IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:27.06.2025

\+ **CRL.L.P. 198/2022**
ARUN NARULA - PROPRIETOR OF
PARUL AGENCIES .....Petitioner

versus

ELECTROMECH INDUSTRIAL
CORPORATION & ANR. .....Respondents

\+ **CRL.L.P. 199/2022**
ARUN NARULA - PROPRIETOR OF
PARUL AGENCIES .....Petitioner

versus

ELECTROMECH INDUSTRIAL
CORPORATION & ANR. .....Respondents

\+ **CRL.L.P. 200/2022**
ARUN NARULA- PROPRIETOR OF
PARUL AGENCIES .....Petitioner

versus

ELECTROMECH INDUSTRIAL
CORPORATION & ANR. .....Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Vikram Saini and Mr. Dharmendra Chaudhary, Advocates.
For the Respondents :Mr. Anil Goel, Mr. Aditya Goel and Mr. Pranjal Sharma, Advocates.

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present leave to appeals are filed against the judgments dated 14.06.2021 (hereafter '**impugned judgments**') passed by the learned Metropolitan Magistrate ('**MM**'), Tis Hazari Courts, Delhi in CC No. 6830/2019, 6831/2019, 6832/2019 whereby the respondents were acquitted of the offence under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**').

2. Briefly stated, the complainant/petitioner is the proprietor of Parul Agencies and is engaged in the business of telecommunication and shielded cables. It is alleged that Respondent No. 2 as partner of Respondent No. 1 and having friendly relations with the petitioner, approached the petitioner for a friendly loan for a sum of ₹75 lakhs in the month of November 2017. It is alleged that the respondents assured to return the loan amount by January, 2019. Thereafter, the petitioner advanced a sum of ₹75 lakhs to the respondents.

3. It is alleged that thereafter the respondents failed to pay the loan amount within the stipulated time and after much insistence issued three cheques bearing nos. 243761 dated 28.01.2019 (CC No. 6830/2019), 243762 dated 27.02.2019 (CC No. 6832/2019), 243763 dated 28.03.2019 (CC No. 6831/2019) each for a sum of ₹25 lakhs. The said cheques on presentation got dishonoured and returned unpaid *vide* return memos dated 23.04.2019 with the remarks : Cheque Nos. 243761 and 243763 with remarks "*exceeds arrangement*" and cheque no. 243762 with remark "*drawer signature differs*". Thereafter, on the

failure of the respondents to repay the cheque amount despite the issuance of legal demand notice, the subject complaints were filed under Section 138 of the NI Act.

4. By the impugned judgments, the learned MM acquitted the respondents of the offence under Section 138 of the NI Act. The learned MM took into consideration the defence of the respondents who questioned mode and manner of the advancement of the loan amount by the petitioner. The respondents contended that as per the case of the petitioner he had advanced a loan for a sum of ₹75 lakhs to the respondents, however, no document of loan or witness had been brought forth by the petitioner to prove the advancement of loan. It was noted that despite the respondents having questioned the mode, manner and advancement of loan amount including the petitioner's capacity to lend such a huge amount, no evidence or document was placed on record by the petitioner to corroborate the advancement of the loan or his capacity to lend the loan.

5. It was noted that the petitioner despite having admitted that the respondents in their reply to the legal demand notice had asked for a copy of accounts and ITR of the petitioner, yet failed to place on record any proof to substantiate the advancement of the loan amount. The learned MM noted that the non-production of ITR assumed significance because the entire loan amount was allegedly advanced by the petitioner in cash, and despite being cross-examined on the specific aspect, the petitioner had failed to produce any document or witness in respect of the advancement of the alleged friendly loan and

that the loan had not been proven by any independent witness/document. Consequently, 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 finding of acquittal ought to be reversed as the same is only based on conjectures, and not cogent evidence. He submitted that all the presumptions under Sections 139 and 118(a) of the NI Act stood against the respondents and in favour of the petitioner. He submitted that the respondents failed to produce material evidence to rebut the presumption that existed in the favour of the petitioner. He submitted that merely because there was no documentary record to manifest the terms and conditions in which the loan was advanced to the respondents, given their cordial relations, cannot be the ground to dismiss the case of the petitioner. He submitted that the non-production of ITR by the petitioner does not tantamount to mean that the petitioner did not advance the loan amount or lacked the financial means to advance the loan amount.

7. The learned counsel for the respondents submitted that the petitioner failed to show that there existed any legally recoverable debt. He submitted that contrary to the allegation of the petitioner that he had advanced a friendly loan to the respondents, the petitioner failed to mention that there existed strictly business relations between the parties. He submitted that while the petitioner alleged that he had advanced a loan for a sum of ₹75,00,000/-, as per his own cross-examination, he was unable to point to a date as to when the said

amount was advanced.

8. He submitted that as per the petitioner's own stand, he had advanced the said loan to the respondents in cash, yet either in the complaint or during his cross-examination, the petitioner could not mention the denomination in which the amount was advanced. He submitted that despite being questioned, the petitioner failed to bring forth any witness to attest the grant of loan. He submitted that the petitioner even failed to specify the date, time or purpose for which the loan was advanced. He submitted that it is implausible for the petitioner to have advanced a huge sum of ₹75 lakhs in cash, that too, without any document or security.

9. He submitted that the respondents even contested the advancement of loan in the reply to the legal demand notice, and demanded a statement of accounts and ITR from the petitioner to showcase the advancement of the loan amount. He submitted that while the same has been duly admitted by the petitioner in his cross-examination, yet no proof of the alleged advancement of loan had been brought forth by the petitioner. He further submitted that the petitioner, despite having been questioned about his ability to advance such a huge sum, failed to show that he had the financial means to advance the loan amount to the respondents. He submitted that since the respondents had raised a probable defence on a preponderance of probabilities by questioning the mode, manner, purpose or financial wherewithal of the petitioner to advance the loan amount, the presumptions raised against the respondents had duly been

controverted. He consequently submitted that since the respondents had raised a probable defence by pointing towards the loopholes in the case of the petitioner, the burden inasmuch as Section 139 of the NI Act was concerned, stood discharged.

Analysis

10. 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)*
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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."*

> *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."***
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> (emphasis supplied)

11. 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**].

12. 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.*
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> *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:*
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> *"If I had an hour to solve a problem, I'd spend 55 minutes thinking about the problem and 5 minutes thinking about solutions."*
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> *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.*
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> *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)

13. Before delving into the correctness of the impugned order, it is 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)

14. On a perusal of the impugned judgments, it is seen that right from the time of the framing of notice, the statement under Section 313 of the CrPC, and during the course of the trial, the respondents denied having taken any loan from the petitioner. The respondents

pointed out that they were in a business relationship with the petitioner, and used to give cheques as a security. The respondents further showed a ledger entry to contend that it was in fact the petitioner who owed a sum of ₹19,00,407 to the respondents. The respondents raised a probable defence by questioning the mode, manner and purpose of the advancement of the said loan. The respondents further contended that it is not plausible for the petitioner to have advanced such an enormous amount without any documentary proof or security.

15. This Court finds force in the defence raised by the respondents. From a perusal of the cross-examination of the petitioner, it is evident that despite the respondents having questioned the mode, manner and advancement of loan amount, no evidence or document was placed on record by the petitioner to corroborate the advancement of the loan. The petitioner was further unable to point towards the date or the purpose for which the loan amount was advanced.

16. Much emphasis has been placed by the petitioner on the fact the learned MM erred in finding the acquittal of the respondents on the non-production of the ITR by the petitioner. At this stage, it is pertinent to mention that mere non production of statement of accounts or the ITR does not *ipso facto* negate the case of the complainant [Ref: ***S. S. Production v. Tr. Pavithran Prasanth*** **: 2024 INSC 1059**]. However, in the present case, it is pertinent to note that right from the time of reply to legal demand notice, the respondents

denied the issuance of the loan and questioned the mode and manner of the advancement of the loan amount. It is pertinent to note that despite having admitted the same, the petitioner failed to bring forth any material to substantiate that he had advanced the said loan to the respondents.

17. 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 the respondents were 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 them disappeared. It was then for the petitioner to prove as a matter of fact that there in fact existed a debt/liability.

18. 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 as on the date appearing on the impugned cheques. The rationale behind the order of acquittal in the present case was not based on the observation whether the ITR was produced *per se* or not but the fact that the petitioner had failed to prove that there existed any debt/liability on date, or show the mode, manner, purpose or the capacity of the petitioner to advance the said loan, or lead any evidence/documentary proof so as to establish how the sum of ₹75,00,000/- was advanced. The respondents already

having dislodged the burden, it was on the petitioner to show the existence of the debt, that too, as a matter of fact. In fact, once the respondents 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 the presumptions under Section 118 and 139 of the NI Act were in his favour, do not bolster the case of the petitioner.

19. 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.

20. Upon a consideration of the facts and circumstances of the case, this Court finds no such perversity in the impugned judgments so as to merit an interference in the finding of acquittal. Consequently, this Court finds no reason to entertain the present petitions. The present leave petitions are accordingly dismissed.

21. A copy of the order be placed in all the matters.

AMIT MAHAJAN, J

JUNE 27, 2025