CGHC010403362019 2026:CGHC:43267

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 760 of 2019

Judgment Reserved on : 28.07.2026

Judgment Delivered on : 06.10.2026

1. Brijmohan Agrawal (Died Through Lrs) As Per this Court's Order Dated 07-07-2025.

1.1 - Ajay Kumar Agrawal S/o Late Shri Brijmohan Agrawal Aged About 49 Years R/o Danipara, Tehsil- Raigarh, District- Raigarh C.G.

... Appellant

versus

- Tanveer Singh Sikh S/o Shri Amrit Singh Sikh, Aged About 33 Years Occupation Agriculturist, R/o Village Jhalmala, Post Office Jhalmala P.S. And Tehsil Pusoor, District Raigarh Chhattisgarh.....Accused

... Respondent

For Appellant	:	Mr. Ayush Lall, Advocate
For Respondent	:	Mr. Shreyansh Mehta, Advocate and Mr. Yashkarn Singh, Advocate

Hon'ble Shri Justice Narendra Kumar Vyas

(CAV Judgment)

1. The appellant has filed the present acquittal appeal under Section 378(4) of the Code of Criminal Procedure, 1973 against the order dated 05.09.2019 (Annexure A/1) passed by the learned 7th Additional Sessions Judge, Raigarh, District Raigarh (C.G.) in Criminal Appeal No. 124 of 2018 arising out of judgment dated 19.07.2018 passed by learned J.M.F.C., Raigarh, District Raigarh in

Complaint Case No. 101/2015 whereby the learned appellate Court vide impugned judgment dated 05.09.2019 allowed the appeal and quashed the order of conviction passed by the learned Judicial Magistrate first Class and acquitted the respondent in complaint case filed under Section 138 of Negotiable Instruments Act, 1881 (in short “N.I. Act, 1881”).

2. Brief facts of the case are that:

(a) The respondent/accused has purchased a Tractor, trolley and agricultural instruments on 12.10.2014 from the complainant which was valued of Rs. 6,00,000/- on the terms of agreement executed between them. It is also the case of the complainant that initially on 15.10.2014, the accused paid Rs. 2,00,000/- in cash and to discharge his remaining debt and liability with interest the accused has given 10 post-dated cheques to the tune of Rs. 64,000/- each to be drawn at UCO Bank, Branch Raigarh. One of the cheques bearing No. 816449 dated 11.04.2015 was deposited in the account maintained by the complainant at Vijaya Bank, Branch Raigarh on 13.04.2015. The said cheque was returned on 17.04.2015 with an endorsement that the cheque was “dishonored due to insufficient fund” in the account of the respondent vide memo dated 15.04.2015.

(b) Thereafter, the appellant had sent a legal notice through his counsel to the accused/respondent on 30.04.2015 which was received by the accused on 11.05.2015. Despite service of notice no amount of dishonored cheque was paid to the complainant which has necessitated him to file a complaint case

under Section 138 of N.I. Act, 1881 against the accused before the learned Judicial Magistrate First Class, Raigarh (C.G.) which was registered as Complaint Case No. 101/2015.

(c) The complainant to prove his case has exhibited documents i.e. agreement dated 15.10.2014 (Ex. P/1), cheque bearing no. 816449 dated 11.04.2015 (Ex.P/2), paying-in-slip dated 13.04.2015 (Ex. P/3), cheque return memo dated 15.04.2015 (Ex. P/4), legal notice (Ex. P/5) and postal receipt (Ex. P/6) and examined himself by way of an affidavit as provided under Section 145 of the N.I. Act, 1881 wherein he has reiterated the stand taken by him in the complaint.

(d) The complainant was cross-examined wherein he has admitted that no vehicle was purchased from its manufacturer Mahindra Gujarat Company as he was not having any agency of that tractor company. He has further admitted that, after purchasing a vehicle, it is mandatory to have it registered within approximately 10–15 days and the vehicle mentioned in agreement (Ex. P-1) was never registered in his name. He further denied the fact that he had no authority to sell the trolley and plough (nangar), and that the agreement (Ex.P-1) was invalid. He has also admitted in paragraph 15 that he is neither manufacturer of Hydraulic tractor trolley nor having agency of the same. He has also admitted that he is neither manufacturer of *nangar* nor he is having any agency. He further admitted that an item can be sold only after the owner has acquired ownership of it and if an item is sold to someone else without ownership, such sale is illegal and according to him, he has

been in the tractor business for the past 10 years, but he could not disclose how many tractors he has sold as on the date of examination. The accused was examined under Section 313 of Cr.P.C. wherein he pleads innocence and falsely implication and denied the execution of the alleged agreement (Ex. P/1) and purchase of any tractor, hydraulic trolley or n*angar* from the appellant.

3. The learned trial Court considering the evidence and material placed on record has recorded its finding that the complainant has been able to prove beyond reasonable doubt that the accused has given a cheque to the complainant towards discharge of debt or liability and the said cheque was dishonoured due to insufficient fund and accordingly, it has convicted the accused under the N.I. Act, 1881 and sentenced him to undergo rigorous imprisonment of 06 months and also awarded compensation to the tune of Rs. 96,000/- under Section 357(3) of the Cr.P.C.

4. Being aggrieved with this order the accused has preferred an appeal before the learned 7th Additional Sessions Judge, Raigarh (C.G.) bearing Criminal Appeal No. 122 of 2018 wherein the said appeal was allowed and the accused was acquitted from the charges under Section 138 of the N.I. Act, 1881. The learned appellate Court while allowing the appeal has raised doubt about execution of the agreement and also recorded its finding that the appellant is unable to prove that the said cheque was given towards debt and liability as the appellant has been unable to prove the sale of tractor, trolley and nangar. Being aggrieved with this order of acquittal, the appellant has filed the instant acquittal

appeal.

5. Learned counsel for the appellant would submit that the learned Appellate Court has failed to appreciate the evidence available on record and wrongly acquitted the accused. He would further submit that the learned appellate Court has acted with material anomalies and illegality in passing the impugned judgment. He would further submit that the learned appellate court has failed to appreciate the circumstances as to how the respondent is trying to dislodge the liability owned by him. He would further submit that the learned Court below has recorded a wrong finding by acquitting the respondent (accused) as the contents of registered agreement are not denied by the respondent. The finding of the learned trial Court that the complainant was unable to prove that the cheque given in pursuance of any liability is perverse which is liable to be quashed by this Court. The impugned judgment passed by the appellate Court is against the judgment passed by the Hon'ble Supreme Court in the case of ***Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited,*** reported in ***(2016) 10 SCC 458***.

6. He would further submit that the appellant has discharged the initial burden that cheque was given towards liability by the accused, thereafter, the burden is shifted upon the respondent to rebut the same, but he miserably failed to discharge, still the learned trial Court has committed illegality in acquitting the accused and would pray for allowing the appeal. To substantiate his submission he would refer to the judgments passed in cases of ***Rohitbhai Jivanlal Patel v. State of Gujarat and Anr.,*** reported in ***(2019) 18 SCC 106,***

Bir Singh v. Mukesh Kumar reported in ***(2019) 4 SCC 197, Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.*** reported in ***(2016) 10 SCC 458***, ***Godwill Tractors Vs. Mokhan Bai Bhandar & Ors.*** reported in ***2014 (3) MPJR-CG 22.***

7. Per contra, learned counsel for the respondent would submit that the order passed by learned appellate Court is legal and justified. He would further submit that upon rebuttal of the presumption, the appellant was obliged to prove the debt as a matter of fact, de hors the presumption and has failed to do so. He would further submit that the respondent stands acquitted by the learned first appellate Court upon a full re-appreciation of the evidence, and the presumption of innocence in his favor stands reinforced. He would further submit that the presumption under Section 139 of the N.I. Act, 1881 is rebuttable by raising a probable defence tested on preponderance of probabilities, and not beyond reasonable doubt. He would further submit that Section 138 of the N.I. Act, 1881 penalises the dishonor of a cheque issued for the discharge, in whole or in part, of "any debt or other liability", and the explanation thereto confines the expression to a "legally enforceable debt or liability". Section 139 of the N.I. Act, 1881 raises a presumption in favor of the holder only "unless the contrary is proved".

8. He would further submit that the respondent raised a probable defence founded upon his statement under Section 313 Cr.P.C. and more significantly, upon the admissions of the appellant himself elicited in cross-examination wherein he has admitted that he is not having ownership of the tractor or the agricultural instruments which

clearly suggests that no transaction with regard to purchase of the tractor or instrument was done between the appellant and accused. Thus, he would submit that learned appellate Court has rightly recorded its finding in paragraph 23 that the instruments which are alleged to have been sold were not owned by the appellant, as such there is no material on record to record a finding that the cheque was given towards debt or liability. Thus, the finding of the appellate Court is legal and justified and would pray for dismissal of the acquittal appeal. To substantiate his submission he would refer to the judgments passed by the Hon'ble Supreme Court in cases of ***Rajesh Jain Vs. Ajay Singh*** reported in ***(2023) 10 SCC 148, Basalingappa Vs. Mudibasappa*** reported in ***(2019) 5 SCC 418, Rangappa Vs. Sri Mohan*** reported in ***(2010) 11 SCC 441, Chandrappa and Others Vs. State of Karnataka*** reported in ***(2007) 4 SCC 415*** and the judgment passed by the Hon'ble Kerala High Court in case of ***Aravindakshan T. Vs. K. Gopakumar and Another*** passed in ***2025 SCC OnLine Ker 10946.***

9. I have heard learned counsel for the parties and perused the record.

10. From the submissions made by the parties, the point emerged for determination is:

> "Whether the finding of acquittal passed by the learned appellate Court is legal, justified and not liable to be interfered by this Court?"

11. From the evidence of the complainant, it is quite vivid that the complainant was not having the Agency of Mahindra Gujarat Company who was manufacturer of the tractor or the agricultural

instruments which are alleged to have been sold by the complainant to prove initial burden that the cheque was given towards any liability. He has also admitted that after the sale of vehicle, it has to be registered in the name of the owner, but no document was placed on record to prove that after the sale, the alleged tractor has been recorded in the name of accused. He has also admitted that he has not submitted any document to prove that how he became the owner of the tractor and was competent to sell the same which clearly demonstrates that any liability was accrued against the accused and to discharge the debt or any liability the accused has given the said cheque.

12. The N.I. Act raises two presumptions, one under Section 118; and the other in Section 139 thereof, which reads as under :

> "**118. Presumptions as to negotiable instruments.**—
> Until the contrary is proved, the following presumptions shall be made:—
> **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;
>
> x x x
>
> **139. Presumption in favour of holder.**— It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

13. Section 118 (a) assumes that every negotiable instrument is made or drawn for consideration, while Section 139 creates a presumption that the holder of a cheque has received the cheque in discharge of a debt or liability. Presumptions under both are rebuttable, meaning they can be rebutted by the accused by raising a probable defence. The Hon'ble Supreme Court through various

pronouncements, has consistently clarified the nature and extent of these presumptions and the standard of proof required by the accused to rebut them. The Hon'ble Supreme Court in case of ***Mallavarapu Kasivisweswara Rao v.Thadikonda Ramulu Firm*** reported in ***(2008) 7 SCC 655, Kumar Exports v. Sharma Carpets*** reported in ***(2009) 2 SCC 513***, ***Vijay v. Laxman*** reported in ***(2013) 3 SCC 86***, ***Baslingappa v. Mudibasappa*** reported in ***(2019) 5 SCC 418, Rajaram v. Maruthachalam*** reported in ***(2023) 16 SCC 125*** and ***Rajesh Jain vs. Ajay Singh***, reported in **(*2023) 10 SCC 148*** has held that presumptions are rebuttable.

14. Now in light of above stated position this Court is considering whether the presumption is substantially rebutted or not and the cheque was given towards discharge in whole or in part of any debt or other liability. From the evidence of PW-1, it is quite vivid that the complainant was unable to prove that the said cheque was given towards debt or liability as the tractor or any agricultural instrument cannot be sold without any statutory record like insurance, sale certificate and registration under the Motor Vehicles Act. Even, in the agreement (Ex. P/1). It has been mentioned that the delivery of the said vehicle and instrument have been handed over to the accused on 12.10.2014 and after paying Rs. 2,00,000/- on advance, whereas the sale consideration is Rs. 6,00,000/- and the agreement further provides that the respondent shall get registered the vehicle as all the documents have already been provided to the respondent purchaser.

15. This Court on 11.03.2026 as per Clause 9 of the Agreement has directed the appellant to clarify that Clause 9 of the condition has

been complied or not and the counsel for the appellant has sought time to place the relevant material on record, but the appellant has not produced the document despite opportunities granted on 30.03.2026, 13.04.2026, 29.04.2026, 16.06.2026 and 02.07.2026 and thereafter on 28.07.2026, the counsel for the appellant has informed this Court that no document as mentioned in the Clause 9 is available with the appellant and thereafter, the matter was heard and reserved.

16. From the evidence and the agreement (Ex.P/1), it is crystal clear that the accused is able to establish probable defence that no sale of the instrument as alleged by the complainant was done, as such cheque was not given towards any debts or liability. As such, in view of well settled position of law that once such defence is established then burden shifts upon the complainant to establish his case beyond reasonable doubt as the effect of Section 138 of NI Act is a criminal conviction.

17. Further from the appreciation of evidence, it is quite vivid that the complainant has failed to discharge his burden as reflected from the cross-examination of the complainant which is already extracted above and also considering the fact that the complainant has deposed in his evidence before the trial Court that on 15.10.2014 the accused has given cash payment of Rs. 2,00,000/- and remaining amount of Rs. 4,00,000/- and with interest, Rs. 2,40,000/- for payment of the said he has given 10 cheques of Rs. 64,000/- each, but he has not produced any document to discharge his burden that initially the accused has paid Rs. 2,00,000/- towards discharge of any debt or liability. Thus, it is quite vivid that it cannot

be said that complainant was able to discharge burden once it has shifted upon him as the accused has discharged his burden of Section 118 and 139 of the NI Act.

18. The Hon'ble Supreme Court in case of **Rajesh jain (Supra)** in paragraph 44 has examined the issue of shifting of burden and has held 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 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}]"

19. Considering the fact and law on the subject, it is quite vivid that the learned appellate Court has not committed any illegality in recording its finding of fact that cheque was not given towards any debt or liability and also considering the well settled position of law that if one view is in favour of the accused acquitting him from the charges the appellate Court should not normally disturb the finding of acquittal unless so cogent or vital materials have been ignored by the appellate Court or there is a clear chance of conviction of the accused. This is not the situation in the present case as there is no

perverse finding recorded by the appellate Court. The appellate Court has examined the evidence in detail and after appreciation of evidence already brought on record, the opinion of the appellate Court has gone against the complainant which is neither perversity nor illegality warranting interference in the acquittal appeal. Accordingly, the acquittal appeal deserves to be dismissed and it is dismissed.

Sd/-
(Narendra Kumar Vyas)
Judge

Bhumika