IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:28.05.2025

\+ **CRL.L.P. 367/2018**

MANOJ KUMAR PANCHAL .....Petitioner

versus

MAHENDER KUMAR PANCHAL .....Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Vipin K. Saini and Mr. Manoj K. Panchal, Advocates.

For the Respondent : Mr. V.P. Singh Bidhuri and Mr. Ajit Bidhuri, Advocates.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present leave to appeal is filed against the judgment dated 27.10.2017 (hereafter '**impugned judgment**') passed by the learned Metropolitan Magistrate ('**MM**'), South, Saket, New Delhi in CC No. 1520/2016 whereby the respondent was acquitted of the offence under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**').

2. Briefly stated, the petitioner is the brother-in-law of the respondent. It is the petitioner's case that the petitioner along with the

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respondent was involved in the business of fabrication of aluminium, doors, windows and building glazing. As per the complaint filed by the petitioner under Section 138 of the NI Act, the respondent asked money from the petitioner, and the petitioner, from time to time, lend monies to the respondent. It is alleged that subsequently in discharge of his liability to repay the loan amount, the respondent issued a cheque bearing no. 780797 dated 05.04.2010 for a sum of ₹1,68,000/- to the respondent.

3. It is alleged that the cheque was presented twice to the bankers, and on both occasions the said cheque returned unpaid with the remarks "*funds insufficient*" *vide* return memos dated 07.04.2010 and 13.04.2010. Thereafter, the petitioner sent a legal demand notice dated 27.04.2010 to the respondent. Since the respondent failed to repay the cheque amount within the stipulated period despite the receipt of the statutory notice, the subject complaint was filed under Section 138 of the NI Act.

4. By the impugned judgment, the learned MM acquitted the respondent of the offence under Section 138 of the NI Act. It was noted that from a perusal of the complaint filed by the petitioner, it was evident that the allegations levelled against the respondent were only a bald assertion made by the petitioner. It was noted that the complaint was silent as to what was the exact amount which was allegedly given to the respondent, or the date or purpose for which such loan was extended. It was noted that the subject cheque was for a peculiar amount being ₹1,68,000/-. It was noted that there was no

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mention of how such amount became payable to the petitioner.

5. The learned MM noted that the complaint was not only devoid of material particulars but the petitioner also took contradictory stands during different phases in the present case. It was noted that the petitioner supplied different reasons for extending the loan amount to the respondent in his complaint, legal notice and during his cross examination. It was noted that the petitioner also failed to maintain a consistent stand insofar as the tranches in which the loan amount extended to the respondent was concerned. It was noted that in accordance with the petitioner's complaint, money was supplied to the respondent at various occasions. However, in his cross examination, the petitioner deposed that the loan was given to the respondent on one single occasion. The learned MM further noted that the amount in question was a time barred debt. Considering the aforesaid, the learned MM acquitted the respondent 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 respondent 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 the petitioner had extended the loan to the respondent on account of the illness of the mother of the respondent. He submitted that the respondent himself admitted in his cross examination that his mother was ill during such time.

7. He submitted that since the petitioner had proved the issuance

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of the subject cheque, the presumption under Section 139 of the NI Act stood in favour of the petitioner and against the respondent. He submitted that the onus was on the respondent to raise a probable defence in order to rebut the statutory presumption against him under Section 139 of the NI Act. He consequently submitted that since the respondent failed to raise a probable defence to dislodge the presumptions raised against him, the present petition be allowed.

8. *Per contra*, 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. He submitted that the respondent, since the very beginning, had disputed the issuance of the subject cheque to the petitioner and had also disputed his signatures on the subject cheque. He submitted that the FSL report manifested that the subject cheque was not signed by the respondent. He submitted that the petitioner, on being cross-examined, took a contradictory stand insofar as the tranches in which the loan amount and the purpose for which the loan amount was disbursed. He 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

9. The present case, relates to acquittal of an accused in a complaint under Section 138 of the NI Act. The restriction on the

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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."*
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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***

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> ***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)

10. 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**].

11. 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*

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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)

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12. 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*

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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)

13. On a perusal of the record, it is seen that right from the time of the framing of the notice, the statement under Section 313 of the Code of Criminal Procedure, 1973 ('**CrPC**') and during the course of the trial, the respondent denied issuing the subject cheque and his signatures on the cheque. In order to buttress his claim, the respondent also preferred an application before the learned MM to send the subject cheque for expert opinion to verify the signature of the respondent. The application was allowed subject to the specimen signature of the respondent as well as the photographs of the subject cheque be taken by the handwriting expert before the Court. On a juxtaposition of the signature appearing on the subject cheque, and the

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specimen signatures, the handwriting expert opined that the subject cheque was not signed by the respondent.

14. In his statement, the respondent stated that the petitioner used to work with him, and that the petitioner had free access to the office of the respondent. He stated that he had no knowledge of how the subject cheque came into the possession of the petitioner. The respondent further stated that he had not taken any loan from the petitioner, and that the subject cheque was not issued by him.

15. From a perusal of the material on record, it is apparent that the respondent invariably maintained that he had not issued the subject cheque, and that the same was not signed by him.

16. Conversely, while the petitioner endeavored to impute liability on the respondent based on the presumption under Section 139 of the NI Act, the learned MM noted that the respondent was able to dislodge the presumptions raised against him.

17. In the present case, as rightly noted by the learned MM, the respondent was able to controvert the presumptions raised against him. The FSL report substantiated the contention of the respondent that he was not a signatory to the subject cheque. Further, the respondent was even able to raise a probable defence on a preponderance of probabilities that there existed no debt/liability in the manner so pleaded by the petitioner. The respondent, in his defence, asseverated that the cheque was not issued by him, and that he did not know how the said cheque came into the possession of the petitioner.

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18. On being cross examined by the learned counsel for the respondent, the petitioner stated that the amount of ₹1,68,000/- was given to the respondent on account of the illness of the respondent's mother. On being specifically asked that the petitioner had mentioned in his complaint that the money was advanced on several occasions, the petitioner stated that the amount of ₹1,68,000/- was paid in one occasion.

19. 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 respondent 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. It was then for the petitioner to prove as a matter of fact that there in fact existed a debt/liability.

20. From a bare perusal of the record, it is borne out that the petitioner has been wobbly in his stance apropos the purpose and the occasion on which the loan amount was advanced. In his complaint, the petitioner stated that the respondent had huge number of contacts and was short of money and that the petitioner from time to time lend him monies. In the legal notice, it has been stated that the subject cheque was issued by the respondent for some aluminum work done by the petitioner on behalf of the respondent. Further, in his cross-examination, the petitioner stated that the money was advanced on one

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single occasion on account of the illness of the mother of the respondent.

21. Much emphasis has been placed by the petitioner on the fact that the learned MM ought not to have acquitted the respondent on the ground that the debt was time barred. In the opinion of this Court, even if the petitioner's case is taken at the highest, yet, since the respondent had already raised a probable defence to dislodge the presumptions raised against him, the onus was on the petitioner to show that there existed a debt/liability as on the date appearing on the subject cheque. The acquittal of the respondent was not premised on the debt being time barred *per se* or not but the fact that the petitioner had failed to prove that there existed any debt/liability on date or the mode, manner or the purpose of the advancement of the loan. The respondent having already dislodged his 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 lead any evidence to show the existence of the debt/liability, his contention that the learned MM erred in observing that the debt was time barred or that the presumption under Section 139 of the NI Act was in his favour, do not bolster the case of the petitioner.

22. 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.

23. Upon a consideration of the facts and circumstances of the case, this Court finds no such perversity in the impugned judgment so as to

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merit an interference in the finding of acquittal. Consequently, this Court finds no reason to entertain the present petition.

24. The present leave petition is accordingly dismissed.

AMIT MAHAJAN, J

MAY 28, 2025

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