IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 09.06.2025

\+ **CRL.L.P. 45/2018 & CRL.M.A. 1078/2018**
BARUN BHANOT .....Petitioner

versus

M/S ANNIE IMPEXPO
MARKETING PVT LTD & ANR .....Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Anand Ranjan, Mr. Abhishek Kumar Singh & Mr. Alok Kumar, Advs.

For the Respondents : Ms. Dharini Windlass, Adv. through V.C.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present leave to appeal is filed against the judgment dated 26.04.2017 (hereafter '**impugned judgment**') passed by the learned Metropolitan Magistrate ('**MM**'), Patiala House Courts, New Delhi in CC No. 42989/2016 dismissing the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**').

2. Briefly stated, the petitioner is the proprietor of M/s A. B. Consultants and is in the business of providing consultancy and other

services in relation to custom clearance and freight forwarding to exporters and importers. It is alleged that the petitioner provided its services to the respondents and consequently raised regular invoices. It is alleged that a sum of ₹2,64,689/- was due to the petitioner. It is alleged that Respondent No. 1 through its managing director being Respondent No. 2, in discharge of the liability, issued two cheques bearing nos. 465680 and 465681 for a sum of ₹50,000/- each duly signed by Respondent No. 2. It is alleged that the subject cheques, on presentation, got dishonoured and returned unpaid *vide* return memo dated 05.01.2009 with the remarks "*payment stopped.*" Subsequently, when the respondents failed to make the payment within the stipulated period despite the issuance of the legal demand notice, the petitioner instituted the subject complaint under Section 138 of the NI Act.

3. By the impugned judgment, the learned MM dismissed the complaint filed by the petitioner and acquitted the respondents of the offence under Section 138 of the NI Act. It was noted that the petitioner failed to file a valid legal notice in terms of Section 138 of the NI Act; the petitioner failed to make a demand for the amount that was to be paid by the respondents; the petitioner failed to specify or raise a demand for the amount in the subject cheques; while the legal demand notice raised the issue that a sum of ₹2,64,689/- was outstanding, and that two cheques were issued by the respondents towards part payment, the details of the two cheques issued by the respondent towards part payment of the outstanding amount had not

been specified.

4. The learned MM held that the petitioner failed to raise a demand for money in the legal notice as is stipulated under Section 138(b) of the NI Act and vaguely mentioned to clear all the outstanding dues which does not meet the requisite under Section 138 of the NI Act. It was held that while the accused can be prosecuted even when the cheque gets dishonored for the reason "*payment stopped by drawer*", the accused is liable to acquitted where he is able 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.

5. It was held that the respondents were able to raise a probable defence on a preponderance of probabilities by highlighting that the petitioner issued incorrect as well as double bills for the same consignment. The respondents pointed out that the petitioner failed to maintain proper statement of accounts. It was noted that while the petitioner in his complaint stated that the total outstanding sum was ₹2,64,689/-, the document produced by the petitioner in Court showed that the outstanding sum was ₹2,43,982/-. It was noted that the petitioner failed to render any explanation as to why the legal demand notice reflected the outstanding amount as ₹2,64,689/- when the amount due was only ₹2,43,982/-. Consequently, considering the invalid legal notice and the defence of the respondents, the learned MM acquitted the respondents of the offence under Section 138 of the

NI Act.

6. The learned counsel for the petitioner submitted that the learned MM erred in acquitting the respondents of the offence under Section 138 of the NI Act. He submitted that the learned MM failed to take into account the evidence on record while dismissing the complaint filed by the petitioner. He submitted that since the petitioner had proved the issuance of the subject cheque, the presumption under Section 139 of the NI Act stood in favour of the petitioner and against the respondents. He submitted that the onus was on the respondents to raise a probable defence in order to rebut the statutory presumption under Section 139 of the NI Act. He submitted that since the respondents failed to raise a probable defence to dislodge the presumptions raised against them, the present petition be allowed.

7. The learned counsel for the respondent submitted that the learned MM rightly acquitted the respondent of the offence under Section 138 of the NI Act. She submitted that the legal demand notice was invalid, and the said ground alone is sufficient for the complaint to be dismissed. She submitted that the respondents raised a probable defence by pointing towards the contradictions in the account maintained by the petitioner, and the amount claimed in the legal notice. She consequently submitted that since the respondent had raised a probable defence by pointing towards the loopholes in the version of the petitioner, the burden inasmuch as Section 139 of the NI Act was concerned stood discharged.

ANALYSIS

8. 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 a petition seeking leave to appeal against order of acquittal in regard to other offence does not apply with same vigor 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)*
>
> > *"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."*
>
> *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)

9. 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**].

10. 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"?

xxx xxx xxx

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.

xxx xxx xxx

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)

11. It is relevant 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]***
>
> *xxx xxx xxx*
>
> *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)

12. The short point of determination by this Court is thus whether the learned MM rightly acquitted the respondents of the offence under Section 138 of the NI Act.

13. The learned MM, in the impugned judgment, noted that the petitioner failed to raise a valid legal demand notice. For this reason, before delving into the correctness of the impugned judgment, it becomes imperative to examine the contours of Section 138 of the NI Act. Section 138(b) of the NI Act in relation to the contents of legal

demand notice provides as under:

> *"Provided that nothing contained in this section shall apply unless—*
> *(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid;"*

14. It is pertinent to note that the Hon'ble Apex Court in the case of ***Rahul Builders v. Arihant Fertilizers & Chemicals*** **: (2008) 2 SCC 321** while delineating the importance of a valid legal demand notice, and that the same can be a ground for dismissal of complaint under Section 138 of the NI Act had observed as under:

> "*10. Service of a notice, it is trite, is imperative in character for maintaining a complaint. It creates a legal fiction. Operation of Section 138 of the Act is limited by the proviso. When the proviso applies, the main section would not. Unless a notice is served in conformity with proviso (b) appended to Section 138 of the Act, the complaint petition would not be maintainable. Parliament while enacting the said provision consciously imposed certain conditions. One of the conditions was service of a notice making demand of the payment of the amount of cheque as is evident from the use of the phraseology "payment of the said amount of money". Such a notice has to be issued within a period of 30 (sic 15) days from the date of receipt of information from the bank in regard to the return of the cheque as unpaid. The statute envisages application of the penal provisions. A penal provision should be construed strictly; the condition precedent wherefor is service of notice. It is one thing to say that the demand may not only represent the unpaid amount under cheque but also other incidental expenses like costs and interests, but the same would not mean that the notice would be vague and capable of two interpretations. An omnibus notice without specifying as to what was the amount due under the dishonoured cheque would not subserve the requirement of law…*"

15. It is pertinent to note that the object of a legal demand notice is to afford an opportunity to the drawer of the cheque to rectify his

omission and also to protect the interests of an honest drawer. For this reason, the service of demand notice under Section 138(b) of the NI Act is a condition precedent to the filing of complaint under Section 138 of the NI Act. Further, since Section 138 of the NI Act mandates the imposition of criminal liability and is penal in nature, the same ought to be strictly construed.

16. The language of Section 138(b) of the NI Act provides that the payee or the holder in due course ought to make a demand for the payment of "the said amount of money" by giving a notice in writing to the drawer of the cheque. The term "the said amount of money" as occurring in Section 138 of the NI Act refers to the cheque amount. [Ref : ***Suman Sethi v. Ajay K. Churiwal*** **: (2000) 2 SCC 380**]. While Section 138 of the NI Act does not mandate that a demand notice can only represent the amount unpaid under the cheque and no other expenses, however, the same should be severable from the cheque amount failing which the demand notice would be invalid.

17. The present case relates to the dishonour of two cheques for a sum of ₹50,000/- each thereby amounting to a total of ₹1,00,000/-. Accordingly, as per the mandate of Section 138 of the NI Act, the petitioner was required to a make a demand for a sum of ₹1,00,000/- from the respondents. However, upon a perusal of the record, it is apparent that the legal demand notice failed to make a demand for the payment of cheque amount. The legal notice sent by the petitioner though mentions that the subject cheques were issued towards part payment of the total dues, however, the demand is made for the entire

outstanding amount mentioned in the notice in the following words: "*you are called upon to clear all the dues of my client within 15 days of this notice by way of demand draft failing which my client will be under constrained to file a civil suit as per the available position in each case to recover its dues*." The same does not qualify as a demand for money as is stipulated under Section 138 of the NI Act. In that light, the learned MM rightly noted that the petitioner failed to comply with the requirement under Section 138(b) of the NI Act.

18. Much emphasis has also been laid on the fact that since the signatures on the subject cheques were not disputed, the presumption under Section 139 of the NI Act stood in favour of the petitioner. As noted earlier, the presumption under Section 139 of the NI Act is not absolute and may be controverted by the accused by raising a probable defence on a preponderance of probabilities. In the present case, the respondents were able to dislodge the presumptions raised against them. While raising a probable defence, the respondents challenged the bills raised by the petitioner. The respondents highlighted that incorrect as well as double bills for the same consignment had been raised by the petitioner. It was further pointed out that the petitioner failed to maintain a proper statement of accounts.

19. It is pertinent to mention that the petitioner in his complaint as well as legal demand notice stated that the total outstanding amount was ₹2,64,689/-. However, the document produced by the petitioner before the Court to show the total outstanding amount showed that the total outstanding amount was only ₹2,43,982/-. No explanation was

rendered by the petitioner to highlight the discrepancy in the total outstanding amount as reflected in the legal demand notice/complaint and the document produced by him.

20. In the opinion of this Court, even if the petitioner's case is taken at the highest, yet, since the respondents had already raised a probable defence to dislodge the presumptions raised against them, the onus was on the petitioner to show that there existed a debt/liability in the manner as pleaded by him. The respondents having already dislodged their burden, it was on the petitioner to show the existence of the debt, that too, as a matter of fact. For this reason, the petitioner having failed to do so, his contention that the presumption under Section 139 of the NI Act was in his favour, does not bolster the case of the petitioner.

21. 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.

22. 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 petition.

23. The present leave petition is accordingly dismissed.

AMIT MAHAJAN, J

JUNE 9, 2025