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184] had occasion to elaborately consider the provisions of Sections 138 and 139. In the above case, the trial court had acquitted the accused in a case relating to dishonour of cheque under Section 138. The High Court had reversed [Mohan v. Rangappa, 2005 SCC OnLine Kar 783] the judgment of the trial court convicting the accused. In the above case, the accused had admitted signatures on the cheque. This Court held that where the fact of signature on the cheque is acknowledged, a presumption has to be raised that the cheque pertained to a legally enforceable debt or liability, however, this presumption is of a rebuttal nature and the onus is then on the accused to raise a probable defence. In para 13, the following has been laid down: (SCC p. 446)

“13. The High Court in its order [Mohan v. Rangappa, 2005 SCC OnLine Kar 783] noted that in the course of the trial proceedings, the accused had admitted that the signature on the impugned cheque (No. 0886322 dated 8-2-2001) was indeed his own. Once this fact has been acknowledged, Section 139 of the Act mandates a presumption that the cheque pertained to a legally



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enforceable debt or liability. This presumption is of a rebuttal nature and the onus is then on the accused to raise a probable defence. With regard to the present facts, the High Court found that the defence raised by the accused was not probable.”

23. *We may now notice the judgment relied on by the learned counsel for the complainant i.e. judgment of this Court in Kishan Rao v. Shankargouda [Kishan Rao v. Shankargouda, (2018) 8 SCC 165 : (2018) 4 SCC (Civ) 37 : (2018) 3 SCC (Cri) 544] . This Court in the above case has examined Section 139 of the Act. In the above case, the only defence which was taken by the accused was that cheque was stolen by the appellant. The said defence was rejected by the trial court. In paras 21 to 23, the following was laid down: (SCC pp. 173-74)*

“21. In the present case, the trial court as well as the appellate court having found that cheque contained the signatures of the accused and it was given to the appellant to present in the Bank, the presumption under Section 139 was rightly raised which was not rebutted by the accused. The accused had not led any evidence to rebut the aforesaid presumption. The accused even did not come in the witness box to support his case. In the reply to the notice which was given by the appellant, the accused took the defence that the cheque was stolen by the appellant. The said defence was rejected by the trial court after considering the evidence on record with regard to which no contrary view has also been expressed [Shankargouda v. Kishan Rao, 2016 SCC OnLine Kar 8467] by the High Court.



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22. Another judgment which needs to be looked into is *Rangappa v. Sri Mohan* [*Rangappa v. Sri Mohan*, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184] . A three-Judge Bench of this Court had occasion to examine the presumption under Section 139 of the 1881 Act. This Court in the aforesaid case has held that in the event the accused is able to raise a probable defence which creates doubt with regard to the existence of a debt or liability, the presumption may fail. The following was laid down in paras 26 and 27: (SCC pp. 453-54)

'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* [*Krishna Janardhan Bhat v. Dattatraya G. Hegde*, (2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166] 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.

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



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

23. No evidence was led by the accused. The defence taken in the reply to the notice that cheque was stolen having been rejected by the two courts below, we do not see any basis for the High Court coming to the conclusion that the accused has been successful in creating doubt in the mind of the Court with regard to the existence of the debt or liability. How the presumption under Section 139 can be rebutted on the evidence of PW 1, himself has not been explained by the High Court."

24. *The above Kishan Rao case [Kishan Rao v. Shankargouda, (2018) 8 SCC 165 : (2018) 4 SCC (Civ) 37 : (2018) 3 SCC (Cri) 544] was a case where this Court did not find the defence raised by the accused probable. The only defence raised was that cheque was stolen having been rejected by the trial court and no contrary opinion having been expressed by the High*



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Court, this Court reversed the judgment of the High Court restoring the conviction. The respondent cannot take any benefit of the said judgment, which was on its own facts.

25. *We having noticed the ratio laid down by this Court in the above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:*

25.1. *Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.*

25.2. *The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.*

25.3. *To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.*

25.4. *That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.*

25.5. *It is not necessary for the accused to come in the witness box to support his defence.*



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26. Applying the preposition of law as noted above, in facts of the present case, it is clear that signature on the cheque having been admitted, a presumption shall be raised under Section 139 that the cheque was issued in discharge of debt or liability. The question to be looked into is as to whether any probable defence was raised by the accused. In cross-examination of PW 1, when the specific question was put that cheque was issued in relation to loan of Rs 25,000 taken by the accused, PW 1 said that he does not remember. PW 1 in his evidence admitted that he retired in 1997 on which date he received monetary benefit of Rs 8 lakhs, which was encashed by the complainant. It was also brought in the evidence that in the year 2010, the complainant entered into a sale agreement for which he paid an amount of Rs 4,50,000 to Balana Gouda towards sale consideration. Payment of Rs 4,50,000 being admitted in the year 2010 and further payment of loan of Rs 50,000 with regard to which Complaint No. 119 of 2012 was filed by the complainant, copy of which complaint was also filed as Ext. D-2, there was burden on the complainant to prove his financial capacity. In the year 2010-2011, as per own case of the complainant, he made payment of Rs 18 lakhs. During his cross-examination, when financial capacity to pay Rs 6 lakhs to the accused was questioned, there was no satisfactory reply given by the complainant. The evidence on record, thus, is a probable defence on behalf of the accused, which shifted the burden on the complainant to prove his financial capacity and other facts.



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29. Thus, there is a contradiction in what was initially stated by the complainant in the complaint and in his examination-in-chief regarding date on which loan was given on one side and what was said in cross-examination in other side, which has not been satisfactorily explained. The High Court was unduly influenced by the fact that the accused did not reply to the notice denying the execution of cheque or legal liability. Even before the trial court, appellant-accused has not denied his signature on the cheque.

32. The High Court without discarding the evidence, which was led by defence could not have held that the finding of trial court regarding financial capacity of the complainant is perverse. We are, thus, satisfied that the accused has raised a probable defence and the findings of the trial court that the complainant failed to prove his financial capacity are based on evidence led by the defence. The observations of the High Court that findings of the trial court are perverse are unsustainable. We, thus, are of the view that judgment of the High Court is unsustainable.

(iv) Crl.A.No.533/2015 dated 03.02.2025 – H.V. Jagannatha vs. Prabhakar B J – para 3, 5, 10, 11, 13 and 17

3. Learned Magistrate has taken cognizance and registered C.C.No.29728/2010 against the respondent/accused for offence punishable under Section 138 of the N.I. Act. The plea of the respondent/accused has been recorded. The complainant has examined



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himself as PW.1 and got marked Exs.P1 to P8. The statement of the respondent/accused has been recorded under Section 313 of Code of Criminal Procedure. The respondent/accused has not led any defence evidence. Learned Magistrate after hearing the arguments on both sides has formulated points for consideration and passed the judgment of acquittal. The said judgment of acquittal has been challenged by the appellant/complainant in this appeal.

5. Learned counsel for appellant would contend that respondent/accused has admitted his signature on cheques Exs.P1 to P3 and therefore, presumption under Section 139 of the N.I. Act has to be drawn, that the cheques have been issued for making payment of legally enforceable debt. The said presumption is a rebuttal presumption. The respondent/accused, who had taken the defence that the cheques have been issued as a security to the loan of one Venkatesh availed from the complainant has not been established. Therefore, the said presumption is not rebutted. Without considering these aspects, the learned Magistrate has harped upon the capacity of the complainant and erred in acquitting the respondent/accused. On these grounds he prayed for allowing the appeal and convicting the respondent/accused for offence under Section 138 of the Act.

10. Having heard the learned counsel for both the parties, the Court has perused the impugned judgment of acquittal and trial Court records. On considering the



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grounds urged, the following point arise for consideration:-

"Whether the learned Magistrate has erred in acquitting the respondent/accused for the offence under Section 138 of N.I. Act?"

11. My answer to the above point is in the 'Negative' for the following reasons:

It is the case of appellant/complainant that respondent/accused was his friend and he has borrowed a sum of Rs.6,35,000/- on different dates for purchase of vehicle and for family necessities. In order to repay the said amount borrowed the respondent/accused has issued three cheques i.e., Exs.P1 to P3. The respondent/accused has admitted his signature on cheques Exs.P1 to P3. The respondent/accused has disputed that the said cheques are issued for making payment of amount borrowed. The respondent/accused had denied that he borrowed Rs.6,35,000/- from the appellant/complainant. As the respondent/accused has admitted his signatures on cheques Exs.P1 to P3, a presumption has to be drawn that the cheques have been issued for making the payment of debt. The said presumption is a rebuttal presumption. The standard of proof for rebutting the said presumption is preponderance of probability.

13. It is the specific defence of the respondent/accused that one Venkatesh has borrowed money from the appellant/complainant and for security of loan of said Venkatesh, the respondent/accused has issued three signed cheques Exs.P1 to P3 as a security. PW.1 in his cross-examination has admitted that said



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Venkatesh is working as a Driver with him. He further admitted that the said Venkatesh had availed loan from him. PW.1 also admitted that accused has given three signed blank cheques and he has filled in the contents in the said cheques. The very said admission given by PW.1 probabalizes the defence of respondent/accused.

17. Considering all these aspects, the learned Magistrate has rightly acquitted the respondent/accused for offence under Section 138 of the Act by a reasoned judgment. There are no grounds made out for setting aside the impugned judgment of acquittal.

15. This Court has given the anxious consideration to the above decisions and principles enunciated therein.

16. In the case of **Rangappa vs. Sri Mohan** reported in **(2010) 11 SCC 441**, **Rajesh Jain vs Ajay Singh** reported in **(2023) 10 SCC 148** and **Sanjabij Tari vs. Kishore S. Borcar and another** reported in **2025 SCC OnLine SC 2069**, Hon'ble Supreme Court has clarified what is the required degree of proof in establishing the offence under Section 138 of the Negotiable Instruments Act. Any other decision which runs contrary to the aforesaid settled principles will not have any binding effect on this Court.

17. Insofar as lending capacity of the complainant is concerned, in the case of **Rajesh Jain** supra, the Hon'ble Apex



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Court has specifically stated, it is for the accused to establish the said defence and expecting the proof from the complainant is totally uncalled for in view of the presumption available to the complainant under Section 139 of the Negotiable Instruments Act.

18. Insofar as the judgment of the Hon'ble Apex Court in the case of ***N. Vijay Kumar vs. Vishwanath Rao N*** reported in **2025 Supreme (SC) 682**, the same is on the factual aspects of the matter and in the case of ***Rangappa*** and ***Sanjabij Tary***, the principles of law in Vijay Kumar as referred to supra is not applicable to the case on hand, especially in the absence of any defence evidence.

19. Therefore, this Court does not find any good grounds to interfere with the order of learned Trial Magistrate confirmed by the First Appellate Court.

20. Accordingly, the following:

ORDER

Revision petition is ***dismissed***.

Sd/-
(V SRISHANANDA)
JUDGE

MR, List No.: 2 SI No.: 77