IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:03.07.2025

\+ **CRL.A. 560/2020**

SHRI ASHOK GAUR .....Appellant

versus

STATE OF NCT OF DELHI & ANR. .....Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Deepak Sharma, Mr. Saurabh & Mr. Nikunj Sharma, Advs.

For the Respondents : Mr. Sunil Kumar Gautam, APP for the State
Ms. Samridhi Singh & Mr. A.K. Singh, Advs. for R2

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present appeal is filed against the judgment dated 15.02.2020 (hereafter '**impugned judgment**') passed by the learned Metropolitan Magistrate ('**MM**'), South, Saket Courts, New Delhi in CC No. 472501/2016 whereby Respondent No. 2 was acquitted of the offence under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**').

2. Briefly stated, it is the case of the complainant/petitioner that on

24.07.2015, he advanced a friendly loan for a sum of ₹10,00,000/- (₹5,00,000/- in cash and ₹5,00,000/- through RTGS) to Respondent No. 2. It is alleged that the same was duly acknowledged by Respondent No. 2 who executed a promissory note and a receipt dated 24.07.2015 in the presence of two witnesses and also issued a post dated cheque bearing No. 834276 dated 17.06.2016 for a sum of ₹10,00,000/- in favour of the petitioner. The said cheque on presentation got dishonoured and returned unpaid *vide* return memo dated 18.06.2016 with remarks "*funds insufficient*". Thereafter, the petitioner sent a legal demand notice dated 12.07.2016 to Respondent No. 2. Subsequently, on the failure of Respondent No. 2 to repay the cheque amount within the stipulated period despite the issuance of legal demand notice, the subject complaint was filed under Section 138 of the NI Act.

3. By the impugned judgment, the learned MM acquitted Respondent No. 2 of the offence under Section 138 of the NI Act. It was noted that as per the version of the petitioner, he had advanced a sum of ₹10,00,000/- to Respondent No. 2 on 24.07.2015 out of which ₹5,00,000/- was paid through RTGS and ₹5,00,000/- was paid in cash. It was noted that at the time of framing of notice, Respondent No. 2 only admitted to receiving a sum of ₹5,00,000/- from the petitioner. It was further noted that as per Respondent No. 2, he had already paid a total of ₹10,00,000/- to the petitioner in the following manner: ₹9,00,000/- from the account of Respondent No.2's mother, and

₹1,00,000/- in cash.

4. The learned MM noted that though the factum of receipt of ₹9,00,000/- from the account of the mother of Respondent No.2 was not denied by the petitioner, however, the same fact had not been mentioned by the petitioner in the complaint and was only unfolded during the course of cross-examination. It was noted that the petitioner stated that the sum of ₹9,00,000/- was received by him in respect of some other transaction which took place separately between the petitioner and the parents of Respondent No. 2 and that the same did not form part of the loan transaction that took place between the petitioner and Respondent No. 2.

5. The learned MM also took note of certain contradictions that emerged in the version of Respondent No. 2. It was noted that while Respondent No.2, in his defence, initially stated that he had given a blank signed cheque to the petitioner, however, he subsequently stated that he met the petitioner for the first time in Court and that a blank signed cheque along with the promissory note was given by him to his father. It was further noted that while Respondent No. 2 initially admitted to having taken a loan for a sum of ₹5,00,000/-, he subsequently stated that he did not have any transaction with the petitioner. The learned MM however noted that despite the contradictions, Respondent No. 2 was able to raise a probable defence to rebut the statutory presumptions raised against him.

6. It was noted that as per the complaint, the loan amount was

advanced on 24.07.2015 and that on the same day a post dated cheque of 17.06.2016 for a sum of ₹10,00,000/- was handed over to the petitioner. It was noted that the statement of accounts as shown by the petitioner only confirmed the transfer of ₹5,00,000/- in the account of M/s/ Blue Bell, that is, the proprietorship of Respondent No. 2. It was noted that the remaining loan amount of ₹5,00,000/- was allegedly given in cash, however, nothing crucial had been proved to that effect. It was noted that while the petitioner examined two witnesses, the same lacked genuineness and originality. It was further noted that Respondent No. 2, on the contrary, had successfully shown that a sum of ₹9,00,000/- was transferred from his mother's account. It was noted that while the petitioner stated that the same was with respect to a separate transaction, no evidence was brought forth to substantiate that the sum of ₹9,00,000/- pertained to a separate transaction with the mother of Respondent No. 2.

7. The learned MM noted that even if the stand of the petitioner that Respondent No. 2 had availed a loan for a sum of ₹10,00,000/- was presumed to be correct, the same had already been repaid by Respondent No. 2. It was noted that the petitioner received a sum of ₹9,00,000/- on 28.01.2016 and that the same was reflected in the statement of account placed by Respondent No. 2. It was noted that the statement of account further reflected a withdrawal of a sum of ₹1,00,000/- on the same day that is 28.01.2016. It was noted that the same was in line with the testimony of Respondent No. 2 and his

father that the remaining sum of ₹1,00,000/- was paid to the petitioner in cash. Consequently, considering that Respondent No. 2 was able to raise a probable defence to rebut the presumptions raised against him, the learned MM acquitted the respondent of the offence under Section 138 of the NI Act.

8. The learned counsel for the petitioner submitted that the learned MM erred in acquitting Respondent No. 2 of the offence under Section 138 of the NI Act. He submitted that impugned judgment is based on surmises and conjectures, and does not take into account the evidence led by the petitioner. He submitted that while the factum of receipt of a sum of ₹9,00,000/- from the account of the mother of Respondent No. 2 is not denied, the same pertained to a separate transaction that took place between the petitioner and the mother of Respondent No. 2. He submitted that as per the testimony of the father of Respondent No. 2, several transactions took place between the petitioner and the parents of Respondent No. 2. He submitted that Respondent No. 2 took contradictory stands in respect of the issuance of cheque to the petitioner. He submitted that while Respondent No. 2, at the time of framing of notice stated that he had given a blank signed cheque to the petitioner, however, he subsequently stated that he met the petitioner for the first time in Court and that a blank signed cheque along with the promissory note was given by him to his father. He further submitted that while Respondent No. 2 only admitted to having taken a loan of ₹5,00,000/- he stated that the entire sum of ₹10,00,000/- had

been paid to the petitioner.

9. He submitted that since the signature on the impugned cheque and the promissory note were not denied, the presumptions under Sections 139 and 118(a) of the NI Act stood in favour of the petitioner. He submitted that the onus was on Respondent No. 2 to raise a probable defence to rebut the presumptions raised against him.

10. The learned counsel for Respondent No. 2 submitted that the impugned judgment is well reasoned and warrants no interference. She submitted that the petitioner failed to show that there existed any legally recoverable debt. She submitted that Respondent No. 2 had controverted the presumptions raised against him by raising a probable defence. She submitted that Respondent No. 2 successfully showed that a sum of ₹9,00,000/- was transferred to the petitioner's account from the account of Respondent No. 2's mother. She submitted that a further sum of ₹1,00,000/- was paid to the petitioner in cash on the same day, and that the same is reflected in the statement of accounts. She submitted that once Respondent No. 2 had raised a probable defence to controvert the presumptions raised against him, it was then on the petitioner to establish the existence of debt.

Analysis

11. The present case, relates to acquittal of an accused in a complaint under Section 138 of the NI Act. The restriction on the power of Appellate Court in an appeal against the order of acquittal in regard to other offence does not apply with same vigour in the offence

under NI Act which entails presumption against the accused. The Hon'ble Apex Court in the case *of* ***Rohitbhai Jivanlal Patel v. State of Gujarat*** **: (2019) 18 SCC 106** had observed as under:

> *"12. According to the learned counsel for the appellant-accused, the impugned judgment is contrary to the principles laid down by this Court in Arulvelu [Arulvelu v. State, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] because the High Court has set aside the judgment of the trial court without pointing out any perversity therein. The said case of Arulvelu [Arulvelu v. State, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] related to the offences under Sections 304-B and 498-A IPC. Therein, on the scope of the powers of the appellate court in an appeal against acquittal, this Court observed as follows : (SCC p. 221, para 36)*
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> > *"36. Careful scrutiny of all these judgments leads to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment cannot be set aside because the appellate court's view ismore probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."*
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> *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 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 essentially to remind the appellate court that an accused is presumed to be innocent unless proved guilty beyond 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 inquiry therein. The same rule with 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."

(emphasis supplied)

12. It is well settled 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/ respondent received the cheque in discharge of a legally enforceable debt or liability are raised against the accused [Ref. ***Rangappa v. Sri Mohan*:(2010) 11 SCC 441**].

13. The Hon'ble Apex Court in ***Rajesh Jain v. Ajay Singh* : (2023) 10 SCC 148**, while discussing the appropriate approach in dealing with presumption under Section 139 of the NI Act, observed the following :

"54. …. 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 on 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 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 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"?

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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 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.

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61. The fundamental error in the approach lies in the fact that the High Court has questioned the want of evidence on the part of the complainant in order to support his allegation of having extended loan to the accused, when it ought to have instead concerned itself with the case set up by the accused and whether he had discharged his evidential burden by proving that there existed no debt/liability at the time of issuance of cheque."

(emphasis supplied)

14. At the same time, it is also pertinent to note that the presumption under Section 139 of the NI Act is not absolute, and may be controverted by the accused. In doing so, the accused only ought to raise a probable defence on a preponderance of probabilities to show that there existed no debt in the manner so pleaded by the complainant in his complaint/ demand notice or the evidence. Once the accused successfully raises a probable defence to the satisfaction of the Court, his burden is discharged, and the presumption 'disappears.' The burden then shifts upon the complainant, who then has to prove the existence of such debt as a matter of fact. The Hon'ble Apex Court in ***Rajesh Jain v. Ajay Singh*** *(supra)*, in this regard has observed as under:

> ***"41. In order to rebut the presumption and prove to the contrary, it is open to the accused to raise a probable defence wherein the existence of a legally enforceable debt or liability can be contested.*** *The words 'until the contrary is proved' occurring in Section 139 do not mean that accused must necessarily prove the negative that the instrument is not issued in discharge of any debt/liability but the accused has the option to ask the Court to consider the non-existence of debt/liability so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that debt/liability did not exist.* ***[Basalingappa Vs. Mudibasappa (AIR 2019 SC 1983) See also Kumar Exports Vs. Sharma Carpets (2009) 2 SCC 513]***
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> *44.* ***The accused may adduce direct evidence to prove that the instrument was not issued in discharge of a debt/liability and, if he adduces acceptable evidence, the burden again shifts to the complainant. At the same time, the accused may also rely upon circumstantial evidence and, if the circumstances so relied upon are compelling the burden may likewise shift to the complainant.*** *It is open for him to also rely upon presumptions of fact, for instance those mentioned in Section 114 and other sections of the*

Evidence Act. The burden of proof may shift by presumptions of law or fact. In Kundanlal's case- (supra) when the creditor had failed to produce his account books, this Court raised a presumption of fact under Section 114, that the evidence, if produced would have shown the non-existence of consideration. Though, in that case, this Court was dealing with the presumptive clause in Section 118 NI Act, since the nature of the presumptive clauses in Section 118 and 139 is the same, the analogy can be extended and applied in the context of Section 139 as well.

45. ***Therefore, in fine, it can be said that once the accused adduces evidence to the satisfaction of the Court that on a preponderance of probabilities there exists no debt/liability in the manner pleaded in the complaint or the demand notice or the affidavit-evidence, the burden shifts to the complainant and the presumption 'disappears' and does not haunt the accused any longer. The onus having now shifted***

to the complainant, he will be obliged to prove the existence of a debt/liability as a matter of fact and his failure to prove would result in dismissal of his complaint case. Thereafter, the presumption under Section 139 does not again come to the complainant's rescue. *Once both parties have adduced evidence, the Court has to consider the same and the burden of proof loses all its importance. [Basalingappa vs. Mudibasappa, AIR 2019 SC 1983; See also, Rangappa vs. Sri Mohan (2010) 11 SCC 441]"*

(emphasis supplied)

15. From a perusal of the record, it is evident that Respondent No. 2 has not denied the issuance or his signatures on the impugned cheque. Respondent No. 2 however raised a probable defence by stating that the entire cheque amount had been repaid by him. Further, Respondent No. 2 placed on record a statement of accounts of his mother to substantiate that the entire sum of ₹10,00,000/- had been repaid to the petitioner.

16. It is pertinent to note that in terms of the dictum of the Hon'ble

Apex Court in ***Rajesh Jain v. Ajay Singh*** *(supra)*, once Respondent No. 2 was able to raise a probable defence by either leading direct or circumstantial evidence to show that there existed no debt/liability in the manner as pleaded in the complaint/ demand notice/ affidavit-evidence, the presumption raised against him "disappeared". The onus then "shifted" on the petitioner to establish as a matter of fact that there in fact existed a debt/liability, and a failure to do so would culminate in the dismissal of his complaint case.

17. The petitioner has emphasised upon the contradictions that emerged in the version of Respondent No. 2 to challenge the impugned judgment. It has been argued that at the time of framing of notice, Respondent No. 2 stated that he had given a blank signed cheque to the petitioner, however, he subsequently stated that he met the petitioner for the first time in Court and that a blank signed cheque along with the promissory note was given by him to his father. He further submitted that while Respondent No. 2 only admitted to having taken a loan of ₹5,00,000/- he stated that the entire sum of ₹10,00,000/- had been paid to the petitioner.

18. It is imperative to note that it is the petitioner's own case that he had advanced a sum of ₹10,00,000/- to Respondent No. 2 (₹5,00,000/- through RTGS and ₹5,00,000/- in cash). The subject cheque was also issued for a sum of ₹10,00,000/-. In order to controvert the presumptions raised against him, Respondent No. 2 brought forth the statement of accounts of his mother to contend that the amount had

already been paid to the petitioner. Contrarily, the petitioner contended that the amount received by him pertained to a separate transaction that took place between the petitioner and Respondent No. 2's mother. However, no evidence was brought forth by the petitioner to substantiate that the amount received by him was in respect of a separate transaction.

19. Even if the petitioner's case is taken at the highest, yet, since Respondent No. 2 had already raised a probable defence to dislodge the presumptions raised against him, the onus shifted to the petitioner to show that there existed a debt/liability as on the date appearing on the impugned cheque. The acquittal of Respondent No. 2 was not premised on whether the version of Respondent No. 2 was without blemish *per se* or not but on the fact that the petitioner failed to show that the sum of ₹9,00,000/- as received by him pertained to a separate transaction. Once Respondent No. 2 had raised a probable defence to the satisfaction of the Court, the presumptions under Sections 118(a) or 139 of the NI Act were no longer in the favour of the petitioner. For this reason, the petitioner having failed to lead evidence to show the existence of the debt/liability, his contentions that there were contradictions in the version of Respondent No. 2 or that the presumptions under Section 118 and 139 of the NI Act were in his favour, do not bolster the case of the petitioner.

20. It is pertinent to note that a decision of acquittal fortifies the presumption of innocence of the accused, and the said decision must not be upset until the appreciation of evidence is perverse.

21. Upon a consideration of the facts and circumstances of the case, this Court finds no such perversity in the impugned judgment so as to merit an interference in the finding of acquittal. Consequently, this Court finds no reason to entertain the present appeal.

22. The present appeal is accordingly dismissed.

AMIT MAHAJAN, J

JULY 3, 2025