TRHC010011842024

HIGH COURT OF TRIPURA
A G A R T A L A

Crl. A. No. 17 of 2024

Sri Swapan Deb Roy,
S/O Late Birendra Chandra Deb Roy, resident of Sidhai Mohanpur, Near Hospital Chowmuhani, P.S. Sidhai, District West Tripura

…… Appellant(s)

– V e r s u s –

1. **The State of Tripura**
   Represented by the Secretary to the Department of Home, New Secretariat Complex, P.S. N.C.C., District West Tripura.

2. **Sri Rajendra Dhyani,**
   S/O Late Rudridutta Dhyani, resident of 79 Tila, P.S. East Agartala, District West Tripura.

……..Respondent(s)

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2. **Sri Rajendra Dhyani,**
   S/O Late Rudridutta Dhyani, resident of 79 Tila, P.S. East Agartala, District West Tripura.

……..Respondent(s)

In both the appeals

For the Appellant(s)	:	Mr. Samar Das, Advocate.
For the Respondent(s)	:	Mr. Biplab Debnath, Advocate.
Date of hearing	:	***21st September, 2026.***
Date of delivery of Judgment & Order	:	***7th October, 2026***

Whether fit for reporting :

YES	NO
√	

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

Common facts and issues being involved, and parties being common in both the appeals, these are heard together and being disposed of by this common judgment.

[2] The appellant's (complainant) case is that he is a businessman of Mohanpur market having previous acquaintance with the accused person (respondent no.2 of both the cases). It is alleged that on 15.11.2013, on request of the accused person, the complainant lent him Rs.1,50,000/- in cash and again on his request for expansion of business of the accused, the complainant further paid him Rs.12,00,000/- in cash on 17.12.2013 as loan. According to the complainant, he arranged said amounts from his business capital. The accused person was running a brick kiln at Mohanpur though the said brick kiln was not registered in his name, and he assured the complainant to return the money after 7/8 months.

[3] Accordingly, he issued a cheque on 25.08.2014 for Rs.12,00,000/-. On 17.09.2014, the complainant deposited the said cheque at the United Bank of India, Mohanpur Branch which was ultimately dishonoured for insufficiency of fund as communicated to him by the Memo dated 20.09.2014. The complainant then issued legal notice through his Advocate by speed post which was received by the accused on 05.10.2014, but despite the same no payment was made by him. For this reason, he instituted NI Case No.312/2024 [connected in Criminal Appeal No.17/2024] and ultimately, learned Chief Judicial Magistrate, West Tripura, Agartala vide impugned judgment dated 24.05.2024 dismissed the complaint and acquitted the accused person.

[4] In NI Case No.313/2024 [connected in Criminal Appeal No.18/2024], the complainant alleges that in respect of the above said previous loan amount of Rs.1,50,000/-, the accused person issued a cheque on 25.08.2014 for Rs.1,50,000/- in his favour and on deposit of the same to the account of the complainant, it was dishonoured on 20.09.2014. Similarly, he issued a legal notice to the accused person on 05.10.2014 by speed post

and the same was received by the accused person on 08.10.2014, but thereafter no payment was made by him. Learned Additional Chief Judicial Magistrate, West Tripura, Agartala dismissed the complaints and acquitted the accused person similarly vide judgment dated 24.05.2024. Challenging both the judgments, the present appeals are filed.

[5] In NI 312/2014, the complainant examined himself as PW-1 and another witness, namely, Sri Abhijit Dey, Deputy Manager, United Bank of India, Mohanpur Branch as PW-2. In NI 313/2014 also, both the said witnesses were examined himself as PW-1 and PW-2.

[6] In both the cases accused person in support of his contention also examined himself as DW-1 and another witness, namely, Khokan Miah as DW-2.

[7] When the accused person was examined under Section 313, CrPC, he stated that in the year 2011, he took loan of Rs.5,00,000/- from the complainant with a condition to repay Rs.7,50,000/- after 10 months and for that reason he issued two cheques as security. Though he repaid the loan amount, but those cheques were not returned to him by the complainant.

[8] Learned trial Court while deciding the issues involved in both the cases, relied on the decision of Hon'ble Supreme Court in case of ***Sumeti Vij Vs. Paramount Tech Fab Industries***, ***(2021 SCC OnLine SC 201)*** and observed that the statement of the accused person recorded under Section 313, CrPC cannot be sufficient to rebut the presumption under Section 139 of NI Act. It is also further observed that if the accused brings on record credible materials challenging the financial competence of the complainant which is in line with his probable defence, the onus would then shifts again to complainant to discharge the burden of proving his financial competence. But a mere suggestion or question on the financial competence of the complainant will not suffice in rebutting the presumption under Section 139 NI Act.

[9] The Ld. Court further proceeded to hold that during cross-examination the complainant admitted that he had failed to submit any

document of his business and that he had not entered into any written agreement with the accused person regarding the payment of money. It was also admitted by him in his cross-examination that he did not mention in his defence or in his complaint petition as to whether the said amount of Rs.12,00,000/- was handed over to the accused person in his house or was withdrawn from the bank. He only stated in his complaint that he had arranged the amount of Rs.12,00,000/- from his business capital and some amount from his personal account, but he never submitted any income tax return. He also did not disclose in whose presence he had paid the amount to the accused person.

[10] Learned trial Court then applying the ratio of ***Basalingappa Vs. Mudibasappa***,***(2019) 5 SCC 418)*** rendered by the Hon'ble Supreme Court, observed that the complainant had failed to prove his capacity of payment by producing relevant bank statement and even there was no written agreement or receipt produced by the complainant in respect of advancing the loan amount to the accused person. No independent witness of the transaction was also produced by him before the Court. Moreover, source of advancing such loan amount was also not disclosed by him.

[11] Mr. Samar Das, learned counsel for the appellant-complainant argues that learned trial Court has misinterpreted and misapplied the provision of Section 139 of NI Act inasmuch as there was no challenge from the side of the accused-respondent about his signature in the cheques and execution of the same.

[12] According to Mr. Das, learned counsel, no satisfactory material was placed by the accused person to discharge his onus by giving rebuttal evidence to avoid the presumption under Section 139 of the Act, and that though the respondent claimed that he had taken only the loan of Rs.5,00,000/- (Rupees five lakhs) from the complainant in the year 2011 and a deed of agreement was also executed between them and further that he executed three cheques as security against said loan, but said deed of agreement was not produced by the accused person before the Court.

[13] It is further submitted by Learned counsel, Mr. Das that the source of income of the complainant, as per provisions of Section 138 of NI Act, is not required to be disclosed by him, still it is stated by the complainant in his evidence that from the fund of his business he had lent the amount of Rs.12,00,000/- (Rupees twelve lakhs). According to learned counsel, learned trial Court has completely mis-appreciated the evidences on record leading to erroneous decision.

[14] He also relies on a decision of Hon'ble Supreme Court in case of ***Ashok Singh vs. State of Uttar Pradesh and another; 2025 SCC OnLine SC 706,*** wherein at paragraph No.22 it is observed by the Hon'ble Supreme Court that the onus is not on the complainant at the threshold to prove his capacity/financial wherewithal to make the payment in discharge of which the cheque is alleged to have been issued in his favour. Only if an objection is raised that the complainant was not in a financial position to pay the amount so claimed by him to have been given as a loan to the accused, only then the complainant would have to bring before the Court cogent material to indicate that he had the financial capacity and had actually advanced the amount in question by way of loan.

[15] Mr. Das, learned counsel also refers to another decision of Hon'ble Supreme Court in the case ***of Rohitbhai Jivanlal Patel vs. State of Gujarat and another, Criminal Appeal No.508 of 2019 [arising out of Special Leave Petition (Crl.) 1883 of 2018]*** decided on ***15.03.2019***. In this case, in paragraph No.16, it is observed that though there may not be sufficient negative evidence which could be brought on record by the accused to discharge his burden, yet mere denial would not fulfill the requirements of rebuttal as envisaged under Sections 118 and 139 of the NI Act.

[15.1] At paragraph no.19, it is also further held that the observation of the trial Court that there was no documentary evidence to show the source of funds with the respondent to advance the loan or that the respondent did not record the transaction in the form of receipt of even kachcha notes, or that there were inconsistencies in the statement of the complainant and his witnesses, or that the witness of the complainant was

more in know of the facts etc. would have been relevant if the matter was to be examined with reference to the onus of the complainant to prove his case beyond reasonable doubt. This consideration and observations however do not stand in conformity with the presumption existing in favour of the complainant by virtue of Section 118 and Section 139 of the NI Act. The result of such presumption is that existence of a legally enforceable debt that is to be presumed in favour of the complainant. When such a presumption is drawn, the factors relating to want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds are not relevant consideration while examining if the accused has been able to rebut the presumption or not.

[16] Mr. B. Debnath, learned counsel for respondent No.2 while refuting the argument of the appellant-complainant submits that the source of fund or the capacity to give loan of such a huge amount was not disclosed by the complainant either in his complaint or in his evidence and no written agreement or any money receipt was also produced by him to prove the transaction. Even no witness was also examined by him who had seen any such transaction of Rs.12,00,000/-(Rupees twelve lakhs) between the parties. It is also submitted that date, time and place of delivery of such huge amount, was also not disclosed by the complainant.

[16.1] It is further contended by Mr. Debnath, learned counsel that despite the names of four witnesses were cited in the complaint petition, two of them were not examined which creates further doubt about the veracity of complainant's case.

[16.2] Mr. Debnath, learned counsel, refers to certain portion of cross-examination of PW-1 to create doubt about financial condition of complainant. The complainant in his cross-examination admitted that total amount paid by him to the respondent-accused was Rs.23,50,000/- for which he filed two criminal cases and one money suit against the accused person. He also admitted in his cross-examination that without getting Rs.13.5 lakhs involved in above said two criminal cases, he even further advanced loan of Rs.10.00 lakhs to the respondent which is not credible.

[16.3] It is further contended by Mr. Debnath that in support of the claim of the respondent he examined himself and also examined another independent witness in both the cases and thereby he has successfully discharged his onus to get away from the statutory presumption under Section 139 of NI Act. Ld. Counsel also submits that once an affidavit was submitted by the respondent in support of his evidence, but Court did not accept it vide order dated 11.02.2020 and therefore, same cannot be used against him and appellant also did not cross-examine him on that affidavit.

[16.4] Mr. Debnath, learned counsel in support of his arguments, relies on a decision of a Coordinate Bench of this Court in the case of ***Sudip Paul vs. Sujata Saha and another; (2023) 1 Tripura Law Reports 163,*** wherein the appreciation of the evidences made by the Court as were described in paragraph Nos.24, 25 and 26 are reproduced hereunder:

> "*24. Moreover in the light of evidence of the complainant and it emerges out in the cross-examination, the complainant failed to prove regarding grant of loan and no receipt was produced regarding such payment of loan. The complainant being a businessman by profession, obviously maintained records and transactions. He did not lead any documentary evidence or oral evidence. Thus the evidence of the complainant is not trustworthy & reliable. He did not mention even the date when such a huge loan amount of Rs.17,00,000/¬ was extended to accused. From his averments, as stated the accused has a outstanding due of Rs.17,00,000. It is not believable that the complainant would incur the risk in absence of any written agreement or any receipt there of advancing the loan. It is to be reiterated the said averments do not aid the complainant and removes the suspicion as advancing of loan remains a bare averment as not been proved of any details have been furnished. Thus said averment does not aid the complainant as a proof of loan extended by the complainant and the presumption is rebutted by the accused.*
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> *25. In the context of the case of the facts the accused has been able to raise a suspicion as to the existence of the loan by bringing to light the financial capacity of the complainant. Moreover, the complainant has not been able to remove the said suspicion. Advancement of loan remains a bare averment as no independent witness have been examined nor records been furnished.*
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> *26. Despite the evidence of the accused is weak in nature on comparison with the evidence of the complainant appears to more reliable. The complainant utterly failed to give any plausible explanation that there were monetary transaction with the accused. No independent witness is examined on behalf of the complainant who has acknowledged the transaction. It is a settled principle of law that the prosecution has to stand on its own leg and prove its case beyond reasonable doubt. It is also a settled principle of law when two views are possible benefit of doubt accrues in favour of the accused. Moreover, the presumption of law which is to be drawn in favour of the drawee of the cheque, namely, the complainant, cheque has been*

> *issued for the valid discharge of his debt, gets dislodged by a reasonable explanation furnished by the accused."*

[16.5] In ***Sudip Paul*** (supra), it is also observed by this Court that non-production of income tax return would not be proved as fatal to the case of the complainant.

[16.6] Mr. Debnath, Ld. Counsel further refers to another decision of a Coordinate Bench of this Court in the case of ***Dulal Baidya vs. State of Tripura and another; (2023) 2 TLR 394,*** wherein also while appreciating the evidences of that case, the learned Bench at paragraph Nos.21 and 22 observed thus:

> *"21. In view of the above observation, this court is of the opinion that the complainant has failed to prove his source of income. It is evident from the record that during the cross-examination in the court below the complainant had stated that he had filed two numbers of NI case against the accused-person, namely, Prakash Tripura for an amount of Rs.4,60,000 and Rs.2,00,000. The complainant also states that he is a businessman by profession and earning Rs.10,000 to Rs.20,000 per month approximately. He also lodged one number of NI case against Pranab Chowdhury for an amount of Rs.3,00,000. He also admitted that he is not any income- tax payee. This court finds it hard to believe if a person is earning barely Rs.10,000 to Rs.20,000 per month what makes him able to advance a sum of Rs.9,60,000 in couple of days. Further, it is unreasonable to belief as to giving loan of huge sum to a person coming to have Xerox copy. No transaction is established to consider the cheque amount as legally enforceable debt. Moreover, the citations referred by Mr. D. Sarkar, learned counsel for the appellant is of no relevance to the present context of the case.*
>
> *22. This court feels that the capacity to advance loans to the accused-persons has not been established by the complainant and the alleged loans was not reflected in the ITR by the complainant. The defence of the accused-persons that they had not taken any loan from the complainant and signing the blank cheque as security for loans of lesser amount has been subsequently filled up for an inflated amount and misused in filing the present complaint seems quite probable."*

[16.7] In the above said case, Court also holds that what is required to be established by the accused in order to rebut the presumption is different from each case under given circumstances. But the fact remains that a mere plausible explanation is not expected from the accused and it must be more than a plausible explanation by way of rebuttal evidence.

[16.8] Mr. Debnath, learned counsel also relies on another decision of Hon'ble Supreme Court in the case of ***Rajaram Sriramulu Naidu (Since Deceased) through L.Rs. vs. Maruthachalam (Since Deceased)***

through L.Rs.; AIR 2023 SC 471. In said decision, at paragraph No.21, it is observed that the scope of interference in an appeal against acquittal is limited. Unless the High Court finds that the appreciation of the evidence is perverse, it should not interfere with the finding of acquittal recorded by the learned Trial Court. On the same principle, he also relies on another decision of Apex Court in case of ***Babu vs. State of Kerala; (2010) 9 SCC 189***.

[16.9] In ***Chithra P. Nair vs. Ravi Prasad and another [Criminal Appeal No._____ of 2026 @ SLP (Crl.) No.3236 of 2023]*** decided on ***24.03.2026,*** as relied on by Mr. Debnath, at paragraph No.16, the followings are observed:

> *"16. Equally important is the requirement that the complainant must lay a proper factual foundation regarding the underlying transaction. The criminal liability under Section 138 of NI Act cannot rest upon vague assertions or bald oral allegations bereft of foundational particulars. The pleadings and evidence must disclose, with reasonable certainty, the nature of transaction, the manner in which the liability arose, the circumstances under which the amount was allegedly adcanced, and the nexus between such liability and the issuance of the cheque. This becomes all the more necessary where large sums of money are alleged to have been paid in cash without any contemporaneous documentation."*

In paragraph No.21, it is observed that while reversing the order of acquittal, the Appellate Court must record cogent reasons demonstrating that the view taken by the trial Court was wholly unreasonable or perverse.

[16.10] Learned counsel also relies on another decision of Hon'ble Apex Court in case of ***Sri Gopalaiah vs. K. Manjunath; Criminal Appeal No.583 of 2016*** decided on ***16.07.2026*** wherein the followings were observed at paragraph No.14:

> ***"14. No doubt, the presumption under Section 139 of the N.I. Act is rebuttable but mere denial is not sufficient to rebut the presumption. To rebut such presumption the accused, inter alia, would have to explain the circumstances in which the cheque in question came to be issued and as to how it came to be with the payee thereof. Circumstance that the payee had no funds to create a legally enforceable debt of the amount equivalent to the cheque is a circumstance, if proved, which may help in dislodging the presumption."***

[16.11] Mr. Debnath further refers to another decision of Apex Court in case of ***APS Forex Services Pvt. Ltd. vs. Shakti International Fashion Linkers and others; AIR 2020 SC 945*** wherein at paragraph No.6.4 it is held that whenever the accused has questioned the financial capacity of the complainant in support of his probable defence, despite the presumption under Section 139 of the N.I. Act about the existence of legally enforceable debt but such presumption is rebuttable and thereafter the onus shifts again on the complainant to prove his financial capacity and at that stage the complainant is required to lead the evidence to prove his financial capacity, more particularly when it is a case of giving loan by cash and thereafter issuance of a cheque.

[17] Mr. Das, learned counsel, in reply, referring to cross-examination of DW-1 and DW-2 submits that it is admitted that the blank cheques which were allegedly handed over by the respondent to the appellant in respect of his defence case, was of UBI and in the agreement also, it was mentioned that the blank cheques were drawn on UBI but the involved cheques for which the present cases have cropped up, are drawn on Axis Bank. He also relies on a most recent decision of Hon'ble Supreme Court in case of ***Kuntegowda vs. Thurubaiah; Criminal Appeal No._____ of 2026 [arising out of Special Leave Petition (Criminal) No.2247 of 2024]*** decided on ***04.08.2026*** wherein it is held that as soon as the complainant discharges the burden to prove that the instrument was executed by the drawer, the rules of presumption under Sections 118 and 139 of the NI Act help him and shift the burden of rebutting the said presumptions upon said drawer. A bare denial of passing of any consideration or existence of any debt does not support the defence of the accused and therefore, to disprove the presumption, something which is probable as is required to be brought on record for getting the burden of proof shifted back to the complainant. The accused has to bring on record such facts and circumstances, upon consideration of which the Court may either believe that the consideration and the debt did not exist or their non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that it did not exist.

[18] Earlier, a three-judge bench of Hon'ble Supreme Court in ***Rangappa vs Sri Mohan, (2011) 11 SCC 441***, as relied on by learned trial Court too, held that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability.
It is also observed that Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to dishonor of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in course of litigation. The offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. It is also observed that the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard of proof. When an accused has to rebut the presumption under Section 139 of the Act, the standard of proof of the same is preponderance of probability.

[19] Same principle has also been reiterated in ***Basalingappa*** (supra) as further relied on by the learned trial Court. The circumstances and the evidences taking note of which Hon'ble Supreme Court in that case observed that burden was shifted to the complainant to prove his financial capacity were highlighted in paragraph no. 26 which is also reproduced here-under:

> "26. *Applying the preposition of law as noted above, in facts of the present case, it is clear that signature on cheque having been admitted, a presumption shall be raised under Section 139 that 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 the PW1, when the specific question was put that cheque was issued in relation to loan of Rs.25,000/- taken by the accused, the PW1 said that he does not remember. PW1 in his evidence admitted that he retired in 1997 on which date he received monetary benefit of Rs. 8*

> *lakhs, which was encashed by the complainant. It was also brought in the 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 Ex.D2, there was burden on the complainant to prove his financial capacity. In the year 2010-2011, as per own case of the complainant, he made payment of Rs.18 lakhs. During his cross-examination, when 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.*

Thus, it appears in this case that through cross-examination of PW-1 the accused was successful in demonstrating that the complainant did not have the financial capacity to give a loan of Rs.6,00,000/- to the accused. Said fact has further been highlighted in paragraph no. 30 of the said decision also which is also extracted here-in-below:

> "30. *We are of the view that when evidence was led before the Court to indicate that apart from loan of Rs.6 lakhs given to the accused, within 02 years, amount of Rs.18 lakhs have been given out by the complainant and his financial capacity being questioned, it was incumbent on the complainant to have explained his financial capacity. Court cannot insist on a person to lead negative evidence……."*

[20] In view of above said authoritative pronouncements of the Hon'ble Supreme Court, it is now well settled that once the execution of cheque is admitted, the statutory presumption under Section 139 of the Act in favour of the holder of the cheque comes into play that the cheque in question has been issued in discharge either in whole or in part of any debt or other liability. A bare denial of existence of any debt is not sufficient to discharge the reverse burden. An accused is required to show something which is probable to get the onus discharged and he is required to bring on record such facts and circumstances, based on which the court may either believe that such debt does not exist or it's non-existence is so probable that a prudent man would presume such non-existence and

thereafter only the burden again shifts back to the complainant [Ref. ***Kuntegowda (supra)***] . In ***APS Forex Services' case*** also, it is held that whenever the accused has questioned the financial capacity of the complainant in support of his probable defence (*emphasis laid*), thereafter onus shifts again on the complainant to prove his financial capacity. Therefore, a probable defence is required to be laid first by the accused to shift such onus back to the complainant. Earlier thereto also, in ***Rohitbhai Jivanlal Patel (supra)***, it has been clarified that unless the accused has discharged his 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 cannot be raised. According to this Court, there is also no hard and fast rule to produce income tax return unless the accused is able to discharge his onus first as discussed above.

[21] Now, both the cases in hand, the complainant has categorically stated that out of previous relationship he paid Rs.1,50,000/- as loan to the accused person on 15.11.2013 and again after one month i.e. on 17.12.2013 paid Rs.12,00,000/- to the accused on his request. He also stated that as the accused person in the name of some other person was running a brick kiln, considering said fact he gave such amount of Rs.12,00,000/- to him. It is further stated by him that in discharge of said debt, he issued two cheques of Rs.1,50,000/- and Rs.12.00,000/- and on deposit the same both the cheques were dishonoured. Through a bank official (PW-2), he also proved the facts of such dishonour. Therefore, he has been able to place on record the foundational facts to raise the statutory presumption under Section 139 of the Act about existence of an enforceable debt from the accused.

[22] In discharge of the onus then shifted to the accused person, he has put forward a clear defence plea through his explanation given in his examination under Section 313 CrPC as well as through his testimonies as DW-1 and testimonies of one Khokan Miah as DW-2 that in the year 2011, the accused took a loan of Rs.5,00,000/- from the complainant with a condition that he would pay Rs.7,50,000/- lakh to him after 10 months and in this regard, he issued three cheques as security.

Said amount, according to him, was repaid to the complainant but the cheques were not returned by the complainant to him.

[23] There a serious doubt about the veracity of the said defence story as revealed from the cross examination of both the accused and his witness, rendering such defence story as dis-believable in as much as in their cross-examination both accused person and DW-2 have categorically stated that those three cheques issued by the accused were drawn on United Bank of India whereas the alleged cheques as involved in the instant proceedings are drawn on AXIS Bank. Therefore, above said two cheques as involved in the present cases cannot be co-related with the alleged transaction of the year 2011. It is also stated by the accused that in relation to said monetary assistance of Rs.5,00,000/- an agreement was executed between the parties but in his cross-examination he admitted that the last page of said agreement did not bear any date which gave further suspicion. Said agreement is also not proved in any of the present two cases. It is also stated by the accused that said three blank cheques were not returned to him after he paid the amount, but despite he same, he did not take any action against the complainant for non-returning of those cheques. According to him, against a loan of Rs.5,00,000/- only, he issued three blank cheques but no explanation is offered by him as to why he issued three cheques when one cheque would serve the purpose. There is also no explanation as to why those cheques were left blank without filling up any amount. According to the accused, apart from issuing those three blank cheques, he also issued a slip from his brick kiln for handing over 2 lakhs bricks to the complainant but what was the value of said two lakhs bricks is also not disclosed by him. No justification is also put forward, as to why against a loan of Rs.5,00,000/- only, so much higher security was given by him. Normally a prudent man would not give such a high security with a complete freedom to the drawer to insert any amount in those cheques. Therefore, the defence story of issuing of three blank cheques is highly improbable and moreover, said alleged three cheques have no resemblance with the cheques as involved in the cases in hand.

[24] When the complainant issued him demand notice, he remained completely silent and did not raise any defence. Even during

hearing of charge also, he did not disclose anything except that he was innocent. Considering all these aspects, it is held that the accused has utterly failed to discharge his onus of rebutting presumption under Section 139 of the Act. When the accused fails to establish his own defence plea, it further fortifies the prosecution case.

[25] Nowhere during cross-examination, no challenge has been put forward to the complainant from the side of accused person that he did not have the financial capacity to lend such amounts under these two cheques. Only a suggestion was given to him that he did not have any taxable income which the complainant denied. Mere denial or giving suggestion is not sufficient to hold that the accused person has been successful in giving rebuttal evidence shifting the burden to the complainant to establish his financial capacity. But despite the same, Ld. trial Court has committed serious error in holding that the complainant failed to show his financial capacity to advance such loan to the accused person. Ld. Court below also insisted the complainant for proof of transaction of the amounts under the cheques despite the fact that the accused has failed to discharge his onus. Learned trial Court also misapplied the decision of ***Basaligappa*** (supra) in the given facts of present cases and grossly mis-appreciated the evidences on record ignoring the fact that the accused person and his witnesses did not offer any explanation in their evidences about the cheques issued to the complainant drawn on AXIS Bank which are actually involved in the present cases.

[26] The wrong application of law as well as erroneous appreciation of evidences by the trial Court have led it's decisions perverse.

[27] Considering thus, both the appeals are allowed. The judgments passed by learned Addl. Chief Judicial Magistrate, West Tripura, Agartala in NI 312/2014 and NI 313/2014 on 24.05.2024, are hereby set aside. In both the cases, (NI 312/2014 and NI 313/2014), the respondent no.2, namely, Sri Rajendra Dhyani is convicted under Section

138 of the NI Act and accordingly, he is directed to appear before this Court on **14.10.2026** for hearing on sentence.

[28] Interim order, if any, stands vacated.

JUDGE

HIGH COURT OF TRIPURA

सत्यमेव जयते

SANJAY GHOSH Digitally signed by SANJAY GHOSH
Date: 2026.10.07 17:46:54 +05'30'

Rudradeep/Sanjay