CGHC010185932021 2026:CGHC:45650

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 159 of 2021

Reserved for Judgment on 14/10/2026

Judgment delivered on 28/10/2026

Vishal Kumar Tharwani S/o Shri Vijay Kumar Tharwani Aged About 26 Years R/o Behind Shri Ram Care Hospital, Geetanjali Nagar, Phase - 1, Nehru Nagar, Bilaspur Police Station Civil Line, Tahsil And District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

... Appellant

versus

Ashok Singh S/o Jagdish Singh Aged About 43 Years R/o Near Old Employment Office, Chandani Chowk, Kududand, Bilaspur Police Station Civil Line, Tahsil And District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

... Respondent

(Cause title taken from Case Information System)

For Appellant	:	Mr. Vaibhav A. Goverdhan, Advocate
For Respondent	:	Mr. Vikrant Pillai, Advocate

Hon'ble Shri Justice Ravindra Kumar Agrawal

C.A.V. Judgment

1. The present acquittal appeal under Section 378(4) of the Code of Criminal Procedure, 1973 has been filed by the appellant against the impugned judgment dated 02.04.2018, passed by learned 9th Additional Sessions Judge, Bilaspur in Criminal Appeal No. 229 of 2017, whereby the respondent/accused has been acquitted from the

offence of Section 138 of the Negotiable Instruments Act, 1881 (in short “NI Act”).

2. The brief facts of the case are that the appellant was the complainant before the learned trial Court and the respondent was the accused. The complainant prosecuted a complaint case under Section 138 of the NI Act against the accused before the learned trial Court with the allegation that, the complainant is running a grocery shop in the name and style of Ganesh Provision Stores and the accused was engaged in property dealing business. They were well acquainted with each other and having good relation. For his business purposes, the accused borrowed an amount of Rs. 17,15,000/- from the complainant, which he given after collecting the cash amount from the amount of death claim of his father under the Life Insurance Policy, which was allowed on 08.12.2012 in the name of his mother Smt. Manju Tharwani and taking loan from one Rahaslal and thereafter extended loan to the accused in installments between December 2012 and January 2013. The accused assured him that he will return the amount within two months. In lieu of the borrowed amount and its repayment, the accused gave a cheque of Chhattisgarh Rajya Sahakari Bank Maryadit, Nehru Chowk, Bilaspur bearing No. 131141, dated 25.03.2013 amounting to Rs. 17,15,000/-. When the complainant deposited the said cheque in his bank account running at State Bank of India, Tifra, Bilaspur, the said cheque was dishonored by the payee bank on 28.03.2013. The complainant informed the accused about dishonor of the cheque and then the accused requested him to present the cheque again for its clearance. On 08.05.2013, when the

complainant again presented the said cheque for its clearance through his bank account, the same was again dishonored by the payee bank on 10.05.2013 on the ground of insufficient fund in the bank account of the accused. The intimation of dishonor of cheque was received by the complainant on 14.05.2013. The complainant served a legal demand notice to the accused through his counsel on 07.06.2013, but the same was returned unserved on 15.06.2013 with the endorsement of not claimed. Since the accused has not paid the amount of cheque, he filed the complaint case under Section 138 of NI Act on 17.07.2013 before the learned Judicial Magistrate First Class, Bilaspur. The complaint case was registered on 21.08.2013 and process was issued to the accused. When after service of summons and bailable warrant upon the accused, he had not appeared the warrant of arrest was issued against him on 05.01.2015 and then on 16.03.2015 the accused appeared in the proceeding and was released on bail. The details of offence were explained on 18.05.2015 and thereafter the evidence of the complainant witnesses were recorded. The statement of the accused under Section 313 of CrPC has also been recorded in which he denied the circumstances that appears against him, pleaded innocence and has submitted that, he has been falsely implicated in the offence. He also stated that his cheque was stolen for which he already made a complaint to Civil Lines police station and by misusing his cheque, the complainant has falsely prosecuted him. The accused examined himself as DW-1.

3. After appreciation of oral and documentary evidence led by the parties, the learned trial Court vide its judgment dated 27.11.2017 convicted

the respondent for the offence under Section 138 of NI Act and sentenced him for simple imprisonment for 6 months and compensation of Rs. 17,15,000/- with default stipulations. The judgment of conviction and sentence was challenged by the accused before the learned 9th Additional Sessions Judge, Bilaspur in Criminal Appeal No. 229 of 2017, which was allowed by the learned appellate court vide its judgment dated 02.04.2018 and acquitted the accused from the offence of Section 138 of NI Act. Hence this appeal against acquittal.

4. Learned counsel appearing for the appellant/complainant would submit that the learned appellate court has erred in facts and law while acquitting the respondent/accused from the alleged offence. The well-reasoned judgment of conviction and sentence has been set aside by the learned appellate court by holding that the complainant has failed to prove his financial capacity to advance loan of Rs. 17,15,000/- to the accused. The complainant has duly proved his financial capacity by making averment that he managed the fund from the amount received by his mother Smt. Manju Tharwani towards death claim of his father and borrowed some of the amount from Rahaslal. The learned appellate court has erroneously considered that the burden to prove the financial capacity was upon the complainant in which no sufficient evidence has been produced and therefore there exists no legally recoverable debt against the accused ignoring the statutory presumption available in favour of the complainant. He would also submit that the accused had not denied his signature over the subject cheque and therefore, the presumption under Sections 118 and 139 of

NI Act are in favour of the complainant and he is not required to prove his financial capacity beyond reasonable doubt in the complaint case. By relying upon the judgment of **Ashok Singh v. State of Uttar Pradesh**, 2025 Live Law SC 383, he would submit that even if the complainant could not examine the relevant witnesses with respect to source of funds that itself would not discharge the accused to prove his defence. The complainant is required only to prove the source of fund by preponderance of probabilities that he had sufficient source of fund to advance loan to the accused, which he did in the present case. The learned appellate court has considered only the aspect of source of fund of the complainant and other evidence and statutory presumption have not been considered while passing the judgment of acquittal of the accused. It is further submitted by him that the learned trial Court has rightly considered the document (exhibit P-10), which was the agreement executed between the complainant and Rahaslal on 04.01.2013 borrowing Rs. 7 lakhs. He would also submit that the accused could not prove the theft of his cheque and misusing the cheque by the complainant as there is sufficient manipulations in the acknowledgment of the complaint allegedly made by him to the police station. The accused had not made effort to get an offence registered for misusing of his cheque and only making a complaint is not sufficient to establish his defence. Further, the legal demand notice has not been accepted by the accused and has not replied the same, which also gives presumption against him, yet the learned appellate court acquitted the respondent/accused which suffers from perversity and illegality and the impugned judgment of acquittal is liable to be set aside. In support of his submission, he would also rely upon the case

of "**Sanjabij Tari v. Kishore S. Borcar and Another**" 2025 LiveLaw SC 952.

5. Per contra, learned counsel appearing for the respondent/accused opposes the submissions made by learned counsel for the appellant and submitted that the learned appellate court has rightly considered the financial capacity of the complainant to advance loan to the accused as he claimed huge cash amount was given to the accused. The agreement (exhibit P-10) clearly demonstrates that the accused was incapacitated to advance loan to the accused as he himself borrowed an amount of Rs. 7 lakhs from Rahaslal on 04.01.2013 for his own personal requirement. He would also submit that from the account statement of Smt. Manju Tharwani (exhibit P-9), it transpires that an amount of Rs. 2 lakhs was withdrawn by herself on 04.01.2013 and Rs. 2 lakhs on 05.01.2013 by herself and there is no evidence that the same amount was given to the accused. The complainant has not disclosed anywhere as to what amount was given to the accused on which date. He would further submit that the cheque of the accused was stolen for which he made a police complaint on 08.01.2013 (exhibit D-2) and also made an application on 08.01.2013 to the bank for stop payment (exhibit D-1). Initially, the cheque was dishonored on the ground of stop payment on 28.03.2013 (exhibit P-3). Subsequently, the complainant again deposited the said cheque on 08.05.2013 and this time the cheque was dishonored on the ground of funds insufficient. The accused has bonafidely stopped the payment of cheque as the same was stolen and subsequent dishonor on the ground of funds insufficient itself is doubtful. No demand notice was

received by the accused and therefore, he could not replied the same. Relying upon the judgment of **Dattatraya v. Sharanappa**, 2024 (8) SCC 573, he would submit that the presumptions are rebuttable presumptions and the accused has duly rebutted the presumptions and the burden again shifts upon the complainant to prove his case in accordance with law, in which he failed to prove the financial capacity to advance loan of such a huge money that too without any documentary proof. The complainant has not produced any documentary evidence with respect to his financial capacity and his inability to put forth the relevant evidence of the loan advanced, no presumption could be drawn against the accused under Section 139 of NI Act. The accused is sufficiently discharged his burden and rebut the presumption. The evidence of the complainant is also full of contradictions and material inconsistencies and therefore, the learned appellate court has rightly considered the financial capacity of the complainant and held that the complainant has failed to prove that he was capable to advance loan of Rs. 17,15,000/- to the accused and also failed to prove that there exists a legally recoverable debt against the accused, which does not suffer from any illegality or perversity. He would also submit that where two views are possible and the learned appellate court after the appreciation of evidence accepted the view in favour of the accused, the same cannot be reverted in an appeal against acquittal without there being any consideration of grave miscarriage of justice. Therefore, the appeal against acquittal have no merit and liable to be dismissed.

6. I have heard learned counsel for the parties and perused the record of the trial court as well as the appellate court and considered their rival submissions.

7. The case of the complainant is that in between December 2012 and January 2013, he advanced loan a sum of Rs. 17,15,000/- to the respondent/accused on account of his business need and towards discharge of the said liability, the accused issued cheque No. 131141 dated 25.03.2013 for Rs. 17,15,000/-, which was dishonored for insufficiency of funds and despite notice, the accused had not repaid the same. The accused denied from borrowing money from the complainant with the defence that the subject cheque was stolen from his office, which was misused by the complainant. He made a police complaint and stop payment of the cheque from the bank. Initially, the cheque was dishonored on the ground of stop payment and subsequently it was dishonored for insufficient fund. The accused also raised defence that the complainant himself had borrowed Rs. 7 lakhs from Rahaslal on 04.01.2013 and he himself was incapacitated to advance loan to the accused. The learned appellate court has considered the financial capacity of the complainant to advance loan to the accused of such a huge amount of Rs. 17,15,000/- in cash without any documentary proof and has acquitted the accused from the alleged offence.

8. It is true that once the execution of the cheque is admitted, the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act, 1881 operate in favour of the holder of the cheque. The law is well settled in **Rangappa v. Sri Mohan**, (2010) 11

SCC 441 and **Bir Singh v. Mukesh Kumar**, (2019) 4 SCC 197, that the presumption includes the existence of a legally enforceable debt or liability. However, the presumption is rebuttable, and the accused is not required to discharge the burden beyond reasonable doubt. The accused can rebut the presumption on the preponderance of probabilities either by leading defence evidence or by relying upon the material elicited from the complainant during cross-examination. Therefore, the question is whether the accused succeeded in creating a probable defence sufficient to rebut the statutory presumption.

9. In the case of **Rangappa** (supra), the Hon'ble Supreme Court has held that:-

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

10. In **Basalingappa v. Mudibasappa**, (2019) 5 SCC 418, the Hon'ble Supreme Court has held that the burden upon the accused is only to raise a probable defence, and once such defence is established, the burden shifts back upon the complainant to prove the transaction in question. The Hon'ble Supreme Court has held that:-

> "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.
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> 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.
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> 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.
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> 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."

11. From the evidence of the complainant, it emerges that although he claimed to have advanced Rs. 17,15,000/- between December 2012 and January 2013, neither the complaint, nor the statutory notice, nor the affidavit under Section 145 of the NI Act disclosed the date on which the amount was given to the accused. Though he averred that he arranged the amount from the death claim amount received by his

mother on 08.12.2012 under the Life Insurance claim and borrowed some amount from one Rahaslal and in support thereof, he filed the bank statement of the bank account of his mother Smt. Manju Tharwani (exhibit P-9) and agreement with Rahaslal dated 04.01.2013 (exhibit P-10). The bank account statement of Smt. Manju Tharwani (exhibit P-9) discloses that an amount of Rs. 8,81,328/- was credited on 08.12.2012, however certain withdrawals of cash amount from ATM, an amount of Rs. 2 lakhs was withdrawn in cash on 04.01.2013 and Rs. 2 lakhs in cash on 05.01.2013 in self withdrawal. The agreement (exhibit P-10) discloses that on 04.01.2013, the complainant borrowed an amount of Rs. 7 lakhs from Rahaslal for his personal need. The said person Rahaslal has not been examined by the complainant to prove that he actually advanced an amount of Rs. 7 lakhs to the complainant. The omission assumes significance because the alleged transaction was not a casual advance of a nominal amount but a substantial sum of Rs. 17,15,000/-, and according to the complainant, the amount was advanced in cash.

12. The learned appellate court has noticed material inconsistencies regarding the complainant's financial capacity. The appellate court has considered that the complainant has not produced his income tax return, any ledger or balance sheet of his business to prove the transaction. The learned trial Court has also observed that no one can advance loan of such a huge amount without there being any security or any document in writing. The complainant has not examined Smt. Manju Tharwani and Rahaslal in support of his claim and thus the subject transaction is suspicious and the complainant failed to prove

his financial capacity by leading evidence to that effect. Such findings are borne out by the record and cannot be said to be perverse.

13. On the other hand, the defence of the accused is supported by document (exhibit D-2), which is a complaint made to the police, with respect to theft of his cheque, exhibit D-1, which is an application to the bank for stop payment of the subject cheque and the document (exhibit P-3), which is the cheque return memo dated 28.03.2013, whereby the subject cheque was dishonored on the ground of payment stopped by drawer and also the examination of the accused as DW-1.

14. The complainant Vishal Kumar Tharwani in his evidence deposed that he advanced loan of Rs. 17,15,000/- to the accused between December 2012 and January 2013 and for its repayment the accused issued a cheque No. 131141, dated 25.03.2013, which was dishonored by the payee bank and when he informed such dishonor of the cheque to the accused, he asked him to redeposit it in the bank and then he again deposited the cheque on 08.05.2013, which was again dishonored on 10.05.2013 and thereafter he issued legal demand notice on 07.06.2013, but it was returned unserved, then he filed the complaint case. In cross-examination, he stated that the contents of the cheque is not in his handwriting. He voluntarily stated that the accused handed over the cheque to him in presence of Mukesh Mathani. He admitted the first dishonor of cheque on 25.03.2013. Thereafter, he again presented the cheque to the bank. He further admitted in the notice (exhibit P-6), he has not mentioned the date on which the amount were given to the accused. Even in his

complaint memo, it has not been mentioned. He also could not state as to on which date the amount was given to the accused. He voluntarily stated that he withdrawn the amount of Rs. 40-40 thousands from ATM and gave an amount of Rs. 2 lakhs to the accused in December 2012, thereafter he withdrawn further amount of Rs. 2 lakhs on 04.01.2013 from State Bank and on the same day, he borrowed Rs. 7 lakhs from Rahaslal and gave it to the accused. On 05.01.2013, he gave Rs. 4,15,000/- to the accused and on that very day the accused gave the subject cheque to him. At the time when he gave Rs. 6,15,000/- to the accused, Mukesh Matlani was present there and when he gave Rs. 9 lakhs to the accused, Rahaslal was present there. He further stated that, though he is a businessman, but he is not the income tax payee, but his brother is submitting his income tax return. He admitted that there is no mention of Rs. 17,15,000/- given to the accused in the income tax return. He also shown his ignorance about the signature on the postal envelope (exhibit P-8). An amount of Rs. 8,81,328/- was deposited in the bank account of his mother Manju Tharwani and he withdrew Rs. 40,000/- on 5 times through ATM of his mother and Rs. 2-2 lakhs on 04.01.2013 and 05.01.2013. He further admitted that in the agreement (exhibit P-10), there is no mention that he borrowed the amount from Rahaslal for advancing loan to the accused, but his own personal need is mentioned.

15. In defence the accused examined himself as DW-1, who proved the document (exhibit D-1), which is an application to the bank for stop payment of the subject cheque, exhibit D-2 is the complaint made to the police, exhibit D-3 is the notice sent by Mahila Police Station, Durg

and has stated that the subject cheque was stolen from his office and it was misused by the complainant and filed the present complaint case. In his cross-examination, he denied that before missing of his cheque, he made a complaint to the police only to come out his liability. He admitted that he made a complaint to the police about theft of his cheque, but has not lodged any complaint case in the court when the police has not taken any action on his complaint.

16. Upon consideration of the evidence available on record, it appears that the complainant has failed to disclose the specific dates on which the alleged loan amount of Rs. 17,15,000/- was advanced to the accused. Although he claimed to have arranged the amount from the insurance claim received by his mother, Smt. Manju Tharwani, and by borrowing Rs. 7,00,000/- from Rahaslal, the bank statement (Exhibit P-9) establishes only the credit of Rs. 8,81,328/- and subsequent cash withdrawals, whereas Rahaslal has not been examined to substantiate the alleged borrowing. Moreover, the agreement (Exhibit P-10) records that the amount of Rs. 7 lakhs was borrowed for the complainant's personal needs and does not indicate that it was intended to be advanced to the accused. The complainant has further admitted that the alleged transaction was not reflected in his income tax records and that no specific date of advancement of the loan was mentioned in the complaint or statutory notice. He has also failed to examine Smt. Manju Tharwani or Rahaslal to corroborate his version. On the other hand, the accused has produced the application for stopping payment of the cheque (Exhibit D-1), the police complaint regarding the alleged theft of the cheque (Exhibit D-2), and the cheque return memo (Exhibit

P-3), which records the initial dishonor on the ground of payment stopped by the drawer. The aforesaid documentary evidence, read with the testimony of the accused as DW-1, lends support to his defence that the cheque was stolen and subsequently misused. The complainant's failure to establish the source of funds and substantiate the alleged advancement of such a substantial amount, coupled with the documentary evidence produced by the accused, creates a reasonable doubt regarding the alleged transaction. Thus, the evidence brought on record supports the finding of the learned appellate court that the accused has raised a probable defence against the alleged legally enforceable debt and financial capacity of the complainant.

17. In the case of **Basalingappa** (supra), the Hon'ble Supreme Court recognized that the question of financial capacity becomes relevant once a specific challenge is raised by the accused. In paragraph 30, it has been held that:-

> "30. We are of the view that when evidence was led before the court to indicate that apart from loan of Rs 6 lakhs given to the accused, within 2 years, amount of Rs 18 lakhs have been given out by the complainant and his financial capacity being questioned, it was incumbent on the complainant to have explained his financial capacity. Court cannot insist on a person to lead negative evidence. The observation of the High Court that trial court's finding that the complainant failed to prove his financial capacity of lending money is perverse, cannot be supported. We fail to see that how the trial court's findings can be

termed as perverse by the High Court when it was based on consideration of the evidence, which was led on behalf of the defence."

18. In the case of "**Ashok Singh**" (supra), the Hon'ble Supreme Court has also considered the judgment of **M/s S. S. Production v. Tr. Pavithran Prasanth**, 2024 INSC 1059, in which the judgment of **Tedhi Singh v. Narayan Dass Mahant**, 2022 (6) SCC 735 was relied upon and has held that:-

"22. The High Court while allowing the criminal revision has primarily proceeded on the presumption that it was obligatory on the part of the complainant to establish his case on the basis of evidence by giving the details of the bank account as well as the date and time of the withdrawal of the said amount which was given to the accused and also the date and time of the payment made to the accused, including the date and time of receiving of the cheque, which has not been done in the present case. Pausing here, such presumption on the complainant, by the High Court, appears to be erroneous. The onus is not on the complainant at the threshold to prove his capacity/financial wherewithal to make the payment in discharge of which the cheque is alleged to have been issued in his favour. Only if an objection is raised that the complainant was not in a financial position to pay the amount so claimed by him to have been given as a loan to the accused, only then the complainant would have to bring before the Court cogent material to indicate that he had the financial capacity and had actually advanced the amount in question by way of loan. In the case at hand, the appellant

had categorically stated in his deposition and reiterated in the cross-examination that he had withdrawn the amount from the bank in Faizabad (Typed Copy of his deposition in the paperbook wrongly mentions this as 'Firozabad'). The Court ought not to have summarily rejected such stand, more so when respondent no.2 did not make any serious attempt to dispel/negate such stand/statement of the appellant. Thus, on the one hand, the statement made before the Court, both in examination-in-chief and cross examination, by the appellant with regard to withdrawing the money from the bank for giving it to the accused has been disbelieved whereas the argument on behalf of the accused that he had not received any payment of any loan amount has been accepted. In our decision in M/s S. S. Production v. Tr. Pavithran Prasanth, 2024 INSC 1059, we opined:

'8. From the order impugned, it is clear that though the contention of the petitioners was that the said amounts were given for producing a film and were not by way of return of any loan taken, which may have been a probable defence for the petitioners in the case, but rightly, the High Court has taken the view that evidence had to be adduced on this point which has not been done by the petitioners. Pausing here, the Court would only comment that the reasoning of the High Court as well as the First Appellate Court and Trial Court on this issue is sound. Just by taking a counter-stand to raise a probable defence would not shift the onus on the complainant in such a case for the plea of defence has to be buttressed by evidence, either oral or documentary, which in

the present cases, has not been done. Moreover, even if it is presumed that the complainant had not proved the source of the money given to the petitioners by way of loan by producing statement of accounts and/or Income Tax Returns, the same ipso facto, would not negate such claim for the reason that the cheques having being issued and signed by the petitioners has not been denied, and no evidence has been led to show that the respondent lacked capacity to provide the amount(s) in question. In this regard, we may make profitable reference to the decision in Tedhi Singh v Narayan Dass Mahant, (2022) 6 SCC 735: '10. The trial court and the first appellate court have noted that in the case under Section 138 of the NI Act the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the NI 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."

19. In the case of **Dattatraya** (supra), the Hon'ble Supreme Court has reiterated that although the statutory presumption favours the holder of the cheque, the accused can rebut the same by showing circumstances which render the existence of the alleged debt doubtful or improbable. Once such probable defence emerges from the evidence, the complainant must independently satisfy the Court regarding the transaction.

> **"**18. As the presumption contemplated by virtue of Section 118 of the NI Act, 1881 entails, Section 139 was similarly introduced to provide for a presumption that the holder of cheque had received the issued cheque concerned towards discharging of the liability of the drawer, either in whole or in part. Therefore, at this juncture, it is ideal to make a reference to Section 118 of the NI Act, 1881, which is reproduced as:
>
> > "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;

(b) as to date : that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance : that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer : that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsement : that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamp : that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course : that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

19. Chapter XIII of the NI Act, 1881, of which Section 118 is a part, lays down specific rules for evidence to be adduced within the scheme of the Act herein. As the text of the said provision showcases, it raises a rebuttable presumption as against the drawer to the extent that the negotiable instrument concerned was drawn and subsequently accepted, indorsed, negotiated, or transferred for an existing consideration, and the date so designated on such an instrument is the date when the negotiable instrument concerned was drawn. It is also further presumed that the same was transferred before its maturity and that the order in which multiple indorsements appear on such an instrument, that is, the deemed order thereon. Lastly, the holder of a negotiable instrument is one in its due course, subject to a situation where the instrument concerned while being obtained from a lawful owner and from his or her lawful custody thereof through undertaking of an offence as contemplated under any statute or through the means of fraud, the burden to prove him or her being a holder in due course, instead, lies upon such a holder.

20. Accordingly, to begin with, the bare provision of Section 139 of the NI Act, 1881 is reproduced herein below:

> "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."
>
> The aforesaid presumption entails an obligation on the court conducting the trial

> for an offence under Section 138 of the NI Act, 1881 to presume that the cheque in question was issued by the drawer or accused for the discharge of a particular liability. The use of expression "shall presume" ameliorates the conundrum pertaining to the right of the accused to present evidence for the purpose of rebutting the said presumption. Furthermore, the effect of such presumption is that, upon filing of the complaint along with relevant documents, thereby **prima facie** establishing the case against the drawer, the onus of proof shifts on the drawer or accused to adduce cogent material and evidence for rebutting the said presumption, and as established in **Laxmi Dyechem v. State of Gujarat**, based on preponderance of probabilities.

21. While describing the offence envisaged under Section 138 of the NI Act, 1881 as a regulatory offence for largely being in the nature of a civil wrong with its impact confined to private parties within commercial transactions, the three-Judge Bench in the decision of Rangappa highlighted Section 139 of the NI Act, 1881 to be an example of a reverse onus clause. This is done so, as the Court expounds, in the light of Parliament's intent, which can be culled out from the peculiar placing of act of dishonour of cheque in a statute having criminal overtones. The underlying object of such deliberate placement is to inject and enhance credibility of negotiable instruments. Additionally, the reverse onus clause serves as an indispensable "device to prevent undue delay

in the course of litigation". While acknowledging the test of proportionality and having laid the interpretation of Section 139 of the NI Act, 1881 hereof, it was further held that an accused cannot be obligated to rebut the said presumption through an unduly high standard of proof. This is in light of the observations laid down by a coordinate Bench in Hiten P. Dalal v. Bratindranath Banerjee, whereby it was clarified that the rebuttal ought not to be undertaken conclusively by an accused, which is reiterated as follows : (SCC p. 25, para 23)

> 23. In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.
>
> Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the "prudent man".

> 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*^9, 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."

20. In the present case, the accused has specifically pleaded that the subject cheque was stolen from his office and was subsequently misused by the complainant. In support of his defence, the accused has produced the police complaint dated 08.01.2013 (Exhibit D-2) and the application submitted to the bank on the same date for stopping payment of the cheque (Exhibit D-1), which is further corroborated by the cheque return memo dated 28.03.2013 (Exhibit P-3), recording dishonour on the ground of payment stopped by the drawer. These circumstances lend support to the defence of the accused that the cheque had not been voluntarily delivered to the complainant towards discharge of any legally enforceable debt or liability. Although Sections 118 and 139 of the Negotiable Instruments Act, 1881 raise statutory presumptions in favour of the holder of the cheque, such presumptions are rebuttable and cannot be applied mechanically where the very circumstances in which the complainant obtained possession of the instrument are placed in doubt. In view of the proviso to Section 118 of the Act, where the instrument is shown to have been obtained from its

lawful owner or a person in lawful custody by means of an offence or fraud, the burden of proving that the holder is a holder in due course lies upon him. In the present case, once the accused has raised a probable defence supported by contemporaneous documentary evidence, the complainant was required to establish, by cogent and reliable evidence, the circumstances in which the cheque came into his possession and the alleged advancement of the loan. However, the complainant has failed to satisfactorily establish the alleged transaction or his financial capacity to advance the substantial amount of Rs.17,15,000/-. Consequently, the statutory presumption cannot, by itself, sustain the complainant's case, and the defence raised by the accused deserves consideration in the light of the evidence available on record.

21. Once the presumption under Sections 118 and 139 of the N.I. Act stood rebutted by a probable defence, the burden shifted back upon the complainant to establish the existence of a legally recoverable debt of Rs. 17,15,000/- by cogent and reliable evidence. In the present case, apart from the cheque and the disputed bank account statement of Smt. Manju Tharwani and the agreement (exhibit P-10), there is no independent evidence proving actual advancement of Rs. 17,15,000/- to the accused. The complainant's failure to produce the most natural and best evidence, namely the persons on whose presence the amount was allegedly advanced to the accused, account books and bank statements, assumes considerable importance. Further, the withdrawal of the amount of Rs. 40,000/- on different occasions from ATM of Smt. Manju Tharwani has also not been corroborated from her bank account statement (exhibit P-9). The appellate court, after a

detailed analysis of the evidence, reached the conclusion that the complainant had failed to discharge the burden which reverted upon him after rebuttal of the presumption. Such a conclusion is a plausible view based on the evidence available on record.

22. It is significant to note that the subject cheque was initially dishonoured on 28.03.2013 on the ground of “payment stopped by drawer”, whereas upon its subsequent presentation, the same was dishonoured on 10.05.2013 on the ground of “insufficient funds”. However, the complainant has not disclosed in the complaint the material fact that the cheque had earlier been dishonoured on the ground of stop payment, nor has he explained the circumstances in which the cheque was presented again despite the earlier dishonour. The initial dishonour memo (Exhibit P-3), read with the application for stop payment (Exhibit D-1) and the police complaint (Exhibit D-2), lends corroboration to the defence of the accused. Though the subsequent dishonour on the ground of insufficiency of funds may independently attract consideration under Section 138 of the Negotiable Instruments Act, 1881, the complainant’s failure to disclose the earlier dishonour and explain the surrounding circumstances is a relevant circumstance to be considered while appreciating the credibility of his version and determining whether the accused has successfully raised a probable defence regarding the alleged misuse of the cheque.

23. It is a settled principle that where an order of acquittal has been recorded, and the view adopted by the court below is a reasonably possible view arising from the evidence on record, the appellate court would be slow to interfere merely because another view may also be

possible. The presumption of innocence stands reinforced by an order of acquittal.

24. The Hon'ble Supreme Court, in **Tulasareddi @ Mudakappa & Another v. State of Karnataka**, reported in 2026 SCC OnLine SC 89, held that :

> "27. In the case of **Babu Sahebagouda Rudragoudar v. State of Karnataka**[1] this Court held in paragraphs 39 to 42 as under:
>
> > 39. This Court in Rajesh Prasad v. State of Bihar[2] encapsulated the legal position covering the field after considering various earlier judgments and held as below : (SCC pp.482-83, para 29)
> >
> > 29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (Chandrappa v. State of Karnataka[3], para 42)
> >
> > '42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:
> >
> > (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

[1]. 2024 (8) SCC 149

[2]. (2022) 3 SCC 471 : (2022) 2 SCC (Cri) 31

[3]. (2007) 4 SCC 415 : (2007) 2 SCC (Cri)325], SCC p. 432

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not

disturb the finding of acquittal recorded by the trial court.'

40. Further, in H.D. Sundara v. State of Karnataka[4], this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 CrPC as follows : (SCC p. 584, para 8)

"8. … 8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4.If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

[4]. (2023) 9 SCC 581 : (2023) 3 SCC (Cri) 748]

> 41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:
>
> 41.1. That the judgment of acquittal suffers from patent perversity;
>
> 41.2. That the same is based on a misreading/omission to consider material evidence on record; and
>
> 41.3. That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.
>
> 42. The appellate court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial court.
>
> * * *

29. From the aforesaid decisions rendered by this Court, it can be said that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the findings of acquittal recorded by the Trial Court. Further, if the view taken is a possible view, the Appellate Court cannot overturn the order of acquittal on the ground that another view was also possible. The following principles have to be kept in mind by the Appellate Court while dealing with the appeals against an order of acquittal:

> (a) whether the judgment of acquittal suffers from patent perversity;
>
> (b) whether the judgment is based on misreading/omission to consider the material evidence on record;
>
> (c) an order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference.’
>
> (d) the appellate court, while deciding an appeal against acquittal, after re-appreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;
>
> (e) if the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and
>
> (f) the appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

25. The judgments relied upon by learned counsel for the appellant in **Ashok Singh** (supra) do not advance the case of the appellant in the facts of the present matter. There is no dispute with the proposition laid down therein that once the execution and signature on the cheque are admitted, the statutory presumptions under Sections 118 and 139

of the Negotiable Instruments Act operate in favour of the complainant, and the accused is required to rebut the same by raising a probable defence. However, in the aforesaid case, the Court found that the accused had failed to rebut the statutory presumption by bringing on record any material creating a reasonable doubt regarding the existence of the debt or liability. In the present case, the learned appellate court, upon appreciation of the evidence, has recorded a finding that the respondent/accused succeeded in raising a probable defence by eliciting material admissions from the complainant regarding the absence of particulars as to the mode of advancement of the alleged loan, non-production of relevant documents, account books despite specific challenge, and inconsistencies relating to the complainant's source of funds. Thus, unlike the facts before the Hon’ble Supreme Court in the aforesaid decision, the presumption available to the complainant stood sufficiently rebutted on the preponderance of probabilities, thereby shifting the burden back upon the complainant to independently establish the existence of a legally enforceable debt, which the learned appellate court has rightly considered. Therefore, the ratio of the aforesaid decision is distinguishable on facts and does not render the impugned judgment of acquittal unsustainable.

26. In the case of “**Sanjabij Tari** (supra), the Hon’ble Supreme Court has considered the judgment of Tedhi Singh (supra), which has been considered in the present case earlier, and therefore, it does not support the complainant in the case.

27. In the present case, from the aforesaid consideration, this Court is of the view that the findings recorded by the appellate court are neither illegal nor perverse, nor do they suffer from misreading of evidence. The accused successfully created a reasonable doubt regarding the existence of a legally enforceable debt of Rs. 17,15,000/-, and the complainant failed to counter such doubt by reliable evidence. Consequently, this Court is of the considered opinion that no ground is made out for interference with the judgment of acquittal.

28. The acquittal appeal, therefore, deserves to be and is accordingly **dismissed**.

Sd/-
(Ravindra Kumar Agrawal)
Judge

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