IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 215 of 2013
Reserved on: 16.12.2025
Date of Decision: 01.01.2026

M/s Sagar Katha Factory ...Appellant

Versus

Jaswant Singh ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] ***No***
For the Appellant : Mr Karan Singh Kanwar, Advocate.
For the Respondent : Ms Shalini Thakur, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 08.03.2013 passed by learned Chief Judicial Magistrate, Sirmaur District at Nahan (the learned Trial Court), vide which the respondent (accused before the learned Trial Court) was acquitted of the accusation for which he was being tried. *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. Briefly stated, the facts giving rise to the present appeal are that the complainant filed a complaint before the learned Trial Court for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (in short 'NI' Act). It was asserted that the complainant is a partnership concern and is engaged in the manufacturing of Katha. The accused agreed to supply the Khair wood. The complainant advanced ₹27,57,000/- to the accused on different dates, but the accused supplied the Khair wood worth ₹22,07,000/- to the complainant. An amount of ₹5,50,000/- was due from the accused. The accused admitted his liability to pay ₹5,50,000/- to the complainant and undertook to supply Khair wood to the complainant. The accused failed to honour his promise to supply the Khair wood despite repeated requests. He issued a cheque of ₹5,50,000/- to the complainant drawn on HP State Co-operative Bank Ltd., Bilaspur. The complainant presented the cheque to its bank for collection, but it was dishonoured with an endorsement 'insufficient funds'. The complainant served a notice upon the accused. The accused refused to receive the notice, and it was returned undelivered. The accused also failed to repay the amount to the complainant.

Hence, the complaint was made against the accused for taking action as per the law.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of an offence punishable under Section 138 of the NI Act, to which he pleaded not guilty and claimed to be tried.

4. The complainant examined Rakesh Kumar (CW1), Punit Mahajan (CW2) and Prince Kumar (CW3) to prove its complaint.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., denied the complainant's case in its entirety. He stated that Khairwood was supplied to the complainant as per the agreement, and the complainant was liable to pay ₹9,00,000/- to him. He claimed that he had issued a blank security cheque in the year 2005 to the complainant. The witnesses were interested, and had falsely deposed against the accused. He was not liable to pay any money to the complainant, and a false complaint was made against him. He stated that he wanted to lead the evidence, but subsequently, a statement was made on his behalf on 28.09.2012 that no evidence was to be led.

6. Learned Trial Court held that the complainant failed to produce the statement of accounts to corroborate its version. The agreement (Ext. PX) was not proved as per the law. No scribe or witness to the agreement was examined before the Court. The statement of Prince Kumar (CW3) could not be relied upon in the absence of the agreement. Consequently, the onus did not shift to the accused to prove the absence of consideration/liability. Therefore, the learned Trial Court acquitted the accused of the commission of an offence punishable under Section 138 of the NI Act.

7. Being aggrieved by the judgment passed by the learned Trial Court, the appellant/complainant has filed the present appeal, asserting that the learned Trial Court failed to properly appreciate the evidence on record. The notice was duly served upon the accused, but he failed to send any reply to it. The accused admitted the issuance of the cheque and claimed that he had issued a blank, signed cheque as security. The admission of the signature on the cheque would shift the burden upon the accused to rebut the statutory presumption. However, learned Trial Court overlooked this aspect and proceeded to dismiss the complaint on untenable grounds. The agreement was duly

proved as per the law, and the learned Trial Court wrongly refused to look into it. Therefore, it was prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

8. I have heard Mr Karan Singh Kanwar, learned counsel for the appellant/complainant and Ms Shalini Thakur, learned counsel for the respondent/accused.

9. Mr Karan Singh Kanwar, learned counsel for the appellant/complainant, submitted that the learned Trial Court erred in acquitting the accused. The accused admitted the issuance of the cheque and his signature thereon. Consequently, statutory presumption would arise that the cheque was issued for consideration to discharge the debt/liability, and the burden would shift upon the accused to rebut the said presumption. The learned Trial Court further erred in holding that the complainant is required to prove the existence of the debt/liability by producing the statements of account. The agreement (Ext.PX) duly proved the liability of the accused which was wrongly ignored by the learned Trial Court. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside. He relied upon the judgment of

Hon'ble Supreme Court in ***Sanjabij Tari versus Kishore S. Borcar and Another (2025) 259 Comp Cas 685: 2025 SCC Online SC 2069*** in support of his submission.

10. Ms. Shalini Thakur, learned counsel for the respondent/accused, submitted that the learned Trial Court had rightly drawn an adverse inference against the complainant for withholding the statement of account. The learned Trial Court had also rightly discarded the agreement (Ext. PX) because the scribe or the attesting witnesses were not examined. This was a reasonable view that could have been taken based upon the evidence led before the learned Trial Court, and no interference is required with it while deciding an appeal against acquittal; hence, she prayed that the present appeal be dismissed. She relied upon the judgment of Hon'ble Supreme Court in ***Sri Dattatraya vs Sharanappa 2024:INSC:586*** in support of her submission.

11. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

12. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in ***Surendra Singh v. State of Uttarakhand, (2025) 5 SCC 433: 2025 SCC***

OnLine SC 176 that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading of evidence, omission to consider the material evidence and no reasonable person could have recorded the acquittal based on the evidence led before the learned Trial Court. It was observed at page 438:

> "**24.** It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial Judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and 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."

13. This position was reiterated in ***State of M.P. v. Ramveer Singh, 2025 SCC OnLine SC 1743,*** wherein it was observed:

> "**21.** We may note that the present appeal is one against acquittal. Law is well-settled by a plethora of judgments of this Court that, in an appeal against acquittal, unless the finding of acquittal is perverse on the face of the record and the only possible view based on the evidence is consistent with the guilt of the accused, only in such an event, should the appellate Court interfere with a judgment of acquittal. Where two views are possible, i.e., one consistent with the acquittal and the other holding the accused guilty, the appellate Court should refuse to interfere with the judgment of acquittal. Reference in this regard may be made to the judgments of this Court in the cases of ***Babu Sahebagouda Rudragoudar*** **v.** ***State of Karnataka (2024) 8 SCC 149***; ***H.D. Sundara*** **v.** ***State of***

Karnataka (2023) 9 SCC 581, and ***Rajesh Prasad* v. *State of Bihar (2022) 3 SCC 471***."

14. While dealing with the appeal against the acquittal in a complaint filed for the commission of an offence punishable under Section 138 of the NI Act the Hon'ble Supreme Court held in ***Rohitbhai Jivanlal Patel v. State of Gujarat (2019) 18 SCC 106*** that the normal rules with same rigour cannot be applied to the cases under Negotiable Instruments Act because there is a presumption that the holder had received the cheque for consideration to discharge the debt/liability. The Appellate Court is entitled to look into the evidence to determine whether the accused has discharged the burden or not. It was observed: -

> "**12.**... The principles aforesaid are not of much debate. In other words, ordinarily, the appellate court will not be upsetting the judgment of acquittal, if the view taken by the trial court is one of the possible views of the matter and unless the appellate court arrives at a clear finding that the judgment of the trial court is perverse i.e. not supported by evidence on record or contrary to what is regarded as normal or reasonable; or is wholly unsustainable in law. Such general restrictions are essential to remind the appellate court that an accused is presumed to be innocent unless proven guilty beyond a reasonable doubt, and a judgment of acquittal further strengthens such presumption in favour of the accused. However, such restrictions need to be visualised in the context of the particular matter before the appellate court and the nature of the inquiry therein. The same rule with the same rigour cannot be applied in a matter relating to the offence under Section 138 of the NI Act, particularly where a presumption is drawn that the holder has received

> the cheque for the discharge, wholly or in part, of any debt or liability. Of course, the accused is entitled to bring on record the relevant material to rebut such presumption and to show that preponderance of probabilities are in favour of his defence but while examining if the accused has brought about a probable defence so as to rebut the presumption, the appellate court is certainly entitled to examine the evidence on record in order to find if preponderance indeed leans in favour of the accused.
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> **13.** For determination of the point as to whether the High Court was justified in reversing the judgment and orders of the trial court and convicting the appellant for the offence under Section 138 of the NI Act, the basic questions to be addressed are twofold: as to whether the complainant Respondent 2 had established the ingredients of Sections 118 and 139 of the NI Act, so as to justify drawing of the presumption envisaged therein; and if so, as to whether the appellant-accused had been able to displace such presumption and to establish a probable defence whereby, the onus would again shift to the complainant?"

15. The present appeal has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

16. The ingredients of the offence punishable under Section 138 of the NI Act were explained by the Hon'ble Supreme Court in ***Kaveri Plastics v. Mahdoom Bawa Bahrudeen Noorul, 2025 SCC OnLine SC 2019*** as under: -

> "**5.1.1.** In ***K.R. Indira v. Dr. G. Adinarayana (2003) 8 SCC 300***, this Court enlisted the components, aspects and the acts, the concatenation of which would make the offence under Section 138 of the Act complete, to be these (i) drawing of the cheque by a person on an account maintained by him with a banker, for payment to another person from out of

> that account for discharge in whole/in part of any debt or liability, (ii) presentation of the cheque by the payee or the holder in due course to the bank, (iii) returning the cheque unpaid by the drawee bank for want of sufficient funds to the credit of the drawer or any arrangement with the banker to pay the sum covered by the cheque, (iv) giving notice in writing to the drawer of the cheque within 15 days of the receipt of information by the payee from the bank regarding the return of the cheque as unpaid, demanding payment of the cheque amount, and (v) failure of the drawer to make payment to the payee or the holder in due course of the cheque, of the amount covered by the cheque, within 15 days of the receipt of the notice."

17. The accused admitted in his statement recorded under Section 313 of Cr.P.C that he had issued a cheque in favour of the complainant. He claimed that the cheque was blank and was issued as security. Thus, the issuance of the cheque and the signature on the cheque were not disputed. It was laid down by the Hon'ble Supreme Court in ***APS Forex Services (P) Ltd. v. Shakti International Fashion Linkers (2020) 12 SCC 724,*** that when the issuance of a cheque and signature on the cheque are not disputed, a presumption would arise that the cheque was issued in discharge of the legal liability. It was observed: -

> "9. Coming back to the facts in the present case and considering the fact that the accused has admitted the issuance of the cheques and his signature on the cheque and that the cheque in question was issued for the second time after the earlier cheques were dishonoured and that even according to the accused some amount was due and payable, there is a presumption under Section 139 of the NI Act that there exists a legally enforceable debt or liability.

> Of course, such a presumption is rebuttable. However, to rebut the presumption, the accused was required to lead evidence that the full amount due and payable to the complainant had been paid. In the present case, no such evidence has been led by the accused. The story put forward by the accused that the cheques were given by way of security is not believable in the absence of further evidence to rebut the presumption, and more particularly, the cheque in question was issued for the second time after the earlier cheques were dishonoured. Therefore, both the courts below have materially erred in not properly appreciating and considering the presumption in favour of the complainant that there exists a legally enforceable debt or liability as per Section 139 of the NI Act. It appears that both the learned trial court as well as the High Court have committed an error in shifting the burden upon the complainant to prove the debt or liability, without appreciating the presumption under Section 139 of the NI Act. As observed above, Section 139 of the Act is an example of reverse onus clause and therefore, once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter, it is for the accused to rebut such presumption by leading evidence."

18. A similar view was taken in ***N. Vijay Kumar v. Vishwanath Rao N., 2025 SCC OnLine SC 873,*** wherein it was held as under:

> "6. 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."

19. This position was reiterated in ***Sanjabij Tari v. Kishore S. Borcar, 2025 SCC OnLine SC 2069***, wherein it was observed:

> *"ONCE EXECUTION OF A CHEQUE IS ADMITTED, PRESUMPTIONS UNDER SECTIONS 118 AND 139 OF THE NI ACT ARISE*
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> 15. In the present case, the cheque in question has admittedly been signed by the Respondent No. 1-Accused. This Court is of the view that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability arises against the accused. It is pertinent to mention that observations to the contrary by a two-Judge Bench in ***Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54,*** have been set aside by a three-Judge Bench in ***Rangappa*** (supra).
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> 16. This Court is further of the view that by creating this presumption, the law reinforces the reliability of cheques as a mode of payment in commercial transactions.
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> 17. Needless to mention that the presumption contemplated under Section 139 of the NI Act is a rebuttable presumption. However, the initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused/drawer of the cheque [See: ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197***].

20. Thus, the Court has to start with the presumption that the cheque was issued in discharge of the liability for consideration, and the burden is upon the accused to rebut this presumption. Learned Trial Court ignored this presumption and stated in paragraph 11 that the drawee is not absolved from

proving the existence of a legally enforceable debt/liability and has to prove beyond a reasonable doubt that there exists a liability. This is not a correct proposition of law because the drawee is not supposed to prove the existence of the liability because of the presumption in his favour, and the burden is upon the accused to rebut the presumption.

21. Prince Kumar (CW3) stated that the accused had executed an agreement (Ext. PX). He stated in his cross-examination that the agreement (Ext. PX) was executed at Bilaspur, and he was not present at the time of the execution of the agreement.

22. The admission made by him in the cross-examination that he was not present at the time of execution of the agreement shows that he could not have proved its execution because the execution of the agreement can be proved by examining the person who had executed it or in whose presence the agreement was executed. It was laid down by the Hon'ble Supreme Court in ***Mobarik Ali Ahmed v. State of Bombay, 1957 SCC OnLine SC 46: 1958 SCR 328: 1957 CRI LJ 1346: AIR 1957 SC 857*** that a document can be proved by examining the person who had seen the document

being written, any person acquainted with the handwriting or an expert to prove the handwriting. It was observed:

> "**11.**...The proof of the genuineness of a document is proof of the authorship of the document and is proof of a fact, like that of any other fact. The evidence relating thereto may be direct or circumstantial. It may consist of direct evidence of a person who saw the document being written or the signature being affixed. It may be proof of the handwriting of the contents, or of the signature, by one of the modes provided in Sections 45 and 47 of the Indian Evidence Act. It may also be proved by internal evidence afforded by the contents of the document. This last mode of proof by the contents may be of considerable value where the disputed document purports to be a link in a chain of correspondence, some links in which are proved to the satisfaction of the court. In such a situation the person who is the recipient of the document, be it either a letter or a telegram, would be in a reasonably good position both with reference to his prior knowledge of the writing or the signature of the alleged sender limited though it may be, as also his knowledge of the subject matter of the chain of correspondence, to speak to its authorship. In an appropriate case, the court may also be in a position to judge whether the document constitutes a genuine link in the chain of correspondence and thus to determine its authorship..."

23. In the present case, no person in whose presence the document was executed or conversant with the handwriting was examined, and the learned Trial Court was justified in holding that the document was not proved as per the law.

24. However, the fact that the execution of the agreement was not proved as per the law will not make any difference to the

complainant's claim because the agreement was proved to corroborate the complainant's version. Otherwise, a presumption exists in the complainant's favour that the cheque was issued for consideration in discharge of the liability, and the burden is upon the accused to rebut this presumption.

25. Learned Trial Court held that the complainant was in possession of the documents, which were not produced to prove that the cheque was issued in discharge of the liability, and an adverse inference is to be drawn against the complainant. This finding cannot be sustained. It was laid down by the Hon'ble Supreme Court in ***Uttam Ram v. Devinder Singh Hudan, (2019) 10 SCC 287: (2020) 1 SCC (Cri) 154: (2020) 1 SCC (Civ) 126: 2019 SCC OnLine SC 1361***, that a presumption under Section 139 of NI Act would obviate the requirement to prove the existence of consideration. It was observed:

> **"20.** The trial court and the High Court proceeded as if the appellant was to prove a debt before the civil court, wherein the plaintiff is required to prove his claim on the basis of evidence to be laid in support of his claim for the recovery of the amount due. An dishonour of a cheque carries a statutory presumption of consideration. The holder of the cheque in due course is required to prove that the cheque was issued by the accused and that when the same was presented, it was not honoured. Since there is a statutory presumption of consideration, the burden is on

the accused to rebut the presumption that the cheque was issued not for any debt or other liability."

26. This position was reiterated in ***Ashok Singh v. State of U.P., 2025 SCC OnLine SC 706,*** wherein it was observed:

> "**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 a stand, more so when respondent no. 2 did not make any serious attempt to dispel/negate such a 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 ***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 petitione₹ 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 case 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****:*
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> > *'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 are 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, further 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.****'(emphasis supplied)' (underlining in original; emphasis supplied by us in bold).*

27. A similar view was taken in ***Sanjabij Tari v. Kishore S. Borcar, 2025 SCC OnLine SC 2069***, wherein it was observed:

> "21. This Court also takes judicial notice of the fact that some District Courts and some High Courts are not giving effect to the presumptions incorporated in Sections 118 and 139 of the NI Act and are treating the proceedings under the NI Act as another civil recovery proceedings and are directing the complainant to prove the antecedent debt or liability. This Court is of the view that such an approach is not only prolonging the trial but is also contrary to the mandate of Parliament, namely, that the

> drawer and the bank must honour the cheque; otherwise, trust in cheques would be irreparably damaged."

28. Therefore, no adverse inference could have been drawn against the complainant for withholding the statement of account.

29. The accused claimed in his statement recorded under Section 313 of Cr.P.C. that he had supplied Khair wood for which he had received the payment, and a sum of ₹9,00,000/- was due from the complainant. He stated that he wanted to lead the defence evidence, but did not produce any evidence. Thus, there is nothing to support the version of the accused that he had supplied the Khair wood to the complainant. It was held in ***Sumeti Vij v. Paramount Tech Fab Industries, (2022) 15 SCC 689: 2021 SCC OnLine SC 201*** that the accused has to lead defence evidence to rebut the presumption and mere denial in his statement under Section 313 of Cr.P.C. is not sufficient. It was observed at page 700:

> "20. That apart, when the complainant exhibited all these documents in support of his complaints and recorded the statement of three witnesses in support thereof, the appellant recorded her statement under Section 313 of the Code but failed to record evidence to disprove or rebut the presumption in support of her defence available under Section 139 of the Act. *The statement of the accused recorded under Section 313 of the Code is not substantive evidence of defence, but only an opportunity for the accused*

> *to explain the incriminating circumstances appearing in the prosecution's case against the accused. Therefore, there is no evidence to rebut the presumption that the cheques were issued for consideration*." (Emphasis supplied)"

30. Prince Kumar (CW3) stated in his cross-examination that the accused started supplying the Khair wood to the complainant in the year 2006-2007. The details of the Khair wood supplied by the accused was entered in the forest register. He had not brought the forest register to the Court. He denied that the accused had supplied 549 logs during the pendency of the proceedings. He denied that the accused had supplied the Khair wood, which was agreed to be supplied by him, and the complainant was not entitled to receive any money from the accused. He denied that a false case was made against the accused.

31. The cross-examination of this witness does not establish the version of the accused that he had supplied the Khair wood as per the agreement. Prince Kumar (CW3) admitted in his cross-examination that the complainant used to maintain a register regarding the supply of the Khair wood to the complainant. The accused did not requisition the Register to prove the extent of the Khair wood supplied by him to the complainant.

32. It was submitted that the complainant was required to prove the register to establish the existence of the liabilities/ debt. This submission ignores the presumption in the complainant's favour that the cheque was issued for consideration to discharge debt/liability. Therefore, the Court has to assume that the accused was liable to pay ₹5,50,000 to the complainant, and the burden is upon the accused to prove that he had no liability for this amount. Hence, the burden of proof was upon the accused and not on the complainant.

33. There is no other evidence to show that the accused is not liable to pay ₹5,50,000/- to the complainant.

34. In ***Sri Dattatraya*** (*supra*), the Hon'ble Supreme Court held that the evidence of the complainant was contradictory and the accused had successfully rebutted the presumption attached to the cheque. In the present case, the testimony of Prince Kumar (CW3) is not contradictory, and the cited judgment does not apply to the present case.

35. Prince Kumar (CW3) stated that the cheque was dishonoured with an endorsement 'insufficient funds'. Rakesh Kumar (CW1) stated that the cheque was received for collection but could not be honoured because of insufficient funds. This

was corroborated by Punit Mahajan (CW2), who stated that the accused had an account in the HP State Cooperative Bank, Bilaspur. The cheque was dishonoured because the accused did not have a sufficient amount in his account. He proved the statement of account (Ext.C9), which shows that the accused had a balance of ₹1144/- on 17.07.2008, when the cheque was presented. Therefore, it was duly proved on record that the cheque was dishonoured with an endorsement 'insufficient funds'.

36. The complainant sent a notice to the accused, which was returned with an endorsement that the addressee had refused to accept the letter; hence, it was returned to the sender. It was laid down by the Hon'ble Supreme Court of India in ***C.C. Allavi Haji vs. Pala Pelly Mohd. 2007(6) SCC 555,*** that when a notice is returned with an endorsement 'refused', it is deemed to be served. It was observed:

> "8. Since in ***Bhaskaran's case (supra)***, the notice issued in terms of Clause (b) had been returned unclaimed and not as refused, the Court, posed the question: "Will there be any significant difference between the two so far as the presumption of service is concerned?" It was observed that though Section 138 of the Act does not require that the notice should be given only by "post", yet in a case where the sender has dispatched the notice by post with the correct address written on it, the principle incorporated in

Section 27 of the General Clauses Act, 1897 (for short 'G.C. Act') could profitably be imported in such a case. It was held that in this situation service of notice is deemed to have been effected on the sendee unless he proves that it was not really served and that he was not responsible for such non-service."

37. A similar view was taken in ***Krishna Swaroop Agarwal v. Arvind Kumar, 2025 SCC OnLine SC 1458,*** wherein it was observed:

> **"13.** Section 27 of the General Clauses Act, 1887, deals with service by post:
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> > "27. **Meaning of Service by post.-** Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post".
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> **14.** The concept of deemed service has been discussed by this Court on various occasions. It shall be useful to refer to some instances:
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> > 14.1 In ***Madan and Co. v. Wazir Jaivir Chand (1989) 1 SCC 264,*** which was a case concerned with the payment of arrears of rent under the J&K Houses and Shops Rent Control Act, 1966. The proviso to Section 11, which is titled "Protection of a Tenant against Eviction", states that unless the landlord serves notice upon the rent becoming due, through the Post Office under a registered cover, no amount shall be deemed to be in arrears. Regarding service of notice by post, it was observed that in order to comply with the proviso, all

that is within the landlord's domain to do is to post a pre-paid registered letter containing the correct address and nothing further. It is then presumed to be delivered under Section 27 of the GC Act. Irrespective of whether the addressee accepts or rejects, "*there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by the addressee.*"

14.2 In the context of Section 138 of the Negotiable Instruments Act, 1881it was held that when the payee dispatches the notice by registered post, the requirement under Clause (b) of the proviso of Section 138 of the NI Act stands complied with and the cause of action to file a complaint arises on the expiry of that period prescribed in Clause (c) thereof. [See: ***C.C. Alavi Haji v. Palapetty Mouhammed (2007) 6 SCC 555***]

14.3 The findings in ***C.C. Alavi*** (supra) were followed in ***Vishwabandhu v. Srikrishna (2021) 19 SCC 549***. In this case, the summons issued by the Registered AD post was received back with endorsement "refusal". In accordance with Sub-Rule (5) of Order V Rule 9 of CPC, refusal to accept delivery of the summons would be deemed to be due service in accordance with law. To substantiate this view, a reference was made to the judgment referred to supra.

14.4 A similar position as in ***C.C. Alavi*** (supra) stands adopted by this Court in various judgments of this Court in ***Greater Mohali Area Development Authority v. Manju Jain (2010) 9 SCC 157; Gujarat Electricity Board v. Atmaram Sungomal Posani (1989) 2 SCC 602; CIT v. V. K. Gururaj (1996) 7 SCC 275; Poonam Verma v. DDA (2007) 13 SCC 154; Sarav Investment & Financial Consultancy (P) Ltd. v. Lloyds Register of Shipping Indian Office Staff Provident Fund (2007) 14 SCC 753; Union of India v. S.P. Singh (2008) 5 SCC 438; Municipal Corpn., Ludhiana v. Inderjit Singh (2008) 13 SCC 506***; and ***V.N. Bharat v. DDA (2008) 17 SCC 321***.

38. Therefore, the notice is deemed to have been served upon the accused. The accused did not claim that he had paid the money to the complainant after the receipt of the notice.

39. Thus, it was duly proved on record that the accused had issued a cheque to discharge the debt/liability which was dishonoured with an endorsement 'funds insufficient' and the accused failed to repay the amount despite the deemed receipt of valid notice of demand; hence all the ingredients of the commission of an offence punishable under Section 138 of NI Act were duly satisfied.

40. Learned Trial Court wrongly proceeded to shift the burden upon the complainant to prove the existence of liability. This was impermissible because of the presumption attached to the cheque. It was laid down in ***Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148: 2023 SCC OnLine SC 1275*** that when the court failed to consider the presumption under section 139 of the Negotiable Instruments Act, its judgment could be interfered with. It was observed at page 166:

> **54.** As rightly contended by the appellant, there is a fundamental flaw in the way both the courts below have proceeded to appreciate the evidence on record. Once the presumption under Section 139 was given effect to, the courts ought to have proceeded on the premise that the

cheque was, indeed, issued in discharge of a debt/liability. The entire focus would then necessarily have to shift to the case set up by the accused, since the activation of the presumption has the effect of shifting the evidential burden on the accused. The nature of inquiry would then be to see whether the accused has discharged his onus of rebutting the presumption. If he fails to do so, the court can straightaway proceed to convict him, subject to the satisfaction of the other ingredients of Section 138. If the court finds that the evidential burden placed on the accused has been discharged, the complainant would be expected to prove the said fact independently, without taking the aid of the presumption. The court would then take an overall view based on the evidence on record and decide accordingly.

55. At the stage when the courts concluded that the signature had been admitted, the court ought to have inquired into either of the two questions (*depending on the method in which the accused has chosen to rebut the presumption*): Has the accused led any defence evidence to prove and conclusively establish that there existed no debt/liability at the time of issuance of cheque? In the absence of rebuttal evidence being led, the inquiry would entail: Has the accused proved the non-existence of debt/liability by a preponderance of probabilities by referring to the "*particular circumstances of the case*"?

56. The perversity in the approach of the trial court is noticeable from the way it proceeded to frame a question at trial. According to the trial court, the question to be decided was "*whether a legally valid and enforceable debt existed qua the complainant and the cheque in question (Ext. CW I/A) was issued in discharge of said liability/debt*". When the initial framing of the question itself being erroneous, one cannot expect the outcome to be right. The onus, instead of being fixed on the accused, has been fixed on the complainant. A lack of proper understanding of the nature of the presumption in Section 139 and its effect has resulted in an erroneous order being passed.

57. Einstein had famously said:

> "If I had an hour to solve a problem, I'd spend 55 minutes thinking about the problem and 5 minutes thinking about solutions."
>
> Exaggerated as it may sound, he is believed to have suggested that the quality of the solution one generates is directly proportionate to one's ability to identify the problem. A well-defined problem often contains its own solution within it.
>
> **58.** Drawing from Einstein's quote, if the issue had been properly framed after careful thought and application of judicial mind, and the onus correctly fixed, perhaps, the outcome at trial would have been very different, and this litigation might not have travelled all the way up to this Court."

41. Thus, the judgment passed by the learned Trial Court, acquitting the accused, cannot be sustained and is set aside. The accused is convicted of the commission of an offence punishable under Section 138 of the NI Act. Let he be produced on **27th February, 2026**, for hearing on the quantum of sentence.

(Rakesh Kainthla)
Judge

1st January, 2026
(Nikita)