(2024) 10 SHI CK 0014

High Court Of Himachal Pradesh

Case No: Criminal Revision No. 161 Of 2022

Vikram Singh and Anr		APPELLANT
	Vs	
Ridhi Sidhi Traders And Anr		RESPONDENT

Date of Decision: Oct. 3, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 313, 397
- Negotiable Instruments Act, 1881 - Section 118, 118(a), 138, 139, 142, 146
- Evidence Act, 1872 - Section 114

Hon'ble Judges: Rakesh Kainthla, J

Bench: Single Bench

Advocate: H.K.S. Thakur, Munish Dhatwalia, Parikshit Sharma, Ayushi Negi

Final Decision: Dismissed

Judgement

Rakesh Kainthla, J

1. The present revision is directed against the judgment dated 11.01.2022 passed by learned Sessions Judge, Solan (learned Appellate Court) vide

which, the judgment dated 03.05.2019 and order dated 16.05.2019 passed by learned Judicial Magistrate, First Class, Court No. II, Kasauli, (learned

Trial Court) were upheld. (Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for

convenience).

2. Briefly stated, the facts giving rise to the present revision are that the complainant filed a complaint before the learned Trial Court against the

accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (in short Ã¢â‚¬Ëœ NI ActÃ¢â‚¬â„¢). It was asserted

that the complainant is carrying on the business of wholesale trading of daily need items and general order supplier of daily use, appliances etc. in the

name of M/s. Ridhi Sidhi Traders at Parwanoo. Mohit Aggarwal is the sole proprietor of the concern. The accused appointed the complainant as a

C&F agent in Himachal Pradesh and demanded â‚¹15,00,000/- as security. The complainant deposited the security through a cheque of â‚¹5,00,000/-on

10.10.2014, a cheque of â‚¹ 5,00,000/- on 17.10.2014 and a cheque of â‚¹ 13,00,000/- on 12.11.2014. The complainant purchased the articles worth

â‚¹5,34,413/-. There was a slow sale of the material. The accused approached the complainant and requested him to return the material. The

complainant returned the material worth â‚¹3,52,247/- on 28.04.2015 and 29.07.2015, respectively. Hence, the complainant was entitled to receive

â‚¹21,30,134/-. The accused issued a cheque of â‚¹1,50,000/- on 25.10.2015 in partial discharge of his liability. The complainant presented the cheque for

encashment but the cheque was dishonoured with an endorsement of Ã¢â‚¬Ëœinsufficient fundsÃ¢â‚¬â„¢. The complainant served a notice upon the accused

asking him to pay the amount within 15 days of the receipt of the notice but the money was not paid; hence, the complaint was filed against the

accused.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the

commission of an offence punishable under Section 138 of the NI Act. The accused pleaded not guilty and claimed to be tried.

4. The complainant examined himself (CW-1) to prove his case.

5. The accused in his statement under Section 313 of Cr.P.C. denied the complainantÃ¢â‚¬â„¢s case in its entirety. He stated that a blank cheque was

given to the complainantÃ¢â‚¬â„¢s father as security. A false case was made against him and the witnesses deposed against him falsely. He was

innocent. He stated that he wanted to lead defence evidence but no evidence was produced despite having been granted many opportunities. Hence,

the evidence of the accused was closed by the order of the court on 30.11.2018.

6. Learned Trial Court held that the issuance of the cheque was not disputed. The cheque carried with it a presumption of consideration and the

burden is upon the accused to rebut the presumption. The documentary evidence showed that material worth â‚¹ 3,52,217/- was returned to the accused

and debit notes were issued. The opening balance shows a debit of â‚¹ 17,77,887/-. Hence the fact that the cheque was issued in discharge of legal

liability was duly established. The cheque was dishonoured due to insufficient funds and the accused had failed to pay the amount despite the receipt

of the notice of demand. Hence, the accused was convicted of the commission of an offence punishable under Section 138 of the NI Act. He was

sentenced to undergo simple imprisonment for six months and to pay a compensation of â‚¹2,00,000/-.

7. Being aggrieved from the judgment and order passed by the learned Trial Court, the accused preferred an appeal, which was decided by the

learned Sessions Judge (learned Appellate Court). Learned Appellate Court concurred with the findings of the learned Trial Court that the cheque

carried with it a presumption of consideration and the cheque was dishonoured due to insufficient funds. The complaint was validly filed in the name of

the sole proprietor. The accused had failed to rebut the presumption of consideration. He had failed to pay the money despite the receipt of a valid

notice of demand. There was no infirmity in the judgment and order passed by the learned Trial Court; hence, the appeal was dismissed.

8. Being aggrieved from the judgments and order passed by the learned Courts below, the present revision has been filed asserting that the learned

Courts below failed to appreciate the law in its right perspective. The complaint was not maintainable. The propriety concern has no legal status in the

eyes of the law. The complainant had not mentioned in the legal notice that he was the sole proprietor. The accused had not issued the cheque to the

complainant in the discharge of his legal liability. Therefore, it was prayed that the present revision be allowed and the order passed by learned Courts

below is set aside.

9. I have heard Mr H.K.S. Thakur, learned counsel for the petitioner/accused, Mr Parikshit Sharma, learned counsel for respondent No.1/complainant

and Ms. Ayushi Negi, learned counsel for respondent No.2/State.

10. Mr. H.K.S. Thakur, learned counsel for the petitioner/accused submitted that the learned Courts below erred in appreciating the material placed

before them. The cheque was issued in the name of M/s Ridhi Sidhi Traders and the complaint was not properly filed. He relied upon the judgment of

Shankar Finance and Investment Vs. State of A.P. 2008 (8) SCC 536 in support of his submission.

11. Mr. Parikshit Sharma, learned counsel for respondent No.1/complainant submitted that the complaint was properly filed and there is no error in the

judgment and order passed by learned Courts below. He relied upon the judgment of the HonÃ¢â‚¬â„¢ble Supreme Court in Milind Shripad Chandurkar

versus Kalim M. Khan and anr., 2011 (4) SCC 275 in support of his submission.

12. Ms Ayushi Negi, learned Deputy Advocate General for respondent No.2/State adopted the submissions of Mr Parikshit Sharma, and prayed that

the present revision be dismissed.

13. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

14. It was laid down by the HonÃ¢â‚¬â„¢ble Supreme Court in Malkeet Singh Gill v. State of Chhattisgarh, (2022) 8 SCC 204: (2022) 3 SCC (Cri)

348: 2022 SCC OnLine SC 786 that the revisional court is not an appellate jurisdiction and it can only rectify the patent defect, errors of jurisdiction

or the law. It was observed on page 207: -

Ã¢â‚¬Å“10. Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts

after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the

jurisdiction like to the appellate court and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short Ã¢â‚¬Å“CrPCÃ¢â‚¬)

vests jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and

as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to

be a well-founded error which is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does

not dwell at length upon the facts and evidence of the case to reverse those findings.

15. This position was reiterated in State of Gujarat v. Dilipsinh Kishorsinh Rao, 2023 SCC OnLine SC 1294 wherein it was observed:

Ã¢â‚¬Å“13. The power and jurisdiction of the Higher Court under Section 397 Cr. P.C. which vests the court with the power to call for and examine records of an inferior

court is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a

patent defect or an error of jurisdiction or law or the perversity which has crept into such proceedings. It would be apposite to refer to the judgment of this court in

Amit Kapoor v. Ramesh Chandra, (2012) 9 SCC 460 where the scope of Section 397 has been considered and succinctly explained as under:

Ã, Ã¢â‚¬Å“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the

legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There

has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bear a token of careful consideration and

appear to be in accordance with the law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the

decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is

ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes but are merely indicative. Each case would have to be determined

on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the

inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself

should not lead to injustice ex-facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a

given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even

framing of charge is a much-advanced stage in the proceedings under the CrPC.Ã¢â‚¬â€‹

16. The present revision has to be decided as per the parameters laid down by the HonÃ¢â‚¬â„¢ble Supreme Court.

17. It was submitted that the complaint was not properly filed as the cheque was issued in the name of M/s Ridhi Sidhi Traders, whereas the

complaint was filed by M/s Ridhi Sidhi Traders through its proprietor-Mohit Aggarwal. This submission is not acceptable. It was laid down by the

HonÃ¢â‚¬â„¢ble Supreme Court in Shankar Finance & Investments v. State of A.P., (2008) 8 SCC 536:: (2008) 3 SCC (Cri) 558: 2008 SCC

OnLine SC 997, that there is no distinction in law between a proprietary concern and individual trading under a trading name. It was observed at page

540: -

10. As contrasted from a company incorporated under the Companies Act, 1956 which is a legal entity distinct from its shareholders, a proprietary concern is not a

legal entity distinct from its proprietor. A proprietary concern is nothing but an individual trading under a trade name. In civil law where an individual carries on

business in a name or style other than his name, he cannot sue in the trading name but must sue in his name, though others can sue him in the trading name.

Therefore, if the appellant in this case had to file a civil suit, the proper description of the plaintiff should be Ã¢â‚¬Å“Atmakuri Sankara Rao carrying on business under

the name and style of M/s Shankar Finance & Investments, a sole proprietary concernÃ¢â‚¬. But we are not dealing with a civil suit. We are dealing with a criminal

complaint to which the special requirements of Section 142 of the Act apply. Section 142 requires that the complainant should be the payee. The payee is M/s

Shankar Finance & Investments. Therefore, in a criminal complaint relating to an offence under Section 138 of the Act, it is permissible to lodge the complaint in the

name of the proprietary concern itself.

11. The next question is where a proprietary concern carries on business through an attorney holder, and whether the attorney holder can lodge the complaint. The

attorney holder is the agent of the grantor. When the grantor authorises the attorney holder to initiate legal proceedings and the attorney holder accordingly initiates

legal proceedings, he does so as the agent of the grantor and the initiation is by the grantor represented by his attorney holder, and not by the attorney holder in his

personal capacity. Therefore where the payee is a proprietary concern, the complaint can be filed: (i) by the proprietor of the proprietary concern, describing himself

as the sole proprietor of the Ã¢â‚¬Å“payeeÃ¢â‚¬; (ii) the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and (iii) the

proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor. It follows that in this case the

complaint could have been validly filed by describing the complainant in any one of the following four methods:

Ã¢â‚¬Å“Atmakuri Shankara Rao, sole proprietor of M/s Shankar Finance & InvestmentsÃ¢â‚¬â€‹

or

Ã¢â‚¬Å“M/s Shankar Finance & Investments, a sole proprietary concern represented by its proprietor Atmakuri Shankara RaoÃ¢â‚¬â€‹

or

Ã¢â‚¬Å“Atmakuri Shankara Rao, sole proprietor of M/s Shankar Finance & Investments, represented by his attorney holder Thamada SatyanarayanaÃ¢â‚¬â€‹

or

Ã¢â‚¬Å“M/s Shankar Finance & Investments, a proprietary concern of Atmakuri Shankara Rao, represented by his attorney holder Thamada SatyanarayanaÃ¢â‚¬â€‹.

What would have been improper is for the attorney holder Thamada Satyanarayana to file the complaint in his own name as if he was the complainant.Ã¢â‚¬â€‹

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18. A similar view was taken in Nexus Health & Beauty Care (P) Ltd. v. National Electrical Office, 2012 SCC OnLine HP 538 w3herein it was

observed: -

Ã¢â‚¬Å“26. The complaint is not happily worded, no doubt, in the memo of parties the complainant has referred to complainant Ã¢â‚¬ËœM/s National Electrical OfficeÃ¢â‚¬â„¢ but

in para 2 it has been pleaded that complainant is providing services of Industrial Electrical fitting under the name and style of Ã¢â‚¬ËœNational ElectricalÃ¢â‚¬â„¢. Again, in the

memo of parties, Subhash Bharwal has been referred as proprietor but in para 1 of the complaint, the complainant has described itself as a firm. In evidence by way of

affidavit Ex.CW-1/A, it has been stated that the complainant is providing services of Industrial Electrical fitting under the name and style of Ã¢â‚¬ËœNational ElectricalÃ¢â‚¬â„¢.

Subhash Pharwal is its sole proprietor. The cheque Ex.C-1 has been issued in the name of Ã¢â‚¬ËœNational ElectricalsÃ¢â‚¬â„¢. The complaint is loosely drafted. But in the

complaint, the complainant has described itself as Ã¢â‚¬ËœNational ElectricalÃ¢â‚¬â„¢ in the body of the complaint.

27. On the face of the complaint and affidavit Ex. CW-1/A, prima facie it cannot be said that the complainant is a firm namely M/s National Electrical Office. The

complainant in the body of the complaint has described the complainant as Ã¢â‚¬ËœNational ElectricalÃ¢â‚¬â„¢ a sole proprietorship concern of Subhash Bharwal. It will be too

technical to throw out the complaint due to loose drafting. At this stage, if the pleadings of the petition are seen the petition is also not less loosely drafted. It starts

with the sentence Ã¢â‚¬Ëœcomplainant issued a cheque for Rs. 2. 00 lacsÃ¢â‚¬â„¢. The complainant did not issue a cheque of Rs. 2,00,000/-. The cheque was allegedly issued

by the accused petitioners. Not only in the opening para of the petition but in other places also the petitioners have used loose expressions. In para 3 of the petition

before grounds, it has been pleaded that the Ã¢â‚¬Å“complainant aggrieved and dissatisfied with the order summoning the accused and taking cognizance of the case by

Judicial Magistrate, files this petitionÃ¢â‚¬. The substance of the complaint or petition is to be seen and it should not be thrown out merely on technicalities of loose

drafting. It emerges from the complaint that the complainant is the Ã¢â‚¬ËœNational ElectricalÃ¢â‚¬â„¢ sole proprietorship concern of Subhash Bharwal. In view of Milind

Shripad Chandurkar (supra), it cannot be said that the complaint is not maintainable.Ã¢â‚¬â€‹

19. In the present case, the complaint was filed in the name of M/s Ridhi Sidhi through its proprietor-Mohit Aggarwal, which is as per the judgment of

the HonÃ¢â‚¬â„¢ble Supreme Court in Shankar Finance (supra). Hence, there is no infirmity in the complaint and the submission that the complaint is not

maintainable is not acceptable.

20. The complainant reiterated the contents of the complaint in his proof affidavit (Ext. CW1/A). He stated in his cross-examination that he was a

proprietor of M/s Ridhi Sidhi Traders since August 2014. The firm has been operating since then. He commenced dealing with the accused in October

2014. He had dealings with the accused before 10.10.2014. He had made the payment to the accused and had not received any article from him. He

met the accused in his office at Parwanoo. He handed over the cheques to the accused on that day. He did not remember the date of handing over

the cheques. He had mentioned 01.10.2014 in one cheque and he did not remember the date mentioned by him in other cheques. He had handed over

the cheques as security of â‚¹15,00,000/-. The articles worth â‚¹4Ã‚Â½ lakhs were supplied in December 2014. He could not tell the quantity or the rate.

Another firm is operating in Ambala, in the name of Ridhi Sidhi Enterprises. He could not say whether it was owned by his father. He volunteered to

say that probably it was owned by his uncle. His father died on 28.08.2015 and he worked in the firm. He did not know that his father used to go to

purchase the articles. The articles worth â‚¹3Ã‚Â½ lakh were returned and he could not tell the quantity. He denied that the articles were supplied to the

firm at Ambala or sometimes in his firm. He denied that no legally enforceable debt existed. He could not say who had filled the cheque because the

cheque was handed over to him in a filled condition. No articles were received between 25.10.2015 and 11.11.2015. He denied that a false case was

made against the accused.

21. The copy of the account ledger (Ext. CW1/H) shows that an amount of â‚¹21,30,134/- was due on 13.11.2015. The account statement (Ext.

CW1/J) shows that an amount of â‚¹13,00,000/-, â‚¹ 5,00,000/-, â‚¹ 5,00,000/-, â‚¹ 2100/-, and â‚¹ 10,000/- were remitted to Natural Tea Company. These

documents clearly show that the accused had a liability of â‚¹21,30,134/- and he was liable to pay more than â‚¹1,50,000/- on 25.10.2015, the date of

issuance of the cheque. The accused has not disputed the issuance of the cheque. It was laid down by this Court in Naresh Verma vs. Narinder

Chauhan 2020(1) Shim. L.C. 398 that where the accused had not disputed his signatures on the cheque, the Court has to presume that it was issued

in discharge of legal liability and the burden would shift upon the accused to rebut the presumption. It was observed: -

Ã¢â‚¬Å“8. Once signatures on the cheque are not disputed, the plea with regard to the cheque having not been issued towards discharge of lawful liability, rightly came

to be rejected by learned Courts below. Reliance is placed upon Hiten P. Dalal v. Bartender NathBannerji, 2001 (6) SCC 16, wherein it has been held as under:

The words 'unless the contrary is proved' which occur in this provision make it clear that the presumption has to be rebutted by 'proof' and not by a bare explanation

which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be

so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by

the provision cannot be said to be rebutted.....

9. S.139 of the Act provides that it shall be presumed unless the contrary is proved, that the holder of a cheque received the cheque of nature referred to in section

138 for the discharge, in whole or in part, of any debt or other liability.

22. Similar is the judgment in Basalingappa vs. Mudibasappa 2019 (5) SCC 418 wherein it was held:

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Ã¢â,¬Å“26. Applying the proposition of law as noted above, in the facts of the present case, it is clear that the signature on the cheque having been admitted, a

presumption shall be raised under Section 139 that the cheque was issued in discharge of debt or liability.Ã¢â,¬â€‹

23. ThisÃ, positionÃ, wasÃ, reiteratedÃ, inÃ, K alamaniÃ, TexÃ, v.Ã, P. Balasubramanian, (2021) 5 SCC 283: (2021) 3 SCC (Civ) 25: (2021)

2 SCC (Cri) 555: 2021 SCC OnLine SC 75 wherein it was held at page 289:

Ã¢â,¬Å“13. Adverting to the case in hand, we find on a plain reading of its judgment that the trial court completely overlooked the provisions and failed to appreciate the

statutory presumption drawn under Section 118 and Section 139 of NIA. The statute mandates that once the signature(s) of an accused on the cheque/negotiable

instrument are established, then these Ã¢â,¬Å“reverse onusÃ¢â,¬ clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the

presumption imposed upon him. This point of law has been crystallised by this Court in Rohitbhai Jivanlal Patel v. State of Gujarat [Rohitbhai Jivanlal Patel v.

State of Gujarat, (2019) 18 SCC 106, para 18: (2020) 3 SCC (Civ) 800 : (2020) 3 SCC (Cri) 575] in the following words : (SCC pp. 120-21, para 18)

Ã¢â,¬Å“18. In the case at hand, even after purportedly drawing the presumption under Section 139 of the NI Act, the trial court proceeded to question the want of

evidence on the part of the complainant as regards the source of funds for advancing loan to the accused and want of examination of relevant witnesses who

allegedly extended him money for advancing it to the accused. This approach of the trial court had been at variance with the principles of presumption in law. After

such presumption, the onus shifted to the accused and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show

the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of

funds for advancing loan to the appellant-accused.Ã¢â‚¬â€‹

14. Once the 2nd appellant had admitted his signatures on the cheque and the deed, the trial court ought to have presumed that the cheque was issued as

consideration for a legally enforceable debt. The trial court fell in error when it called upon the respondent complainant to explain the circumstances under which the

appellants were liable to pay. Such approach of the trial court was directly in the teeth of the established legal position as discussed above, and amounts to a patent

error of law.Ã¢â‚¬â€‹

24. Similar is the judgment in APS Forex Services (P) Ltd. v. Shakti International Fashion Linkers (2020) 12 SCC 724 w,herein it was observed:

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7.2. What is emerging from the material on record is that the issuance of a cheque by the accused and the signature of the accused on the said cheque are not

disputed by the accused. The accused has also not disputed that there were transactions between the parties. Even as per the statement of the accused, which was

recorded at the time of the framing of the charge, he has admitted that some amount was due and payable. However, it was the case on behalf of the accused that the

cheque was given by way of security and the same has been misused by the complainant. However, nothing is on record that in the reply to the statutory notice it

was the case on behalf of the accused that the cheque was given by way of security. Be that as it may, however, it is required to be noted that earlier the accused

issued cheques which came to be dishonoured on the ground of Ã¢â‚¬Å“insufficient fundsÃ¢â‚¬ and thereafter a fresh consolidated cheque of â‚¹9,55,574 was given which

has been returned unpaid on the ground of Ã¢â‚¬Å“STOP PAYMENTÃ¢â‚¬. Therefore, the cheque in question was issued for the second time. Therefore, once the accused

has admitted the issuance of a cheque which bears his signature, there is a presumption that there exists a legally enforceable debt or liability under Section 139 of the

NI Act. However, such a presumption is rebuttable in nature and the accused is required to lead the evidence to rebut such presumption. The accused was required

to lead evidence that the entire amount due and payable to the complainant was paid.

9. Coming back to the facts in the present case and considering the fact that the accused has admitted the issuance of the cheques and his signature on the cheque

and that the cheque in question was issued for the second time after the earlier cheques were dishonoured and that even according to the accused some amount was

due and payable, there is a presumption under Section 139 of the NI Act that there exists a legally enforceable debt or liability. Of course, such presumption is

rebuttable in nature. However, to rebut the presumption, the accused was required to lead the evidence that the full amount due and payable to the complainant had

been paid. In the present case, no such evidence has been led by the accused. The story put forward by the accused that the cheques were given by way of security

is not believable in the absence of further evidence to rebut the presumption and more particularly the cheque in question was issued for the second time after the

earlier cheques were dishonoured. Therefore, both the courts below have materially erred in not properly appreciating and considering the presumption in favour of

the complainant that there exists legally enforceable debt or liability as per Section 139 of the NI Act. It appears that both, the learned trial court as well as the High

Court, have committed an error in shifting the burden upon the complainant to prove the debt or liability, without appreciating the presumption under Section 139 of

the NI Act. As observed above, Section 139 of the Act is an example of reverse onus clause and therefore, once the issuance of the cheque has been admitted and

even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability

and thereafter, it is for the accused to rebut such presumption by leading evidence.

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25. Learned Courts below had rightly held that there is a presumption under Section 139 of the N.I. Act that the cheque was issued in the discharge of

the legal liability. This presumption was explained by the HonÃ¢â‚¬â„¢ble Supreme Court in Triyambak S. Hegde v. Sripad, (2022) 1 SCC 742: (2022)

1 SCC (Civ) 512: 2021 SCC OnLine SC 788 as under at page 747:

Ã¢â‚¬Å“12. From the facts arising in this case and the nature of the rival contentions, the record would disclose that the signature on the documents at Exts. P-6 and P-2

are not disputed. Ext. P-2 is the dishonoured cheque based on which the complaint was filed. From the evidence tendered before the JMFC, it is clear that the

respondent has not disputed the signature on the cheque. If that be the position, as noted by the courts below a presumption would arise under Section 139 in favour

of the appellant who was the holder of the cheque. Section 139 of the NI Act reads as hereunder:

Ã¢â‚¬Å“139. Presumption in favour of holder. Ã¢â‚¬"It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature

referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.Ã¢â‚¬â€‹

13. Insofar as the payment of the amount by the appellant in the context of the cheque having been signed by the respondent, the presumption for passing of the

consideration would arise as provided under Section 118(a) of the NI Act which reads as hereunder:

Ã¢â‚¬Å“118. Presumptions as to negotiable instruments. Ã¢â‚¬"Until the contrary is proved, the following presumptions shall be made:

(a) of consideration: that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed,

negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration.Ã¢â‚¬â€‹

14. The above-noted provisions are explicit to the effect that such presumption would remain until the contrary is proved. The learned counsel for the appellant in

that regard has relied on the decision of this Court in K. Bhaskaran v. Sankaran Vaidhyan Balan [K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510:

1999 SCC (Cri) 1284] wherein it is held as hereunder: (SCC pp. 516-17, para 9)

Ã¢â‚¬Å“9. As the signature in the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of the Act can legally be inferred that the

cheque was made or drawn for consideration on the date which the cheque bears. Section 139 of the Act enjoins on the Court to presume that the holder of the

cheque received it for the discharge of any debt or liability. The burden was on the accused to rebut the aforesaid presumption. The trial court was not persuaded to

rely on the interested testimony of DW 1 to rebut the presumption. The said finding was upheld [Sankaran Vaidhyan Balan v. K. Bhaskaran, Criminal Appeal No. 234

of 1995, order dated 23-10-1998 (Ker)] by the High Court. It is not now open to the accused to contend differently on that aspect.Ã¢â‚¬‹

15. The learned counsel for the respondent has however referred to the decision of this Court in Basalingappa v. Mudibasappa [Basalingappa v. Mudibasappa,

(2019) 5 SCC 418: (2019) 2 SCC (Cri) 571] wherein it is held as hereunder: (SCC pp. 432-33, paras 25-26)

Ã¢â‚¬Å“25. We having noticed the ratio laid down by this Court in the above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this

Court in the following manner:

25.1. Once the execution of the cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for

rebutting the presumption is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in

order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by

reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive

burden.

25.5. It is not necessary for the accused to come in the witness box to support his defence.

26. Applying the preposition of law as noted above, in facts of the present case, it is clear that the signature on the cheque having been admitted, a presumption shall

be raised under Section 139 that the cheque was issued in discharge of debt or liability. The question to be looked into is as to whether any probable defence was

raised by the accused. In cross-examination of PW 1, when the specific question was put that a cheque was issued in relation to a loan of Rs 25,000 taken by the

accused, PW 1 said that he does not remember. PW 1 in his evidence admitted that he retired in 1997 on which date he received a monetary benefit of Rs 8 lakhs,

which was encashed by the complainant. It was also brought in evidence that in the year 2010, the complainant entered into a sale agreement for which he paid an

amount of Rs 4,50,000 to Balana Gouda towards sale consideration. Payment of Rs 4,50,000 being admitted in the year 2010 and further payment of loan of Rs 50,000

with regard to which Complaint No. 119 of 2012 was filed by the complainant, copy of which complaint was also filed as Ext. D-2, there was a burden on the

complainant to prove his financial capacity. In the years 2010-2011, as per own case of the complainant, he made a payment of Rs 18 lakhs. During his cross-

examination, when the financial capacity to pay Rs 6 lakhs to the accused was questioned, there was no satisfactory reply given by the complainant. The evidence on

record, thus, is a probable defence on behalf of the accused, which shifted the burden on the complainant to prove his financial capacity and other facts.Ã¢â‚¬â€‹

16. In that light, it is contended that the very materials produced by the appellant and the answers relating to lack of knowledge of property details by PW 1 in his

cross-examination would indicate that the transaction is doubtful and no evidence is tendered to indicate that the amount was paid. In such an event, it was not

necessary for the respondent to tender rebuttal evidence but the case put forth would be sufficient to indicate that the respondent has successfully rebutted the

presumption.

17. On the position of law, the provisions referred to in Sections 118 and 139 of the NI Act as also the enunciation of law as made by this Court need no reiteration as

there is no ambiguity whatsoever. In, Basalingappav. Mudibasappa [Basalingappa v. Mudibasappa, (2019) 5 SCC 418 : (2019) 2 SCC (Cri) 571] relied on by the

learned counsel for the respondent, though on facts the ultimate conclusion therein was against raising presumption, the facts and circumstances are entirely

different as the transaction between the parties as claimed in the said case is peculiar to the facts of that case where the consideration claimed to have been paid did

not find favour with the Court keeping in view the various transactions and extent of amount involved. However, the legal position relating to the presumption arising

under Sections 118 and 139 of the NI Act on signature being admitted has been reiterated. Hence, whether there is a rebuttal or not would depend on the facts and

circumstances of each case.Ã¢â‚¬â€‹

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26. This position was reiterated in Tedhi Singh v. Narayan Dass Mahant, (2022) 6 SCC 735: (2022) 2 SCC (Cri) 726 : (2022) 3 SCC (Civ)

442: 2022 SCC OnLine SC 302 wherein it was held at page 739:

Ã¢â‚¬Å“8. It is true that this is a case under Section 138 of the Negotiable Instruments Act. Section 139 of the NI Act provides that the court shall presume that the holder

of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability. This presumption,

however, is expressly made subject to the position being proved to the contrary. In other words, it is open to the accused to establish that there is no consideration

received. It is in the context of this provision that the theory of Ã¢â‚¬Å“probable defenceÃ¢â‚¬ has grown. In an earlier judgment, in fact, which has also been adverted to in

Basalingappa [Basalingappa v. Mudibasappa, (2019) 5 SCC 418: (2019) 2 SCC (Cri) 571], this Court notes that Section 139 of the NI Act is an example of

reverse onus (see Rangappa v. Sri Mohan [Rangappa v. Sri Mohan, (2010) 11 SCC 441: (2010) 4 SCC (Civ) 477: (2011) 1 SCC (Cri) 184]). It is also true that

this Court has found that the accused is not expected to discharge an unduly high standard of proof. It is accordingly that the principle has developed that all which

the accused needs to establish is a probable defence. As to whether a probable defence has been established is a matter to be decided on the facts of each case on

the conspectus of evidence and circumstances that exist...Ã¢â‚¬â€‹

27. Similar is the judgment in P. Rasiya v. Abdul Nazer, 2022 SCC OnLine SC 1131 wherein it was observed:

Ã¢â‚¬Å“As per Section 139 of the N.I. Act, it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in

Section 138 for discharge, in whole or in part, of any debt or other liability. Therefore, once the initial burden is discharged by the Complainant that the cheque was

issued by the accused and the signature and the issuance of the cheque are not disputed by the accused, in that case, the onus will shift upon the accused to prove

the contrary that the cheque was not for any debt or other liability. The presumption under Section 139 of the N.I. Act is a statutory presumption and thereafter, once

it is presumed that the cheque is issued in whole or in part of any debt or other liability which is in favour of the Complainant/holder of the cheque, in that case, it is

for the accused to prove the contrary.Ã¢â‚¬â€‹

28. This position was reiterated in Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148: 2023 SCC OnLine SC 127 w5herein it was observed at page

161:

33. The NI Act provides for two presumptions: Section 118 and Section 139. Section 118 of the Act inter alia directs that it shall be presumed until the contrary is

proved, that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that Ã¢â‚¬Å“unless the contrary is proved, it shall be

presumed, that the holder of the cheque received the cheque, for the discharge of, whole or part of any debt or liabilityÃ¢â‚¬. It will be seen that the Ã¢â‚¬Å“presumed factÃ¢â‚¬

directly relates to one of the crucial ingredients necessary to sustain a conviction under Section 138. [The rules discussed hereinbelow are common to both the

presumptions under Section 139 and Section 118 and are hence, not repeatedÃ¢â‚¬" reference to one can be taken as reference to another]

34. Section 139 of the NI Act, which takes the form of a Ã¢â‚¬Å“shall presumeÃ¢â‚¬ clause is illustrative of a presumption of law. Because Section 139 requires that the Court

Ã¢â‚¬Å“shall presumeÃ¢â‚¬ the fact stated therein, it is obligatory for the Court to raise this presumption in every case where the factual basis for the raising of the

presumption had been established. But this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary as is

clear from the use of the phrase Ã¢â‚¬Å“unless the contrary is provedÃ¢â‚¬â€‹.

35. The Court will necessarily presume that the cheque had been issued towards the discharge of a legally enforceable debt/liability in two circumstances. Firstly,

when the drawer of the cheque admits issuance/execution of the cheque and secondly, in the event where the complainant proves that the cheque was

issued/executed in his favour by the drawer. The circumstances set out above form the fact(s) which bring about the activation of the presumptive clause. [Bharat

Barrel & Drum Mfg. Co. v. Amin Chand Payrelal [Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal, (1999) 3 SCC 35]]

36. Recently, this Court has gone to the extent of holding that presumption takes effect even in a situation where the accused contends that a blank cheque leaf was

voluntarily signed and handed over by him to the complainant. [Bir Singh v. Mukesh Kumar [Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197 : (2019) 2 SCC (Civ)

309 : (2019) 2 SCC (Cri) 40]]. Therefore, the mere admission of the drawer's signature, without admitting the execution of the entire contents in the cheque, is now

sufficient to trigger the presumption.

37. As soon as the complainant discharges the burden to prove that the instrument, say a cheque, was issued by the accused for discharge of debt, the presumptive

device under Section 139 of the Act helps shifting the burden on the accused. The effect of the presumption, in that sense, is to transfer the evidential burden on the

accused of proving that the cheque was not received by the Bank towards the discharge of any liability. Until this evidential burden is discharged by the accused,

the presumed fact will have to be taken to be true, without expecting the complainant to do anything further.

38. John Henry Wigmore [John Henry Wigmore and the Rules of Evidence: The Hidden Origins of Modern Law] on Evidence states as follows:

Ã¢â‚¬Å“The peculiar effect of the presumption of law is merely to invoke a rule of law compelling the Jury to reach the conclusion in the absence of evidence to the

contrary from the opponent but if the opponent does offer evidence to the contrary (sufficient to satisfy the Judge's requirement of some evidence), the presumption

Ã¢â‚¬Ëœdisappears as a rule of law and the case is in the Jury's hands free from any ruleÃ¢â‚¬â„¢.Ã¢â‚¬â€‹

39. The standard of proof to discharge this evidential burden is not as heavy as that usually seen in situations where the prosecution is required to prove the guilt of

an accused. The accused is not expected to prove the non-existence of the presumed fact beyond reasonable doubt. The accused must meet the standard of

Ã¢â‚¬Å“preponderance of probabilitiesÃ¢â‚¬, similar to a defendant in a civil proceeding. [Rangappa v. Sri Mohan [Rangappa v. Sri Mohan, (2010) 11 SCC 441: (2010) 4

SCC (Civ) 477: (2011) 1 SCC (Cri) 184: AIR 2010 SC 1898]]

29. Therefore, the Court has to start with the presumption that the cheque was issued in discharge of legal liability and the burden is upon the accused

to prove the contrary.

30. The accused stated that the cheque was issued in the name of the complainantÃ¢â‚¬â„¢s father. He did not step into the witness box to establish this

fact. He also did not lead any evidence to prove this fact. It was held in Sumeti Vij v. Paramount Tech Fab Industries, (2022) 15 SCC 689: 2021

SCC OnLine SC 201 that the accused has to lead defence evidence to rebut the presumption and mere denial in his statement under Section 313 of

Cr.P.C. is not sufficient to rebut the presumption. It was observed at page 700:

Ã¢â‚¬Å“20. That apart, when the complainant exhibited all these documents in support of his complaints and recorded the statement of three witnesses in support thereof,

the appellant has recorded her statement under Section 313 of the Code but failed to record evidence to disprove or rebut the presumption in support of her defence

available under Section 139 of the Act. The statement of the accused recorded under Section 313 of the Code is not substantive evidence of defence, but only an

opportunity to the accused to explain the incriminating circumstances appearing in the prosecution case of the accused. Therefore, there is no evidence to rebut

the presumption that the cheques were issued for consideration."" (Emphasis supplied)Ã¢â‚¬â€‹

31. There is nothing in the cross-examination of the complainant to show that the cheque was not issued in the discharge of the legal liability. Thus,

learned Courts below had rightly held that the version of the complainant that the accused had issued the cheque in discharge of the legal liability was

duly proved.

32. The memo of dishonour (Ext. CW1/C) shows that the cheque was dishonoured with an endorsement of Ã¢â‚¬Ëœfunds insufficientÃ¢â‚¬â„¢. The memo of

dishonour carries with it a presumption of correctness under Section 146 of the NI Act. No evidence was led to rebut the presumption. Hence,

learned Courts below had rightly held that the complainant had succeeded in proving that the cheque was dishonoured due to insufficient funds.

33. The complainant stated that he had served a notice (Ext. CW1/F) upon the accused. This notice was sent through registered A.D. The

acknowledgements (Ext. CW1/G and Ext. CW1/G1) have been proved on record. The notice was sent to the address mentioned in the complaint, a

notice of accusation and the statement of the accused under Section 313 of Cr.P.C. Thus, they were sent to the correct address and are deemed to be

served.

34. In any case, it was laid down in C.C. Allavi Haji vs. Pala Pelly Mohd. 2007(6) SCC 555 that the person who claims that he had not received the

notice has to pay the amount within 15 days from the date of the receipt of the summons from the Court and in case of failure to do so, he cannot take

the advantage of the fact that notice was not received by him. It was observed:

Ã¢â‚¬Å“It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of a

notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in

respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of

receipt of summons (by receiving a copy of the complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within

15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no

proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the G.C. Act and Section 114 of the

Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in BhaskaranÃ¢â‚¬â„¢s case (supra), if the

giving of notice in the context of Clause (b) of the proviso was the same as the receipt of notice a trickster cheque drawer would get the premium to avoid receiving

the notice by adopting different strategies and escape from legal consequences of Section 138 of the Act.Ã¢â‚¬â€‹ (Emphasis supplied)

35. The accused has not paid any money to the complainant, and it was duly proved that the accused had failed to pay the money despite the receipt

of the notice.

36. Thus, it was duly proved that the cheque was issued in discharge of the legal liability and it was dishonoured due to insufficient funds and the

accused failed to make the payment despite the receipt of a valid notice of demand; hence, the complainant had succeeded in proving its case beyond

the reasonable doubt.

37. The learned Trial Court had sentenced the accused to undergo simple imprisonment for six months. The legislature had introduced the offence of

dishonour of cheques to instil confidence in the public about the transactions carried with the cheque. It was laid down by the HonÃ¢â‚¬â„¢ble Supreme

Court in Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40 : (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 138 that the

penal provisions of Section 138 is a deterrent in nature. It was observed at page 203:

Ã, Ã¢â‚¬Å“6. The object of Section 138 of the Negotiable Instruments Act is to infuse credibility into negotiable instruments including cheques and to encourage and

promote the use of negotiable instruments including cheques in financial transactions. The penal provision of Section 138 of the Negotiable Instruments Act is

intended to be a deterrent to callous issuance of negotiable instruments such as cheques without serious intention to honour the promise implicit in the issuance of

the same.Ã¢â‚¬â€‹

38. In view of this, the sentence of six months is not excessive.

39. Learned Trial Court had imposed a fine of â‚¹2,00,000/-The cheque was issued by the accused for a sum of â‚¹1,50,000/- on 25.10.2015. The learned

Trial Court pronounced the order on 16.05.2019 after a lapse of four years. The complainant lost interest on the amount and he had to pay the

litigation expenses for filing the complaint. He was entitled to be compensated for the same. It was laid down by the HonÃ¢â‚¬â„¢ble Supreme Court in

Kalamani Tex v. P. Balasubramanian, (2021) 5 SCC 283: (2021) 3 SCC (Civ) 25: (2021) 2 SCC (Cri) 555: 2021 SCC OnLine SC 7th5a t the

Courts should uniformly levy a fine up to twice the cheque amount along with simple interest at the rate of 9% per annum. It was observed at page

291: -

19. As regards the claim of compensation raised on behalf of the respondent, we are conscious of the settled principles that the object of Chapter XVII of NIA is not

only punitive but also compensatory and restitutive. The provisions of NIA envision a single window for criminal liability for the dishonour of a cheque as well as

civil liability for the realisation of the cheque amount. It is also well settled that there needs to be a consistent approach towards awarding compensation and unless

there exist special circumstances, the courts should uniformly levy fines up to twice the cheque amount along with simple interest @ 9% p.a. [R. Vijayan v. Baby,

(2012) 1 SCC 260, para 20: (2012) 1 SCC (Civ) 79: (2012) 1 SCC (Cri) 520]Ã¢â‚¬â€‹

40. Therefore, the amount of â‚¹ 2,00,000/- is not excessive.

41. No other point was urged.

42. Thus, the learned Courts below had rightly held that the accused had issued a cheque in discharge of the legal liability which was dishonoured due

to insufficient funds and the accused failed to pay the amount despite the receipt of a valid notice of demand. There is no infirmity in the judgments

and the order passed by learned Courts below and no interference is required with them.

43. Consequently, the present petition fails and the same is dismissed, so also the pending miscellaneous applications, if any. Records of the learned

Courts below be sent back forthwith.