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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 27th January, 2025

\+ **CRL.L.P. 72/2020 & CRL.M.A. 8515/2022**

M/S OKARA ROADLINES .....Petitioner

Through: Mr. Abdhesh Chaudhary, Mr. Ritik Malik, Mr. Akhil Suri, Mr. Udit Thakrar & Ms. Geetanjali Setia, Advocates.

versus

M/S PUNJAB FRIEGHT CARRIERS PVT. LTD. & ORS. .....Respondents

Through: Mr. Vikrant Singh & Mr. Gandharv Anand, Advocates for R- 1 to 6.

\+ **CRL.L.P. 73/2020**

M/S OKARA ROADLINES .....Petitioner

Through: Mr. Abdhesh Chaudhary, Mr. Ritik Malik, Mr. Akhil Suri, Mr. Udit Thakrar & Ms. Geetanjali Setia, Advocates.

versus

M/S PUNJAB FRIEGHT CARRIERS PVT. LTD. & ORS. .....Respondents

Through: Mr. Vikrant Singh & Mr. Gandharv Anand, Advocates for R- 1 to 6.

\+ **CRL.L.P. 74/2020**

M/S OKARA ROADLINES .....Petitioner

Through: Mr. Abdhesh Chaudhary, Mr. Ritik Malik, Mr. Akhil Suri, Mr. Udit Thakrar & Ms. Geetanjali Setia, Advocates.

versus

M/S PUNJAB FREIGHT CARRIERS PVT. LTD. & ORS. .....Respondents

Through: Mr. Vikrant Singh & Mr. Gandharv Anand, Advocates for R- 1 to 6.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The present petitions under Section 378(4) of the Code of Criminal Procedure, 1973[1], seek leave to appeal against separate orders of acquittal, all of which are dated 31st October, 2019[2], passed by the MM, NI Act-3, Tis Hazari Courts, Delhi, in three separate Criminal complaints filed by the Petitioner under Section 138 of the Negotiable Instrument Act, 1881[3]. The relevant details of the Criminal complaint cases are as follows:

Present Crl. L.P No.	Arising from Complaint case No.	No. of cheques in the complaint	Date of order of Impugned order	Cumulative Amount of the cheques (INR)	Allegedly Issued towards
CRL.L.P. 72/2020	CC No. 22707/2016	1	31.10.2019	30,00,000/-	Principal Amount
CRL.L.P. 73/2020	CC No. 22706/2016	3	31.10.2019	80,00,000/-	Principal Amount
CRL.L.P. 74/2020	CC No. 23435/2016	14	31.10.2019	30,80,000/-	Interest/profit

2. Since all the aforementioned criminal complaints stem from the same underlying transaction, and the factual matrix as well as the grounds of challenge in these appeals are substantially identical, the present leave to appeals are being decided through this common order. For ease of reference, the evidence led by the parties is cited hereinafter based on the documents marked in CC No. 22707/2016 (impugned in CRL.L.P. 72/2020).

[1] "CrPC"
[2] "Impugned orders"
[3] "NI Act"

FACTUAL MATRIX

3. Briefly, the essential background facts set up by the Petitioner before the Trial Court, are as follows:

3.1 The Petitioner, a registered partnership firm is represented by Authorised Representative/Partner of the firm, Mr. Bhim Sain Wadhwa, who is well conversant with the facts of the case.

3.2 The Respondent No.1 (identified as Accused no. 1 in the impugned order), M/s Punjab Freight Carriers Pvt. Ltd. and its directors, Respondents No. 2 to 6 (identified as Accused no. 2 to 6 in the impugned order) have maintained a longstanding and cordial business relationship with the Petitioner spanning over three decades. Mr. Bhim Sain Wadhwa, being engaged in the same line of business, was well acquainted with the Respondent firm.

3.3 On the basis of this established relationship, Respondents No. 2 to 6 secured the trust and confidence of Mr. Bhim Sain Wadhwa, thereby inducing and persuading him to invest in Respondent No. 1, under the assurance of receiving a fixed profit in the form of interest. Consequently, the Petitioner firm invested an aggregate amount of INR 1.10 Crores in Respondent No. 1 through transactions facilitated by Respondents No. 2 to 6.

3.4 These investments were made from time to time on different dates and occasions, starting from 10th September, 2013 to 30th June, 2014. All of the said investments made by the Petitioner firm were duly acknowledged and confirmed by the Respondents in writing, through their Manager – i.e., Respondent No. 6, who routinely transmitted financial documents, such as Balance Sheets, Profit & Loss Accounts, D.O. accounts etc., to the Chief

Auditor of the Petitioner firm, thereby confirming the Respondent's liability of INR 1.10 Crores to the Petitioner firm. Reliance is placed on the statement of accounts with Cover Letter dated 4th October, 2015 and Cover Letter dated 5th May, 2016, sent by Respondent No. 6 (Manager and Authorised Signatory of Respondent No. 1) to the Chief Auditor of the Petitioner firm [marked as Exhibit - CW-1/2(Colly)]. Moreover, Respondent No. 1, through one of its partners – i.e., Respondent No. 3, also provided a written acknowledgement and confirmation, to the Petitioner firm, specifying that as on 19th September, 2014, a sum of INR 1,25,15,537/- was due as balance to the Partner of the Petitioner firm (marked as Exhibit - CW – 1/3).

3.5 The Respondents undertook to pay the Petitioner firm a fixed monthly profit of INR 2,20,000 in lieu of the INR 1.10 Crores investment, with the understanding that the principal amount would be repaid in full by the end of December, 2015. However, failing to adhere to this commitment and citing alleged financial constraints, they repeatedly sought extensions. In response to the Petitioner's persistent demands for repayment, the Respondents subsequently issued 4 cheques toward the principal amount (INR. 1.10 Crores) and an additional 14 cheques representing the fixed profit (Cumulatively amounting to INR 30.8 Lakhs), for the period from February 2015 to March 2016.

3.6 All of the aforementioned cheques bore the signatures of the Manager/Authorised Signatory – Mr. Anil Katoch (Respondent No.6). However, upon presentation, each of the four cheques was dishonoured with the notation "PAYMENT STOPPED BY DRAWER." Despite the Petitioner firm duly informing the Respondents of the dishonour, the latter failed to

remedy the default. Consequently, the Petitioner firm issued a statutory notice dated 2nd August, 2016 under Section 138 of the Negotiable Instruments Act, and subsequently lodged a written complaint on 4th August 2016, with both the Commissioner of Police, New Delhi, and the SHO of District VI, Jalandhar, Punjab.

3.7 Following the receipt of the legal notice, Respondent No. 3, Mr. Parminder Singh Gill, personally visited the Petitioner firm on 8th August 2016 and met with Mr. Bhim Sain Wadhwa. During this meeting, Mr. Gill, on behalf of the other Respondents, assured that the cheque amounts would be remitted to the Petitioner firm within ten days. In furtherance of this assurance, Respondent No. 2 also provided a written confirmation dated 8th August, 2016 to the Petitioner firm [Exhibit marked as 'E'].

3.8 Contrary to the foregoing assurances, the Respondents later sent an undated, false and frivolous reply, received by the Petitioner firm on 27th August, 2016 [marked as Exhibit – CW-1/10(Colly)]. In this correspondence, the Respondents not only contradicted the prior written assurance but also alleged that the cheques had gone missing from their office cheque book. They further asserted that upon discovering the missing cheques, they had promptly informed their bank and issued instructions that the cheques should not be honoured if presented. Additionally, the Respondents contended that the Petitioner had never invested any sum with them, thereby negating any repayment obligation.

3.9 As a consequence of the Respondents' failure to repay the invested amount in breach of multiple assurances, the Petitioner was compelled to initiate the present proceedings under Section 138 of the Negotiable Instruments Act.

PROCEEDINGS BEFORE THE TRIAL COURT

4. During the proceedings before the Trial Court, notices under Section 251 of CrPC were framed stating the substance of the allegations levied against the Respondents by the Petitioner firm. All of the Respondents denied their liability *qua* the cheques in question, specifically contending that no transactions of the alleged nature were ever undertaken with the Petitioner firm, nor were any cheques issued as a means of discharging any legal obligation.

5. Thereafter, opportunity was granted to the Respondents to cross-examine the complainant and the matters proceeded as summons cases. Subsequently, statements of the accused (Respondents), in each of the Criminal complaint case was recorded under Section 313 of CrPC on 09th August, 2017, wherein the Respondents denied their liability. Further, the Respondents stated that the evidence produced by the complainant (Petitioner herein) was incorrect and as such, they wished to lead evidence in their defence.

6. In support of their claims, the Petitioner firm examined its sole witness, the Partner of the firm - Mr. Bhim Sain Wadhwa. In defence, the Respondents examined three witnesses being - DW1 - Adil Khan, Deputy Manager, ICICI Bank Ltd., DW2 - HC Surender as a formal witness to bring on record *roznamcha* dated 16th November, 2017 – i.e., the complaint filed by them in terms of the theft of cheques in question, and DW3 - Anil Katoch (Respondent No. 6) the purported signatory of the cheques in issue.

7. Briefly stated, the case of the Respondents before the Trial Court was as follows:

7.1 There was no transaction as alleged between the parties. The

Petitioner has not established their financial capacity to make such a large investment in the Respondent No. 1 company. The ITR filed by the Petitioner firm for FY 2016-2017 indicates that during FY 2013-14, the Petitioner firm was incurring a loss of over INR 2 Crores. However, the Petitioner alleges that during the same period of time – i.e., from 10th September, 2013 to 30th June, 2014 (FY 2013-14 and FY 2014-15), they made the alleged investment of INR 1.10 Crores in the Respondent company. The Petitioner has also not examined any other witness apart from Mr. Bhim Sain Wadhwa to show that there existed a liability of the Respondents towards the Petitioner firm.

7.2 There is no document on record to show that any such investment was ever made by the Petitioner firm in the Respondent company. The statement of accounts [Exhibit CW-1/2(Colly)] which is heavily relied upon by the Petitioner firm to establish that a liability existed, has not been proved by them and thus, the document cannot be considered as a piece of evidence. Purportedly, the said statements of accounts as well as the cheques in question were signed by Respondent No. 6, however, while the signatures on the cheques are admitted, the signatures on the statements of accounts are denied. Additionally, the signatures on these documents do not match.

7.3 The execution of the purported written acknowledgement dated 8th August, 2016 [Exhibit marked as ‘E’] is suspicious, since the Legal Notice issued by the Petitioner was itself received *via* postal receipt on 8th August, 2016 in Jalandhar. Thus, it is not possible for Respondent No. 3, who is a resident of Jalandhar, to have reached the office premises of the Petitioner firm situated in Delhi, on the same day and give the aforementioned written acknowledgement.

7.4 There is no averment in the complaint as to the mode of payment for the alleged investment of INR 1.10 Crores made by the Petitioner firm. Even assuming that there was an investment to this effect, since Respondent No. 1 company is a Private Limited company, such an alleged investment would not be legally tenable in view of Section 73 of the Companies Act, 2013.

7.5 Rather, the cheques in question were lost/missing from their office, due to which the Respondents promptly issued directions to their bank to stop payment *qua* the missing cheques. The Respondents were shocked when the missing cheques were presented by the Petitioner for the purported liability of INR 1.10 Crores. Recognising that the missing cheques were being unlawfully misused by the Petitioner firm, a police compliant dated 16th November, 2017 was also filed by them regarding theft of the same.

8. After careful consideration of the evidence led by the parties, the Trial Court held that even though the signature on the subject cheques was admitted by Respondent No. 6 (Authorised agent of Respondent No. 1) and this admission lent credence to the presumption under Section 118(a) read with Section 139 of the NI Act; the Respondents' successfully rebutted the said presumption. Respondents established that there was no receipt of the investment or loan as alleged by the Petitioners and such investment or loan amount of INR 1.10 Crores was not even shown in the ITR return of the Petitioner firm. Moreover, with respect to the 14 cheques issued towards interest/profit on the alleged investment, the Trial Court held that since the foundational claim of an initial investment of INR 1.10 crores was not established, the question of discharging any liability towards returns or profit on such an investment did not arise. Thus, the Cort concluded that the Respondents have raised a probable defence that the cheques in question

were misplaced or stolen from their office, thereby rebutting the presumption under Section 139 of the NI Act.

SUBMISSIONS OF THE PARTIES IN THE PRESENT LEAVE TO APPEAL

9. Aggrieved by the impugned decision of the Trial Court, Counsel for the Petitioner argues that the Trial Court erred in its factual and legal analysis, particularly in light of established precedents under Section 138 of the Negotiable Instruments Act. He advances the following contentions to challenge the impugned order:

9.1 The parties are well-known to each other and had a relationship for the last 30-35 years, during which the Petitioner firm rendered transportation services to Respondent No. 1. Over time, significant dues remained unsettled, culminating in an outstanding amount of INR 1.10 Crores owed to the Petitioner firm by Respondent No. 1. The parties had mutually agreed to treat this amount as an investment by the Petitioner, to be repaid with a fixed profit. The cheques in question, issued to discharge of the Respondents liability, bear signatures that have been acknowledged as genuine by the authorized signatory, Respondent No. 6. Consequently, a legal presumption in favour of the Petitioner arises under Section 118(a) read with Section 139 of the NI Act.

9.2 The Petitioner has adduced sufficient evidence to prove the existence of the liability of INR 1.10 crores against the Respondents:

(a) Exhibit CW1/2 (Colly), which contains the statement of accounts transmitted by Respondent No. 6 to the Petitioner's Chief Auditor;

(b) Exhibit CW1/3, a written acknowledgment from the Respondents confirming the investment; and

(c) Exhibit 'E', a written acknowledgment by Respondent No. 3, Mr.

Parminder Singh Gill, expressly admitting the investments made by the Petitioner.

9.3 The fact that the cheques were signed by an authorized representative of the Respondents is undisputed. The Trial Court erred in concluding that the statutory presumption under Section 118(a) read with Section 139 of the NI Act had been rebutted.

9.4 *Mala fide* intent of Respondent is clearly evident, which has been ignored by the Trial Court. Prior to issuing the cheques, the Respondents had dispatched a letter dated 7th April 2016 to their bank, alleging that the cheques had been misplaced and instructing the bank to stop payment. Moreover, the Court failed to reconcile the Respondents' contradictory submissions. On one hand, during cross-examination, Respondent No. 6, Mr. Anil Katoch, conceded the genuineness of the signatures on the cheques; on the other, the Respondents' reply to the legal notice [Exhibit CW-1/10 (Colly)], received on 27th August 2016, alleges forgery by Mr. Bhim Sain Wadhwa. Furthermore, the police complaint regarding the alleged theft of the cheques was lodged by Respondent No. 6 only on 16th November 2017 — several months after the alleged misplacement — and was not actively prosecuted. The testimony of DW-2, Mr. HC Surender, in support of the police complaint is vague, suggesting that the complaint was a mere afterthought, contrived to furnish a frivolous defence.

9.5 The Trial Court has failed to consider these discrepancies in the story of the Respondents' account regarding the alleged theft of the cheques. By placing undue reliance on Respondents' narrative, the Trial Court has wrongly shifted the onus of proof on Petitioner and placed heavy burden on them to prove the debt, which is contrary to the law on this issue, as held by

the Supreme Court in ***Kalamani Tex and Another v. P. Balasubramanian***[4]***, Rohitbhai Jivanlal Patel v. State of Gujarat***[5] and ***Pavan Diliprao Dike v. Vishal NarendraBhai Parmar***[6]**.**

9.6 Admittedly, the Partner of the Petitioner firm, Mr. Bhim Sian Wadhwa was a Director in Respondent No. 1 company from the year 1999 to 2007. The continued good relations of the parties were due to the fact that the Petitioner firm owned 16 trucks that were being used in the operations of the Respondent company. This fact has been admitted by Respondent No. 6 in his cross examination dated 06th March, 2019. Respondent No. 6 - Anil Kotach, has also admitted in his testimony that during the time when Mr. Bhim Sain Wadhwa was a Director of Respondent No. 1 from 1997 to 2007, there were no complaints of missing or stolen cheques, which indicates that the story of theft/ stolen cheques is not reliable and is concocted.

9.7 As regards the contention that the loan/investment amount were not reflected in the ITR returns of the Petitioner firm, the Trial Court has overlooked a catena of judgements holding that there is no mandatory requirement under Section 138 of the Negotiable Instruments Act to record debts, loans, or investments in IT returns. Instead, the Court improperly relied on the deposition of Mr. Bhim Sain Wadhwa (examined as CW-1), who merely stated that the Respondent company had been shown as a debtor in the IT returns.

ANALYSIS:

10. The Court has considered the aforenoted contentions of the parties and perused the record. This matter arises from complaints under Section

[4] (2021) 5 SCC 283
[5] (2019) 18 SCC 106

138 of the NI Act. Such cases are founded on statutory presumptions that heavily favour the holder of the cheque. In particular, once the signature on the cheque is admitted, the law, under Sections 118 and 139 of the NI Act, establishes a strong presumption against the accused.

11. Under Section 118 of the Act, once the signature on the cheque is admitted, the presumption is that the cheque was drawn for consideration. In tandem, Section 139 reinforces the presumption by holding that the holder of the cheque is deemed to have received it in discharge, whether wholly or partially, of a debt or liability. These provisions collectively create an inference of a legally enforceable liability, thereby shifting the evidentiary burden to the accused to rebut the presumption. However, as has been consistently held by the Supreme Court, the standard for such a probable defence is that it need only be established on a preponderance of probabilities, and it is not incumbent upon the accused to conclusively prove the non-existence of the debt or liability.

12. In the case of ***Rajesh Jain v. Ajay Singh***[7] the Supreme Court summarized the law as to the standard of proof required for discharge of the statutory presumptions under the NI Act. The Court held as follows:

> *"40. 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 the 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 v. Mudibasappa, (2019) 5 SCC 418; see also Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513]*

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[6] Arising out of SLP (Crl.) No. 3858/2019
[7] (2023) 10 SCC 148

41. In other words, the accused is left with two options. The first option—of proving that the debt/liability does not exist—is to lead defence evidence and conclusively establish with certainty that the cheque was not issued in discharge of a debt/liability. The second option is to prove the non-existence of debt/liability by a preponderance of probabilities by referring to the particular circumstances of the case*. The preponderance of probability in favour of the accused's case may be even fifty-one to forty-nine and arising out of the entire circumstances of the case, which includes : the complainant's version in the original complaint, the case in the legal/demand notice, complainant's case at the trial, as also the plea of the accused in the reply notice, his Section 313CrPC statement or at the trial as to the circumstances under which the promissory note/cheque was executed. All of them can raise a preponderance of probabilities justifying a finding that there was "no debt/liability". [Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513]*

42. The nature of evidence required to shift the evidential burden need not necessarily be direct evidence i.e. oral or documentary evidence or admissions made by the opposite party; it may comprise circumstantial evidence or presumption of law or fact.

43. 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 Kundan Lal Rallaram v. Custodian (Evacuee Property), [1961 SCC OnLine SC 10] 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 Sections 118 and 139 is the same, the analogy can be extended and applied in the context of Section 139 as well.

44. ***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 v. Mudibasappa, (2019) 5 SCC 418]; see also, Rangappa v. Sri Mohan, (2010) 11 SCC 441]*
>
> [Emphasis added]

13. The foregoing exposition clarifies that the onus on the accused is not to prove conclusively the non-existence of a debt or liability, but rather to establish, on a preponderance of probabilities, that no such debt or liability exists. Once the accused meets this threshold, the evidentiary burden shifts to the complainant, who must then prove the existence of the debt or liability as a matter of fact. In the present case, the Respondents have not denied signing the cheques in question, however, they have established a probable defence by demolishing the case of the Petitioner that there was a liability of INR 1.10 Crores payable by the Respondents. Accordingly, since no liability was established for the principal amount, any alleged obligation to pay profit or interest on the purported investment also stood negated. The Respondents have, by their own evidence and through the effective cross-examination of the Petitioner's witness, succeeded in rebutting the statutory presumptions under Sections 118 and 139 of the NI Act.

14. It is pertinent to note that in the proceedings before the Trial Court, it has been the specific case of the Petitioner that because of long relationship with the Respondents and their alleged inducement, the Petitioner firm, through its partner Mr. Bhim Sain Wadhwa, was induced to make the alleged 'investments' in the Respondent company from time to time. However, before this Court, counsel for Petitioner argues that the Petitioner had been rendering and providing transportation services over a period of

time and that the so-called "investment" represented outstanding dues owed by Respondents.

15. In support of this contention of rendering 'transportation services', no invoices, books of account, or other documentary evidence have been adduced to substantiate the alleged supply of services. Furthermore, no statement of accounts maintained in the ordinary course of business were produced to corroborate the existence of such a liability. The criminal complaints filed by the Petitioner make no averment regarding the supply of services as the foundation for the underlying liability constituting the so-called "investment." Additionally, there is no documentary evidence to demonstrate that any business transaction between the parties took place within a commercial relationship allegedly spanning about three decades. These discrepancies and the shifting position of the Petitioner firm are unequivocally inconsistent with the pleadings and significantly undermines their credibility.

16. In further contradiction, in response to this Court's direct query regarding the mode of payment for the alleged "investment"- whether it was made in cash, by electronic transfer, or *via* cheque, the Petitioner's counsel, on instructions, asserted that the payment was made in cash. However, no documentary evidence or corroborative material has been adduced to substantiate this claim. Furthermore, counsel's subsequent argument that the cash amount was remitted to the Respondents over an extended period is devoid of any documentary support.

17. In the Court's considered view, notwithstanding the amicable business relations between the Petitioner and the Respondents, it is entirely implausible that the Petitioner would have remitted an aggregate sum as

substantial as INR 1.10 Crores in cash to a legally constituted company without producing any corroborative documentary evidence. In this regard, Mr. Bhim Sain Wadhwa failed to adduce any ITRs or financial accounts evidencing such an investment. Confronted with these facts, the lead witness, Mr. Bhim Sain Wadhwa, designated as CW-1, admitted during his cross-examination that the purported investment of INR 1.10 Crores was not reflected in the firm's taxable income or the profit and loss account submitted for the financial year 2016–2017. To this effect the trial Court records:

> *"CW-1 further in his cross-examination admitted of not showing the investment of Rs. 1.10 Crore with the accused company in his statement of account for the financial year 2016-2017".*

18. In a feeble attempt to mitigate this discrepancy, CW-1 asserted that the accused company had been shown as a debtor in previous income returns, yet he promptly conceded that no such returns had been filed. The Trial Court's findings, as extracted below, reinforce this deficiency:

> *''The complainant/CW-1, as stated above, has also admitted in his cross-examination that he has not filed any ITR or other accounts of his firm showing the investment made by him to the tune of one crore ten lakh rupees from 10-09-13 to 30-06-14 or showing the grant of the alleged loan of Rs. 50,70,533 from 11-02-15 to 31-01-16."*

19. Moreover, CW-1 was unable to specify the precise dates on which either the cash payments were made or the purported cheques were issued to discharge any liability. These deficiencies, in the Court's opinion, are fatal to the Petitioner's case.

20. In light of the evidence adduced by the parties, coupled with the cross-examination of the witnesses, the Respondents have raised credible doubts as to the credibility of the documents relied upon by the Petitioner to

establish the existence of a liability. Specifically, the alleged statement of accounts [Exhibit CW 1/2 (Colly)], the written acknowledgment dated 8th August 2016 [Exhibit marked as 'E'] tendered by Respondent No. 3, and the acknowledgment dated 19th September 2016 [Exhibit CW 1/3] could not establish the alleged transaction of investment or a legally enforceable debt. Upon an appraisal of the evidence and circumstances adduced by the Respondents, the Trial Court reached the conclusion that when the defence succeeds in casting credible doubt over the existence of the consideration, namely, the alleged investment, the burden to substantiate the claim rightfully shifts back onto the Petitioner. In this context, Trial Court scrutinized all the materials placed on record by the Petitioner firm to determine whether the requisite burden of proof had been discharged.

21. In particular, the Court examined the statement of accounts purportedly furnished by the Respondents. During cross-examination, the sole witness (CW-1) conceded that this statement did not bear the name of the Respondents' company, nor did it include the company's stamp or the signature of any of its directors. The Court, thus, rightly observed that these documents appeared to be mere, vague, and unsubstantiated computer-generated Excel sheets, falling short of the mandatory standards prescribed under Section 34 of the Indian Evidence Act, 1872. Further, in terms of the acknowledgment dated 19th September 2016 [Exhibit CW 1/3], the Trial Court noted that the document appears to be a simple piece of handwritten paper showing some calculations of loss/net balance, which does not prove any legally enforceable debt. The evidence was also not corroborated by any other documentary or oral evidence to prove the investment. In light of these deficiencies, the Trial Court rightly held that the statement of accounts and

the other materials placed on record by the Petitioner failed to discharge the shifted burden of proof regarding the existence of the alleged investment or loan.

22. In their effort to discharge the burden shifted back upon the Petitioner, during cross-examination of CW-1, reliance was placed on a letter dated 8th August, 2016 [Exhibit marked as 'E'], purportedly issued by Respondent No. 3, as evidence of an acknowledgment of liability. However, a closer examination of the circumstances reveal significant anomalies that undermine the credibility of the said document:

22.1. First, during cross-examination, CW-1 admitted that the letter was handed over in person by Respondent No. 3 on 8th August, 2016 at approximately 12:00 noon in CW-1's office in New Delhi. Furthermore, CW-1 acknowledged that Respondent No. 3 was merely carrying the letter on that day; the document was neither prepared, stamped, nor signed in his presence.

22.2 The letter itself references a legal notice dated 2nd August, 2016, which Respondent No. 3 had already received.

22.3 In stark contrast, postal receipts and tracking reports adduced by the Respondent to show that two copies of the legal notice were received by Respondent No. 3 on 8th August, 2016, but only at 3:36 pm and 5:03 pm, respectively, at his residence in Jalandhar, Punjab.

22.4 These discrepancies make it virtually impossible for Respondent No. 3 to have simultaneously: (i) Received the legal notices in Jalandhar at 3:36 pm and 5:03 pm on 8th August, 2016, (ii) Prepared the letter dated 8th August, 2016 [Exhibit marked as 'E'], and (iii) travelled to New Delhi at around 12:00 noon to hand over the letter to CW-I on the same day.

22.5 Moreover, CW-1, despite admitting that he did not witness the execution of the letter, has failed to produce any independent evidence to verify its execution or proper handing-over in accordance with the requirements of the Evidence Act, 1872.

22.6 In view of these circumstances, which unequivocally favour the Respondents, the Trial Court rightly concluded that the execution of the letter dated 8th August, 2016 [Exhibit marked as 'E'] is highly dubious and unreliable.

23. Lastly, beyond the foregoing factors, the Respondents have successfully advanced a probable defence that the cheques in question were either missing or stolen from their office. They contend that, prior to any alleged issuance of these cheques to the Petitioner, they had duly directed their bank to stop payment on the said instruments. This defence was substantiated not only by independent evidence adduced by the Respondents but also by the circumstances elicited during the cross-examination of CW-1, thereby establishing, on a preponderance of probabilities, a credible case of loss or theft which purportedly led to the misuse of the cheques by the Petitioner. The Trial Court has also duly noted the unequivocal admissions of the Petitioner's witness, CW-1, who affirmed his continuous business association with the Respondents over a period of 22 to 23 years and acknowledged his uninterrupted access to the Respondents' offices, where the cheques were ordinarily kept. In light of these admissions, the Trial Court rightly accorded weight to the Respondents' assertion that the cheques had been misappropriated as a result of their loss or theft.

24. Furthermore, the strength of the Respondents' probable defence was reinforced by additional independent evidence. This includes a letter

addressed to their bank, instructing the stoppage of payment for the cheques (Exhibit DW-1/A), and a written Criminal complaint filed against the Petitioner (Exhibit DW-2/A). Taken together, and applying the principles of preponderance of probabilities these submissions render the defence both credible and persuasive, thereby justifying the findings of the Trial Court.

25. In light of the above, the Respondents have rebutted the statutory presumption on the basis of preponderance of probability that the Petitioner does not have a legally enforceable debt due from the Respondents. The Trial Court rightly held that the burden of proof to establish such a liability shifts on the Petitioner, which burden they were not able to discharge. In this regard, it must also be noted that the Petitioner's reliance on the cases of ***Kalamani Tex and Another v. P. Balasubramanian***[8]***, Rohitbhai Jivanlal Patel v. State of Gujarat***[9] and ***Pavan Diliprao Dike v. Vishal NarendraBhai Parmar*** is misplaced. In the said judgments, the Supreme Court, while noting that the presumptions under Section 118 and 139 of the NI Act are rebuttable, on the basis of the facts and circumstances of the particular cases, held that the accused therein failed to rebut the said presumptions and therefore, the shifting of the burden of proof on the Complainants was not valid.

26. Once it is established that no legally enforceable debt was payable by the Respondents to the Petitioner firm, any claim for returns or interest on such a debt becomes untenable.

27. Thus, the decision of the Trial Court is based on meticulous examination of the facts of the case, documents on record as well as the

[8] (2021) 5 SCC 283
[9] (2019) 18 SCC 106

jurisprudence on the issues arising in the present petition. Accordingly, this Court finds no reason to interfere with the impugned order of the Trial Court, acquitting the Respondents under Section 138 of the NI Act.

28. In light of the above, the present petition is dismissed along with pending application.

SANJEEV NARULA, J

JANUARY 27, 2025
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