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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL
Criminal Appeal No. 2423/2015

DHEERENDRA SINGH

Versus

MAHENDRA SINGH

Appearance:

Shri Akhil Singh– Advocate for the appellant.

Shri Aniket Tiwari –Advocate for the respondent.

RESERVED ON : 27.03.2025

PRONOUNCED ON : 17.05.2025

This appeal having been heard and reserved for judgment, coming on for pronouncement on this day, the court passed the following

ORDER

Appellant/complainant has preferred this leave to appeal under Section 378(4) of Code of Criminal Procedure, 1973, against judgment dated 13.03.2015 passed by Judicial Magistrate First Class, Beohaari, District-Shahdol (M.P.) in criminal case No.70/2013, whereby respondent/accused has been acquitted of offence punishable under Section 138 of NI Act relating to issuance of cheque of Rs.21,50,000/-.

2. Leave to appeal was granted by this Court vide order dated 03.09.2015.

3. Brief facts relevant for the disposal of this appeal are that appellant/complainant Dheerendra Singh filed a complaint under Section 138 of N.I. Act on the ground that he had advanced an amount of Rs. 21,50,000/- to respondent/accused and that was not refunded by the respondent/accused. Later on, respondent/accused gave appellant/complainant account payee cheque No.216084 dated 07.10.2012 of an amount of Rs. 21,50,000/- for discharge of aforesaid liability. When appellant/complainant presented aforesaid cheque for payment, then, the same was dishonored on the ground that there is insufficient amount in the bank account of respondent/accused. Thereafter, appellant/complainant issued a notice to respondent/accused but despite receipt of the same, respondent/accused did not pay the amount.

4. Learned counsel for the appellant submits that in the instant case, date, signature, hand writing of cheque (Ex.P/1) are not in dispute. The only defence taken by the respondent/accused is that aforesaid cheque was lost when the bag of respondent, containing aforesaid blank cheque with signature was lost. Learned counsel for the appellant also submits that there is nothing on record to show that any FIR was lodged by respondent with respect to loss of aforesaid bag containing cheque (Ex.P/1) and other documents. Further, after referring to non-applicant witness No.2, it is urged that witness has admitted that Ex.D/1's complaint was not found to have been received in police station. Learned Trial Court has wrongly mentioned in paras 8 and 9 of judgment that appellant failed to explain the source of amount properly. It is also urged that appellant has given Rs.21,50,000/- in cash to respondent/accused, aforesaid amount was arranged by taking loan as well as

from PW-2, who got encashed his FD of an amount of Rs.6,00,000/-. Further, after referring to **John K. Abraham Vs. Simon C.Abraham and Another, (2014) 2 SCC 236**, it is urged that in aforesaid case, beside issue pertaining to source of fund, other issues were also involved. Further, after referring to para 10 of PW-1 (complainant), it is also urged that therein source of fund has been explained by complainant. Further, as signature on cheque was not in dispute, therefore, in view of presumption under Section 139 of NI Act, complainant is not required to prove anything else. With respect to aforesaid submissions, learned counsel for the appellant has relied upon **P.Rasiya Vs. Abdul Nazar and Anr., Criminal appeal No. 1233-1235 of 2022, decided by Hon'ble Apex Court on 12.08.2022** and **Rangappa Vs. Sri Mohan, (2010) 11 SCC 441** and **Bhupesh Rathod Vs. Dayashankar Prasad Chaurasia and another, (2022) 1 SCC (Cri) 514**. On above grounds, it is urged that appeal filed by the appellant be allowed and impugned judgment passed by the Trial Court be set aside.

5. Learned counsel on behalf of respondent/accused submits that loss of bag, which contained cheque (Ex.P/1), was duly reported to police station on 15.08.2012 vide Ex.D/1's complaint. It is also urged that appellant/complainant has failed to prove source of amount of Rs.21,50,000/-. Neither in complaint nor in evidence adduced by appellant, details of loan and FD have been mentioned. Appellant also did not clarify as to in whose presence aforesaid amount was given to respondent. As per appellant's case, the amount is alleged to have been given in two installments in the year 2008-2009. But it has not been clarified as to when and where and how much amount was given on which date. It is also not clear

from evidence as to from which bank and how much loan was taken. Testimonies of PW-1 and PW-2 are contradictory with respect to handing over of cheque (Ex.P/1) to complainant. PW-2 is an interested witness. Further, learned counsel for the respondent after referring and relying upon **Dattatraya Vs. Sharanappa, (2024) 8 SCC 573**, submits that in para 28, 30 and 32 of aforesaid judgment, it has been mentioned as to how presumption under Section 139 of NI Act can be rebutted. On above grounds, it is urged that judgment passed by the Trial Court is just and proper and no interfere is required. Hence, appellant's appeal be dismissed.

6. Heard. Perused record of the case.

Analysis and findings:-

7. There can be no dispute that in matters relating to alleged offences under Section 138 of the N.I. Act, the complainant has only to establish that the cheque was genuine, presented within time and upon it being dishonoured, due notice was sent within 30 days of such dishonor, to which re-payment must be received within 15 days, failing which a complaint can be preferred by the complainant within one month as contemplated under Section 142(1)(b) of the Act.

8. On the other hand, the foremost defence available to the accused is to deny the very liability to pay the amount for which the cheque was issued on the ground that it was not a 'legally enforceable debt' under the Act.

9. Perusal of submissions of both the parties as well as impugned judgment reveals that learned Trial Court has acquitted respondent/accused primarily on the ground that respondent/accused succeeded in rebutting the presumption under

Section 139 read with Section 118 of N.I. Act and appellant/complainant failed to establish the source of amount of Rs. 21,50,000/-, that was allegedly advanced to respondent/accused.

10. Therefore, primary question for determination before this Court is as to whether learned Trial Court was justified in acquitting respondent/accused on aforesaid ground for the offence under Section 138 of N.I. Act. With respect to aforesaid, basic questions to be addressed to are twofold: as to whether the appellant/complainant had established the ingredients of Section 118 and 139 of N.I. Act, so as to justify drawing of the presumption envisaged therein; and if so, as to whether the respondent/accused had been able to displace such presumption and to establish a probable defence whereby, the onus would again shift to the complainant.

11. Before proceeding further, it would be appropriate to refer the relevant provisions contained in Sections 118 and 139 of N.I. Act and they are as follows:-

“118. Presumption as to negotiable instruments.- 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;

(b) as to date-that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance-that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer-that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of endorsements-hat the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamps- that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course-that the holder of a negotiable instrument is a holder in due course;

139. Presumption in favour of holder - It shall be presumed, unless the contrary is proved, that the holder is a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, if any debt or other liability."

12. So far as the question of existence of basic ingredients for drawing of presumption under Sections 118 and 139 of N.I. Act is concerned, evidently respondent/accused has admitted his signature on cheque Ex. P/1 and it is also not in dispute that aforesaid cheque has been drawn on a bank account maintained by the respondent/accused. The aforesaid cheque was presented in the bank concerned within the period of its validity and was returned unpaid for the reason that there was insufficient amount in the account. All the basis ingredients of Section 138 of N.I. Act as also of Sections 118 and 139 of N.I. Act are apparent on the face of the record. The trial Court had also consciously taken note of these facts and had drawn the requisite presumption. Therefore, it is required to be presumed that the cheque in question was drawn for consideration and the holder of the cheque i.e. the complainant received the same in discharge of an existing debt. The onus,

therefore, shifts on the respondent/accused to establish a probable defence so as to rebut such a presumption.

Scope of presumption under Section 139 and 118 of N.I. Act and the nature and extent of evidence required to rebut the same:-

13. Before discussing and examining the facts of the case/evidence on merit, it would be appropriate to refer relevant pronouncements pertaining to aforesaid.

14. A three judge benches of Hon'ble Apex Court in **Rangappa Vs. Sri Mohan, (2010)11 SCC 441**, while discussing and examining the scope of presumption under section 118 and 139 of N.I. Act and nature of evidence required to rebut the same, has held as under:-

“3. The legal question before us pertains to the proper interpretation of Section 139 of the Act which shifts the burden of proof on to the accused in respect of cheque bouncing cases. More specifically, we have been asked to clarify the manner in which this statutory presumption can be rebutted.

16. All of these circumstances led the High Court to conclude that the accused had not raised a probable defence to rebut the statutory presumption. It was held that:

“6. Once the cheque relates to the account of the accused and he accepts and admits the signatures on the said cheque, then initial presumption as contemplated under Section 139 of the Negotiable Instruments Act has to be raised by the court in favour of the complainant. The presumption referred to in Section 139 of the NI Act is a mandatory presumption and not a general presumption, but the accused is entitled to rebut the said presumption.

What is required to be established by the accused in order to rebut the presumption is different from each case under

the 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. In other words, the defence raised by way of rebuttal evidence must be probable and capable of being accepted by the court.

The defence raised by the accused was that a blank cheque was lost by him, which was made use of by the complainant. Unless this barrier is crossed by the accused, the other defence raised by him whether the cheque was issued towards the hand loan or towards the amount spent by the complainant need not be considered...”

Hence, the High Court concluded that the alleged discrepancies on part of the complainant which had been noted by the trial court were not material since the accused had failed to raise a probable defence to rebut the presumption placed on him by Section 139 of the Act. Accordingly, the High Court recorded a finding of conviction.

19. *It has been contended on behalf of the appellant-accused that the presumption mandated by Section 139 of the Act does not extend to the existence of a legally enforceable debt or liability and that the same stood rebutted in this case, keeping in mind the discrepancies in the complainant's version. It was reasoned that it is open to the accused to rely on the materials produced by the complainant for disproving the existence of a legally enforceable debt or liability. It has been contended that since the complainant did not conclusively show whether a debt was owed to him in respect of a hand loan or in relation to expenditure incurred during the construction of the accused's house, the existence of a legally enforceable debt or liability had not been shown, thereby creating a probable defence for the accused.*

26. *In light of these extracts, we are in agreement with the respondent-claimant that the presumption mandated by Section 139 of*

*the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in **Krishna Janardhan Bhat Vs. Dattatraya G. Hegde, (2008) 4 SCC 54** may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.*

27. 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 the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard or proof.

28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of 'preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the

prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.”

15. Hon’ble Apex Court in **Rohitbhai Jivanlal Patel Vs. State of Gujarat and another, (2019) 18 SCC 106** has also discussed the issue and has held as under:-

“16. In Rangappa v. Sri Mohan : (2010) 11 SCC 441, this Court has reiterated and summarised the principles relating to presumptions under Sections 118 and 139 of the NI Act and rebuttal thereof in the following:-

"26. In the light of these extracts, we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it is based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttal presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.

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28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."

17. On the aspects relating to preponderance of probabilities, the accused has to bring on record such facts and such circumstances which may lead the Court to conclude either that the consideration did not exist or that its non- existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that the consideration did not exist. This Court has, time and again, emphasized 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 Section 118 and 139 of the NI Act. This court stated the principles in the case of **Kumar Exports Vs. Sharma Carpets, (2009) 2 SCC 513** as follows:*

"20. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and 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 they did not exist. Apart from adducing direct evidence to prove that

the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act.

21. The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, therefore, the presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue."

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 accused-appellant. The aspect relevant for consideration had been as to whether the accused-appellant has brought on record such facts /material/ circumstances which could be of a reasonably probable defence

20. Hereinabove, we have examined in detail the findings of the trial court and those of the High Court and have no hesitation in concluding that the present one was clearly a case where the decision of the trial court suffered from perversity and fundamental error of approach; and the High Court was justified in reversing the judgment of the trial court. The observations 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 witness, or that the witness of the complaint was more in the know of facts, etc. would have been relevant if the matter was to be examined with reference to the onus on the complaint to prove his case beyond reasonable doubt. These considerations and observations do not stand in conformity with the presumption existing in favour of the complainant by virtue of Sections 118 and 139 of the NI Act. Needless to reiterate that the result of such presumption is that existence of a legally enforceable debt is to be presumed in favour of the complainant. When such a presumption is drawn, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not. The other observations as regards any variance in the statement of complainant and witness; or want of knowledge about dates and other particulars of the cheques; or washing away of the earlier cheques in the rains though the office of the complainant being on the 8th floor had also been irrelevant

factors for consideration of a probable defence of the appellant. Similarly, the factor that the complainant alleged the loan amount to be Rs 22,50,000 and seven cheques being of Rs 3,00,000 each leading to a deficit of Rs 1,50,000, is not even worth consideration for the purpose of the determination of real questions involved in the matter. May be, if the total amount of cheques exceeded the alleged amount of loan, a slender doubt might have arisen, but, in the present matter, the total amount of 7 cheques is lesser than the amount of loan. Significantly, the specific amount of loan (to the tune of Rs 22,50,000) was distinctly stated by the appellant-accused in the aforesaid acknowledgment dated 21-3-2017.

21. On perusing the order of the trial court, it is noticed that the trial court proceeded to pass the order of acquittal on the mere ground of “creation of doubt”. We are of the considered view that the trial court appears to have proceeded on a misplaced assumption that by mere denial or mere creation of doubt, the appellant had successfully rebutted the presumption as envisaged by Section 139 of the NI Act. In the scheme of the NI Act, mere creation of doubt is not sufficient.

22. The result of discussion in the foregoing paragraphs is that the major considerations on which the trial court chose to proceed clearly show its fundamental error of approach where, even after drawing the presumption, it had proceeded as if the complainant was to prove his case beyond reasonable doubt. Such being the fundamental flaw on the part of the trial court, the High Court cannot be said to have acted illegally or having exceeded its jurisdiction in reversing the judgment of acquittal. As noticed hereinabove, in the present matter, the High Court has conscientiously and carefully taken into consideration the views of the trial court and after examining the evidence on record as a whole, found that the findings of the trial court are vitiated by perversity. Hence, interference by the High Court was inevitable; rather had to be made for just and proper decision of the matter.

23. For what has been discussed hereinabove, the findings of the High Court convicting the appellant-accused for the offence under Section 138 of the NI Act deserve to be, and are, confirmed.”

16. Hon’ble Apex Court in Dattatraya Vs. Sharanappa, (2024) 8 SCC 573,

has also examined the nature and extent of presumption as well as nature of evidence required for rebutting the presumption and has held as under:-

“19. Chapter XIII of the NI Act 1881, of which Section 118 is a part, lays down special rules for evidence to be adduced within the scheme of the Act herein. As the text of the said provision showcases, it raises a rebuttable presumption as against the drawer to the extent that the concerned negotiable instrument was drawn and subsequently accepted, indorsed, negotiated, or transferred for an existing consideration, and the date so designated on such an instrument is the date when the concerned negotiable instrument was drawn. It is also further presumed that the same was transferred before its maturity and that the order in which multiple endorsements appear on such an instrument, that is the deemed order thereon. Lastly, the holder of a negotiable instrument is one in its due course, subject to a situation where the concerned instrument while being obtained from a lawful owner and from his or her lawful custody thereof through undertaking of an offence as contemplated under any statute or through the means of fraud, the burden to prove him or her being a holder in due course, instead, lies upon such a holder.

20. Accordingly, to begin with, the bare provision of Section 139 of the NI Act 1881 is reproduced herein below:

*“139. **Presumption in favour of holder**—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.”*

*The aforesaid presumption entails an obligation on the court conducting the trial for an offence under Section 138 of the NI Act 1881 to presume that the cheque in question was issued by the drawer or accused for the discharge of a particular liability. The use of expression “shall presume” ameliorates the conundrum pertaining to the right of the accused to present evidence for the purpose of rebutting the said presumption. Furthermore, the effect of such presumption is that, upon filing of the complaint along with relevant documents, thereby prima facie establishing the case against the drawer, the onus of proof shifts on the drawer or accused to adduce cogent material and evidence for rebutting the said presumption, and as established in **Laxmi Dyechem v. State of Gujarat and Others, (2012) 13 SCC 375** based on preponderance of probabilities.*

21. *While describing the offence envisaged under Section 138 of the NI Act 1881 as a regulatory offence for largely being in the nature of a civil wrong with its impact confined to private parties within commercial transactions, the 3-Judge Bench in the decision of **Rangappa Vs. Sri Mohan, (2010) 11 SCC 441** highlighted Section 139 of the NI Act 1881 to be an example of a reverse onus clause. This is done so, as the Court expounds, in the light of Parliament’s intent, which can be culled out from the peculiar placing of act of dishonour of cheque in a statute having criminal overtones. The underlying object of such deliberate placement is to inject and enhance credibility of negotiable instruments. Additionally, the reverse onus clause serves as an indispensable “device to prevent undue delay in the course of litigation”. While acknowledging the test of proportionality and having laid the interpretation of Section 139 of the NI Act 1881 hereof, it was further held that an accused cannot be obligated to rebut the said presumption through an unduly high standard of proof. This is in light of the observations laid down by a co-ordinate Bench in **Hiten P. Dalal v. Bratindranath Banerjee, (2001) 13 SCC 375** whereby it was*

clarified that the rebuttal ought not to be undertaken conclusively by an accused, which is reiterated as follows:

“23. In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when,

‘after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the ‘prudent man’.

22. Therefore, it may be said that the liability of the defence in cases under Section 138 of the NI Act 1881 is not that of proving its case beyond reasonable doubt.

*23. In light of the aforesaid discussion, and as underscored by this Court recently in the decision of **Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148** an accused may establish non-existence of a debt or liability either through conclusive evidence that the concerned cheque was not issued towards the presumed debt or liability, or through adduction of circumstantial evidence vide standard of preponderance of probabilities.*

24. Since a presumption only enables the holder to show a prima facie case, it can only survive before a court of law subject to contrary not having been proved to the effect that a cheque or negotiable

*instrument was not issued for a consideration or for discharge of any existing or future debt or liability. In this backdrop, it is pertinent to make a reference to a decision of 3-Judge Bench in **Bir Singh v. Mukesh Kumar,(2019) 4 SCC 197***

*which went on to hold that if a signature on a blank cheque stands admitted to having been inscribed voluntarily, it is sufficient to trigger a presumption under Section 139 of the NI Act 1881, even if there is no admission to the effect of execution of entire contents in the cheque. 27. A comprehensive reference to the Sections 118, 139 and 140 of the NI Act 1881 gives birth to a deemed fiction which was also articulated by this Court in **K.N. Beena v. Muniyappan, (2001) 8 SCC 458** as follows:*

*“6.....Under section 118, unless the contrary was proved, it is to be presumed that the negotiable instrument (including a cheque) had been made or drawn for consideration. Under section 139 the court has to presume, unless the contrary was proved, that the holder of the cheque received the cheque for discharge, in whole or in part, of a debt or liability. Thus, in complaints under section 138, the court has to presume that the cheque had been issued for a debtor’s liability. This presumption is rebuttable. However, the burden of proving that a cheque had not been issued for a debt or liability is on the accused. The Supreme Court in the case of **Hiten P. Dalal v. Bratindranath Banerjee (2001) 6 SCC 16** has also taken an identical view.*

28. Furthermore, on the aspect of adducing evidence for rebuttal of the aforesaid statutory presumption, it is pertinent to cumulatively read the decisions of this Court in Rangappa (supra) and Rajesh Jain (supra) which would go on to clarify that accused can undoubtedly place reliance on the materials adduced by the complainant, which would include not only the complainant’s version in the original

complaint, but also the case in the legal or demand notice, complainant's case at the trial, as also the plea of the accused in the reply notice, his Section 313 CrPC 1973 statement or at the trial as to the circumstances under which the promissory note or cheque was executed. The accused ought not to adduce any further or new evidence from his end in said circumstances to rebut the concerned statutory presumption concerned."

17. From aforesaid pronouncements, the law on the point may be summarized as under:-

- (i) That, the presumption mandated by Section 139 of N.I. Act, includes a presumption that there exists a legally enforceable debt or liability. Thus, there is an initial presumption which favours complainant;
- (ii) That, the aforesaid presumption is rebuttable;
- (iii) That, the standard of proof required to rebut the presumption is that of "preponderance of probabilities";
- (iv) That, an accused is not required to adduce any independent evidence to rebut the presumption. It can rebut the presumption from evidence on record, including that adduced by the complainant.

FACTUAL ANALYSIS OF THE CASE:-

18. Perusal of submissions of learned counsel for the appellant/complainant reveals that primarily appellant/complainant's case is that as respondent/accused has admitted his signature on Ex. P/1's cheque, therefore, in view of presumption

under Sections 118 and 139 of N.I. Act, respondent/accused was required to rebut the presumption and as respondent/accused has failed to rebut the presumption, therefore, learned trial Court has wrongly acquitted respondent/accused.

19. On the other hand, perusal of submissions of learned counsel for the respondent/accused reveals that primarily counsel for the respondent/accused has advanced twofold submissions on behalf of the respondent/accused i.e. one is that Ex. P/1's cheque was lost from respondent/accused while he was going from Shahdol to Beohari and second one is, that appellant/complainant has failed to establish/prove source of amount allegedly advanced to respondent/accused.

20. In the instant case, respondent/accused's signature on Ex. P-1's cheque are not in dispute and respondent/accused has not denied his signature on Ex.P/1's cheque. In view of Sections 118 and 139 of N.I. Act as well as principles laid down by Hon'ble Apex Court in pronouncements as referred in preceding paras, initial presumption is to be raised/drawn in favour of appellant/complainant. Therefore, question arises as to whether respondent/accused has succeeded in rebutting the aforesaid presumption.

21. Primary defence of respondent/accused is that he had lost the P/1's cheque while he was going from Shahdol to Beohari. Therefore, question arises as to whether respondent/accused has succeeded in establishing that Ex. P/1's cheque was lost while respondent/accused was going from Shahdol to Beohari or otherwise also.

22. Perusal of cross-examination of appellant/complainant Dheerendra Singh, on behalf of the respondent/accused, reveals that no such suggestion has been

given to appellant/complainant Dheerendra Singh that Ex. P/1's cheque was lost while respondent/accused was going from Shahdol to Beohari. On the contrary, in para 11 of cross-examination of appellant/complainant Dheerendra Singh, a suggestion has been given on behalf of respondent/accused to the effect that appellant/complainant, after having received accused's cheque from someone else, had filled arbitrary amount therein and had filed case before this Court. Further, para 8 of appellant/complainant's cross-examination reveals that Ex. P/1's cheque was given by respondent/accused in the presence of Upendra Singh and it was given at house of respondent/accused in Beohari.

23. Similarly, perusal of cross- examination of appellant/complainant witness Upendra Singh (PW/2) reveals that no such suggestion has been given to the witness that Ex. P/1's cheque was lost while respondent/accused was going from Shahdol to Beohari. The only suggestion given on behalf of respondent/accused to complainant witness Upendra Singh in para 5 is that no cheque was given by respondent to Dheerendra Singh in his presence and this suggestion has been denied by the witness.

24. Respondent/accused has not explained that, if Ex. P/1's cheque was lost, then, why no such specific suggestion has been given to appellant/complainant and his witness and why such suggestion has been given to appellant/complainant that he received respondent/accused's cheque from someone else and thereafter filled arbitrary amount in the same.

25. Further, with respect to the defence of respondent/accused that the cheque was lost, it would be appropriate to refer and reproduce relevant paras of respondent/accused Mahendra Singh's deposition which are as under:-

मुख्यपरीक्षण

“01. मेरे द्वारा प्रकरण में दिनांक 15.08.2012 ब्यौहारी थाना में चैक क्रमांक 216084 एवं दस्तावेजे गुज जाने के सम्बन्ध में की गई रिपोर्ट की द्वितीय प्रति प्र.डी.-1 है। जिसके ए से ए भाग पर उसके हस्ताक्षर हैं। थाना ब्यौहारी में एवं सेन्ट्रल म.प्र. ग्रामीण बैंक भाखा ब्यौहारी द्वारा चैक क्रमांक 312913 से 312921 तक में स्टाप पेमेन्ट लगाये जाने सम्बंधी भाखा प्रबंधक भाखा ब्यौहारी द्वारा प्राप्त पत्र की मूल प्रति जो प्र.पी.02 है। प्रकरण में उसके पे 1 किया गया है। वह परिवादी धीरेन्द्र सिंह को जानता है। धीरेन्द्र सिंह रामलला सिंह के रिश्तेदार है जिन्हें वह जानता है। प्रकरण में प्रस्तुत उसका चैक गुम गया था जिसके सम्बन्ध में उसके द्वारा थाना में 15.08.12 को रिपोर्ट कराई गई थी उक्त चैक के साथ उसका स्टाप पेपर, वोटर आई.डी., उसके साथ और कुछ एक चैक ग्रामीण बैंक का था जो चैक उसका गुम गया था उसमें मात्र मेरे हस्ताक्षर थे उसे एक पार्टी का हिसाब करना था। अर्थात् पैमेन्ट शहडोल में करना था। जब हिसाब किताब होने लगा उसमें राशि भरने को हुआ तो हिसाब सम्बंधी मेरी और कुछ पर्ची है तो मैं बोला कि ब्यौहारी चलकर हिसाब करते हैं। फिर वह उन्ही के साथ शहडोल से ब्यौहारी आ रहा था जब वह ब्यौहारी आया तो देखा कि जिसमें उसके उक्त सभी कागजात रखे थे वह उसके कागजात मोटरसाईकिल में नहीं थे। फिर वह दूसरे दिन शहडोल अपने कमरा गया तब उसका उक्त बैग सहित दस्तावेज नहीं मिले तो वह ब्यौहारी आकर दिनांक 15.08.12 को थाना में आकर रिपोर्ट किया ।

प्रतिपरीक्षण द्वारा श्री प्रदीप सिंह अधिवक्ता वास्ते परिवादी

03. मोटर साईकिल कौन की थी क्या नम्बर था। उसे ध्यान नहीं है। उक्त मोटरसाईकिल रावेन्द्र सिंह की थी। गाडी रावेन्द्र सिंह चला रहा था। हैण्ड बैग काले रंग का था जिसमें चैक रखे हुये थे। हैण्डबैग में मोटर साईकिल में पकड़कर ही बैठा था। रावेन्द्र सिंह शहडोल उसके पास हिसाब कराने आये थे उस समय वह शहडोल में था उस समय उनका भी काम का पैसा बांकी था। रावेन्द्र सिंह उसके पास करीब तीन बजे पहुँचे थे। वह पांच बजे के पास ब्यौहारी के लिये दिनांक 13.08.12 को शहडोल से निकला था उसे ध्यान नहीं है कि किस किस हाथ में बैग रखा था। उसे यह भी ध्यान नहीं है कि उसका बैंक शहडोल में गिर गया कि ब्यौहारी में या जयसिंहनगर में गिर गया था। ब्यौहारी रात्रि साढ़े सात बजे के करीब पहुँचा तब देखा कि उसके हाथ में बैग नहीं था। उसने रिपोर्ट को टाईप शहडोल में कराया था। उसने घटना की रिपोर्ट शहडोल में नहीं किया । वह शहडोल रिपोर्ट लिखाने गया ही नहीं और न ही जयसिंह नगर गया और घटना दिनांक और व उसके दूसरे दिन भी थाना ब्यौहारी में रिपोर्ट नहीं लिखाया । यह सही है कि इस बात से अ वस्तु नहीं था कि उसका बैग गिर के कहां गुम गया है। उसका बैग शहडोल में गिरा ही नहीं इसलिये उक्त रिपोर्ट शहडोल में नहीं कराया । जयसिंह नगर में भी बैग का गिरना पक्का नहीं था इसलिये वहां पर रिपोर्ट नहीं लिखाई। ब्यौहारी में प्रवेश करते समय ही कहीं पर गिरा इसलिये ब्यौहारी में रिपोर्ट कराई । सही है में इस बात से अश्वस्त होने के बाद कि बैग

शहडोल व जयसिंह नगर में नहीं गिरा है। बैग ब्यौहारी में गिरा है। उसके बाद भी ब्यौहारी थाना में घटना दिनांक को रिपोर्ट नहीं की। साक्षी ने स्वतः कहा कि बैग जयसिंह नगर और शहडोल में दूढ़ने के बाद ब्यौहारी में रिपोर्ट किया जब बैग नहीं मिला तो दिनांक 15.08.12 को रिपोर्ट की गई। यह सही है कि उसके द्वारा प्र.डी.-2 से सम्बंधित बैग में जो चैक क्र. के लिये स्टाप पैमेन्ट दिनांक 3.3.15 को लगवाया था वह सेन्दल म.प्र.ग्रामीण बैंक भाखा न्यू बरौधा ब्यौहारी के चैक बुक से जारी किये गये चैक के सम्बंध में। यह सही है कि दिनांक 3.3.15 को ही प्र.डी.2 के दस्तावेज में स्टाप पैमेन्ट दर्शाया गया लेख किया गया है। साक्षी ने स्वतः कहा कि उसने 3.3.15 को उसका प्रमाण पत्र प्राप्त किया है स्टाप पैमेन्ट उसी दिन करा लिया था जब केस दायर हुआ है। यह बात सही है कि प्र.डी.-2 में स्टाप पैमेन्ट करने की तारीख अंकित नहीं है। इस प्रकरण में चैक स्टेट बैंक आफ इंदौर शाखा शहडोल में का विवादित है। यह सही है कि सेन्दल स्टेट बैंक आफ इन्दौर शाखा शहडोल का उसने कोई स्टाप पैमेन्ट करने सम्बंधी प्रमाण पेश नहीं किया है। वह शहडोल में ही रहता है। यह सही है कि उसने प्रश्नाधीन बैंक शहडोल में चैक गुमने सम्बंधी सूचना दिये जाने या चैक के पैमेन्ट को स्टाप किये जाने सम्बंधी कोई अभिलेख इस प्रकरण में लेख नहीं किया है। प्रार्थी ने स्वतः कहा कि ब्यौहारी कोरियर से शहडोल बैंक के लिये बैं को सूचना भेजी। यह कहना गलत है कि परिवार को चैक की राशि न देने के लिये उसने फर्जी दस्तावेज पेश किये हैं। यह कहना गलत है कि उसका कोई चैक नहीं गुमा। यह कहना गलत है कि भुगतान की अदायगी से बचने के लिये वह आज झूठी व मनगढ़ंत कथन कर रहा है। यह कहना गलत है कि थाना ब्यौहारी में कोई रिपोर्ट नहीं की।”

26. Thus, from aforesaid deposition of respondent/accused, it appears the cheque and other papers were in a hand bag and aforesaid hand bag was in the hand of respondent/accused. It is highly unnatural and improbable that if, while going from Shahdol to Beohari, the hand bag was lost or got slipped from the hand of respondent/accused, then, he might have not noticed the same immediately. Further, in examination-in-chief itself, on the one hand respondent/accused Mahendra Singh has stated that when he reached Beohari, then, he noticed that the papers were not in motorcycle. On the other hand, it is also stated therein that when on the next day, he went to his room in Shahdol, then, his aforesaid documents could not be found. It is not clear that if hand bag, containing cheque and other documents, was lost while going from Shahdol to Beohari, then, how

and why the witness has stated in his examination-in-chief that when on the next day, he went to his room in Shahdol, then, he did not found aforesaid bag containing documents and reported the matter

27. Further, from testimony of respondent/accused Mahendra Singh, it is evident that he had to make payment to one Ravendra Singh. Therefore, he had taken the cheque and other documents to Shahdol and at relevant point of time, this Ravendra Singh was riding motorcycle, on which respondent/accused was travelling as pillion rider. Ravendra Singh has not been examined and no explanation has been furnished for the same.

28. Respondent/accused Mahendra Singh has also stated in his examination-in-chief that on 15.08.2012, he had reported to Beohari Thana with respect to fact that he had lost cheque No. 216084 and other documents and second copy of the report is Ex. D/1. With respect to aforesaid, respondent/accused has examined Sub Inspector G.P. Tiwari (DW/2). But G.P. Tiwari (DW-2) has stated in his examination-in-chief itself that on Ex. D/1, there is a seal of Incharge Thana Beohari and there are signature also but he cannot state as to whose signature are there on Ex. D/1. Witness has also stated in his examination-in-chief itself that there is no entry of any such report in Rojnamcha of Thana, Beohari. Thus, there is no entry with respect to Ex. D/1's report in police station, Beohari and no FIR has been registered on the basis of Ex. D/1.

29. With respect to aforesaid, i.e. that Ex. P/1's signed blank cheque was lost, it is also important as to whether concerned bank was immediately informed about the same and stop payment was requested. Perusal of testimony of

appellant/complainant Dheerendra Singh, respondent/accused Mahendra Singh as well as Ex. D/2 clearly reveals that respondent/accused did not inform concerned bank about the fact that Ex. P/1's cheque has been lost and did not ask the bank to stop the payment with respect to Ex. P/1's cheque. No explanation for aforesaid has been furnished on behalf of respondent/accused.

30. From suggestions given to appellant/complainant Dheerendra Singh in his cross-examination as well as Upendra Singh and from testimony of respondent/accused Mahendra Singh himself and otherwise also, signature of respondent/accused Mahendra Singh on Ex. P/1 cheque is an admitted fact. If respondent/accused did not make other entries in Ex. P/1's cheque and it were made by someone else, then, respondent/accused should have got Ex. P/1's cheque examined by some handwriting expert to prove the fact that on Ex. P/1's cheque, only signature are of respondent/accused and other entries have been made by someone else and they are not in the handwriting of respondent/accused. For aforesaid also, no explanation has been furnished on behalf of the respondent/accused.

31. Further, from deposition of appellant/complainant Dheerendra Singh as well as Ex. P/4, P/5, P/6, it is evident that appellant/complainant had sent Ex. P/4's notice to respondent/accused and receipt of the same by respondent/accused has not been disputed at all by respondent/accused. This is also evident from cross-examination of appellant/complainant Dheerendra Singh and Upendra Singh and testimony of respondent Mahendra Singh himself.

32. Perusal of record of the case reveals that respondent/accused has not explained anywhere that if Ex. P/1's cheque was lost and he did not fill it and made entries therein and did not handover it to appellant/complainant, then, even after receipt of Ex. P/4's notice, why did he immediately not send reply to Ex. P/4's notice to appellant, stating therein that Ex. P/1's cheque was lost and he did not make entries pertaining to amount and name of appellant/complainant etc.

33. Further, with respect to the fact that respondent/accused did not inform concerned Bank to stop the payment of Ex.P/1's cheque stating that Ex.P/1's cheque was lost and non-filing of any reply to Ex.P/4's notice, para-29 of ***Rangappa Vs. Sri Mohan (2010) 11 SCC 441*** is also relevant, which is as under:-

“29. Coming back to the facts in the present case, we are in agreement with the High Court's view that the accused did not raise a probable defence. As noted earlier, the defence of the loss of a blank cheque was taken up belatedly and the accused had mentioned a different date in the “stop payment” instructions to his Bank. Furthermore, the instructions to “stop payment” had not even mentioned that the cheque had been lost. A perusal of the trial record also shows that the accused appeared to be aware of the fact that the cheque was with the complainant. Furthermore, the very fact that the accused had failed to reply to the statutory notice under Section 138 of the Act leads to the inference that there was merit in the complainant's version. Apart from not raising a probable defence, the appellant-accused was not able to contest the existence of a legally enforceable debt or liability.”

34. Similarly, with respect to non-filing of any reply to Ex.P/4's notice and also that the cheque was lost, observations of Hon'ble Apex Court in para-17 and 18 of **Cr.A. No. 4171/2024 (Ashok Singh Vs. State of UP) decided on 02.04.2025**, are also relevant, which are as under:-

“17. In the present case, there is no denial apropos the signature on the cheque by the respondent no.2 and, as noted hereinbefore, the stand taken is that the said cheque was lost. This is the reason given by the respondent no.2 to have advised the bank to stop payment due to which the cheque in question was not honoured/encashed. However, the relevant dates beg to tell a different tale. The cheque in question dated 17.03.2010 was presented within time but returned un-encashed on 07.05.2010 with the endorsement ‘payment stopped by drawer’ . A Legal Notice was also sent by the appellant on 18.05.2010 through Registered Post, i.e., within the stipulated thirty days period, intimating about the dishonour of the cheque. As no reply was proffered by respondent no.2, thus, an inference, albeit rebuttable, could arise that he had no sustainable/valid defence to justify why the cheque in question was dishonoured. Be that as it may, the respondent no.2 avers that no reply was sent as he had not received any Legal Notice.

18. Further, a defence raised by the respondent no.2 was that he had intimated the police of the factum of the cheque being lost. However, upon verification of the said claim, it emerges that such intimation/information reached the police only in the year 2011, though the intimation itself was dated 12.03.2010. Notably, the cheque was presented on 17.03.2010. This sequence strengthens the statutory presumption in favour of the appellant, as it cannot be believed that a cheque having been lost on/about 12.03.2010, the respondent no.2 would intimate the police thereof only in the year 2011, moreso, when the amount involved was a princely sum of Rs.22,00,000/- (Rupees Twenty- Two Lakhs). It is noted that during cross-examination, respondent no.2 admitted that such intimation was sent to the police only in 2011 but never converted into a formal FIR.

This further raises serious doubts with regard to the veracity of the accused’ s claims/defences insofar as the story projected of the cheque having been lost is concerned.”

35. Thus, from discussion in the forgoing paras and having regard to nature and extent of evidence available on record, this Court is of considered opinion that

from evidence on record, it is not established at all that at alleged date, time and place or at any point of time, Ex. P/1's cheque was lost.

36. Further, so far as, in relation to rebuttal of presumption raised/drawn in favour of appellant/complainant under Sections 118 and 139 of N.I. Act, respondent/accused's defence, that appellant/complainant has failed to establish source of amount of Rs. 21,50,000/- allegedly advanced to respondent/accused, is concerned, with respect to aforesaid, it would be appropriate to refer and reproduce relevant paras of appellant/complainant's evidence.

37. Appellant/complainant Dheerendra Singh has deposed in his examination-in-chief as under:-

"1. मैं अभियुक्त को जानता हूँ क्योंकि मेरा उससे पारिवारिक सम्बन्ध है वह ठेकेदारी का काम करते हैं और मेरा उनसे लेन-देन का काम होना रहता है। आरोपी व मेरे मध्य निपनिया में दलको कोठार सड़क निर्माण प्रधान मंत्री ग्राम सड़क योजना पैकेज नंबर 3880 के अन्तर्गत सड़क निपनिया से दलको कोठार तक निर्माण कराने हेतु अनुबंध हुआ था। उक्त सड़क निर्माण के मेन ठेकेदार मेसर्स सिंह कंस्ट्रक्शन कंपनी सिंगरौली के नाम से था जिसका कार्य कराने के लिये अभियुक्त सिंह कंस्ट्रक्शन कंपनी सिंगरौली की ओर से पूर्ण रूपेण अधिकृत था। उसका अभियुक्त से पेटी कांटेक्टर के रूप में उक्त सड़क निर्माण हेतु अनुबंध था। वह उसी सड़क निर्माण कार्य हेतु अभियुक्त को 21,50,000/-रूपये नगद दिया थां उक्त सड़क निर्माण काकार्य चलता रहा। अभियुक्त के द्वारा यह कहा गया कि उक्त कार्य पूर्ण होने पर हिसाब-किताब कर पैसा दे दिया जायेगा किन्तु उसने कार्यपूर्ण होने के बाद भी पैरान नहीं पाया। उसने अभियुक्त से पैसा प्राप्त करने के लिये काफी प्रयास किया एवं पंचायत किया।

प्रतिपरीक्षण द्वारा श्री के.बी.सोनी अधिवक्ता वास्ते अभियुक्त

04. यह बात सही है कि मैंने न्यायालय में प्रस्तुत परिवाद को अच्छी तरह से पढ़-समझकर पेश किया है एवं उस पर हस्ताक्षर किया है। मैंने नोटिस को भी अच्छी तरह से पढ़कर अपना हस्ताक्षर किया था। यह बात सही है कि मैं एग्रीमेंट को भी अच्छी तरह से पढ़ लिया था। पैकेज नं. 3880 निपनिया से दलको के बीच की साढ़े चार किलोमीटर लंबाई की सड़क मुझे निर्माण हेतु दी गई थी जिसकी लागत एक करोड़ अठारह लाख थी। पूरी सड़क लगभग 18 किलोमीटर लंबी थी। जिसके ठेक की लागत चार करोड़ चौरसी लाख थी। यह बात सही है कि कि उक्त निर्माण कार्य से सम्बंधित प्राक्कलन रिपोर्ट मैंने प्रकरण में प्रस्तुत नहीं किया है। उक्त निर्माण कार्य पूर्ण करने का समय

9 महिने था। मैने उक्त निर्माण कार्य अक्टूबर 2008 से प्रारंभ किया था और जनवरी 2009 में कार्य समाप्त हो गया था।

05. यह बात सही है कि उक्त निर्माण कार्य सिंह कंस्ट्रक्शन कंपनी सिंगरौली को ठेके पर प्राप्त हुआ था। मुझे नहीं मालूम कि उस कंपनी में अभियुक्त के नाम से सड़क निर्माण का अधिकार पत्र दिया था लेकिन मैंने अभियुक्त के द्वारा ही ठेका प्राप्त किया था। यह बात सही है कि सिंह कंस्ट्रक्शन कंपनी द्वारा अभियुक्त को ठेका देने पर ही अभियुक्त द्वारा उसे ठेका दिया गया था। मुझे नहीं मालूम कि अक्टूबर 2008 से जनवरी 2009 तक के कार्य के दौरान अभियुक्त ने मुझे कितने पैसे का भुगतान किया था। स्वतः कहा कि इसके बारे में अभियुक्त को ही जानकारी होगी साक्षी ने फिर कहा कि लगभग दस लाख रुपये का भुगतान अभियुक्त ने मुझे किया था। फिर कहा कि मैंने अभियुक्त से कितना पैसा प्राप्त किया मुझे ध्यान नहीं है। उसका कागज कहीं रखा होगा उसका कोई कागज मैंने पेश नहीं किया है।

06. यह बात सही है कि मैंने काम करने और भुगतान प्राप्त करने के सम्बन्ध में कोई भी दस्तावेज प्रकरण में पेश नहीं किया है। मेरे पास मजदूरों को भुगतान करने का हाजिरी रजिस्टर है। गिट्टी, मिट्टी, सरिया और सीमेंट आदि का कोई हिसाब मेरे पास नहीं है। मेरे पास सीमेंट, सरिया, डीजल खरीदने का कोई हिसाब मेरे पास इस समय नहीं है। मेरे पास चार डंपर हैं जिसमें ड्राइवर रखे हुये हैं। मैं डंपर से सम्बंधित आय व्यय के सम्बन्ध में कोई हिसाब नहीं रखता हूँ। मेरे पास लिखित में यह हिसाब नहीं है कि किसको कितना पैसा दिया हूँ और किससे कितना पैसा प्राप्त किया हूँ। यह बात सही है कि मेरे पास महेन्द्र सिंह के लेन-देन के सम्बन्ध में कोई हिसाब-किताब नहीं है। मैं 21,50,000/-रुपये अभियुक्त को नगद दिया था। मैं उक्त राशि 2,75,000/-रुपये एफ.डी. के माध्यम से दिया था। मैं उक्त राशि दो-तीन किश्तों में दिया था। मैं उक्त एफ.डी. 2008 में टेंडर के समय दिया था। मैंने 2008 से 2009 के बीच जनवरी माह तक दो किश्तों में पैसा दिया था। मैं अभियुक्त को राशि कब दिया था उसकी दिन, तारीख ध्यान नहीं है। यह बात सही है कि मैं उक्त राशि सड़क निर्माण के सम्बन्ध में ही अभियुक्त को दिया था।

07. यह बात सही है कि मैंने नोटिस में कही पर यह लेख नहीं है कि मैं सड़क निर्माण कार्य करने के लिये ठेका अभियुक्त से लिया था। यह बात सही है कि मैंने नोटिस में यह लेख नहीं है कि मैं 21,50,000/-रुपये अभियुक्त को दो-तीन किश्तों में दिया था और एफडी भी दिया था। यह बात सही है कि मेरे परिवाद पत्र में यह लेख नहीं है कि मैं अभियुक्त को 21,50,000 रूपया दो-तीन किश्तों में दिया था। उक्त निर्माण कार्य पैकेज नं. 3880 का कार्य में अकेले लिया था। यह बात सही है कि अभियुक्त से जो ठेका उसने लिया था उसमें कई लोग मिलकर कार्य करते थे। स्वतः कहा कि दूसरे से पैसे लेने पर उकसा भी ठेके में हिस्सेदार बनाना पडता है। उसी हिसाब से कई लोग ठेके में शामिल थे। उपेन्द्र सिंह भी उसमें शामिल थे। अतुल सिंह उस ठेके में शामिल नहीं थे। फिर कहा कि अतुल सिंह अभियुक्त के साथ काम करते थे, मेरे साथ काम नहीं करते थे।

08. यह बात सही है कि उस ठेके में काम करने वाले सभी लोग एक दूसरे से परिचित थे और मिलजुलकर काम करते थे। यह बात सही है कि आवश्यकता पडने पर एक-दूसरे साथ से पैसा एवं मटेरियल की उधारी लेते-देते रहते थे। यह बात सही है कि जो पैसा हम उधारी लेते थे वह पैसा बाद में मांगने वाले को वापस कर देते थे। यह बात सही है कि चैक दिनांक 07.10.09 को दिया गया था फिर कहा कि 07.10.12 को दिया गया था। वह चैक अभियुक्त ने उसे व्यौहारी में अपने घर में दिया था। अभियुक्त का कोई घर नहीं बना है। वह वार्ड नं.9 में बबलू श्रीवास्तव के घरपर किराए से रहते

थे। चैक देते समय हम दोनों के अलावा उपेन्द्र सिंह भी थे। जो चैक दिया गया था वह भरा हुआ था। चैक उसी दिन भरा गया था और अभियुक्त ने ही भरा था। यह बात सही है कि चैक की लिखावट और हस्ताक्षर में भिन्नता है। स्वतः कहा कि हस्ताक्षर अंग्रेजी में है और लिखावट हिन्दी में है इसलिये भिन्नता है।

09. यह कहना गलत है कि उक्त निर्माण कार्य से सम्बंधित राशि का भुगतान शासन द्वारा जनवरी 2009 में हो चुका था। यह बात सही है कि मुझे यह मालुम नहीं है कि उक्त सडक निर्माण से सम्बंधित शासन द्वारा अभियुक्त को कब राशि प्राप्त हुई है। यह कहना गलत है कि अनुबंध पत्र में यह लेख किया गया था कि 6 महीने में कार्य पूरा न करने पर अनुबंध समाप्त हो जायेगा। मुझे रोड से सम्बंधित स्टीमेंट प्राप्त नहीं हुआ था। इसलिये मुझे नहीं मालुम कि उस रोड में क्या काम करताथा। यह बात सही है कि अनुबंध में यह लेख है कि 6 महीने में काम पूरा नहीं होने पर एवं काम छोड़ने पर परिवादी को कोई राशि नहीं दी जायेगी। यह बात सही है कि मैने डामर का काम नहीं किया था और काम छोड़ दिया था क्योंकि कोई भुगतान नहीं हुआ था। यह कहना गलत है कि मैने अंधूरा काम छोड़ दिया था। यह कहना गलत है कि मेरे द्वारा समय पर पूरा काम न करने के कारण अभियुक्त पर 12 लाख रूपये की पैनाल्टी विभाग द्वारा लगायी गई थी। मै नहीं बता सकता कि अभियुक्त ने मेरे द्वारा छोड़ा हुआ काम वर्ष 2011 में पूरा किया। यह बात सही है कि मेरा कार्य डंफर बगैरह चलाने और ठेके पर सडक बनाने का है। यह बात सही है कि मैं अपने कारोबार का हिसाब रखता हूं। मैं स्वयं हिसाब नहीं करता हूं। मेरे कार्यकर्ता हिसाब-किताब रखते है। यह कहना गलत है कि मैने पैकेज नंबर 3880 से सम्बंधित कोई काम नहीं किया इसलिये मेरे पास उसका कोई हिसाब नहीं है। यह बात सही है कि मैने पैकेज नंबर 3880 में जो काम किया है उसके लेन-देन का कोई हिसाब मेरे पास नहीं है इसलिये मैने प्रकरण में पेश नहीं किया है।

10. यह बात सही है कि वर्ष 2008 से लेकर 2012 तक अभियुक्त से राशि प्राप्त करने के संबंध में लिखित रूप से कोई पत्र व्यवहार नहीं किया हूं। स्वतः कहा कि मौखिक रूप से कई बार कहा है। मुझे इस समय ध्यान नहीं है कि मैने अभियुक्त को दूसरी किश्त में कितना पैसा दिया था। मुझे यह भी ध्यान नहीं है कि तीसरी किश्त में कितना पैसा दिया था। मैने कुछ पैसा बैंक से क्रेडिट कार्ड से लोन लेकर दिया था और कुछ इधर उधर से उधार लेकर दिया था। मैने 6 लाख रूपये उपेन्द्र सिंह से लिया था। उक्त राशि मै 2008-09 के बीच में लिया था। मै बैंक से 17 लाख रूपये कर्ज लिया था। मैने बैंक से कर्ज 2008 में लिया था। मुझे बैंक से लोन लेने की दिन, तारीख मालुम नहीं है। मै बैंक से ली हुई राशि से कुछ डीजल का पैसा दिया था और पैसा किसको दिया था। मुझे याद नहीं है। मुझे ध्यान नहीं है कि मेने जो 17 लाख रूपये कर्ज लिया था उसमे से कितना पैसा अभियुक्त को दिया था। मै काग देखकर बता सकता हूं कि कितना पैसा किस तारीख को दिया था। यह बात सही है कि मैने बैंक से लोन का कोई कागज प्रकरण में पेश नहीं किया है।

11. यह बात सही है कि बीस हजार रूपये से अधिक का लेन-देन एकाउंट पेयी चैक के माध्यम से किया जाता है। यह बात सही है कि मुझे इस बात की जानकारी है कि बीस हजार रूपये से अधिक का लेनदेन एकाउंट पेयी चैक से करना चाहिये। मैने अभियुक्त को व्यवहार में पैसा दिया था, ब्याज में नहीं दिया था। यह कहना गलत है कि अभियुक्त ने मुझसे कोई पैसा उधार नहीं लिया था। यह कहना गलत है कि अभियुक्त नरे मुझे कोई चैक नहीं दिया। यह कहना गलत है कि मैने किसी दूसरे व्यक्ति से अभियुक्त का चैक प्राप्त कर उसमें मनमानी राशि भरकर लिया था और न्यायालय में केस लगा

दिया है। यह कहना गलत है कि मेरा अभियुक्त से कोई पैसा बकाया नहीं था। ”

38. Appellant/complainant witness Upendra Singh has deposed in his examination-in-chief as under:-

“1. मैं परिवादी धीरेन्द्र सिंह व अभियुक्त महेन्द्र सिंह को जानता-पहचानता हूँ घटना वर्ष 2009 की है। महेन्द्र सिंह प्रधान मंत्री ग्राम सड़क योजना के तहत निर्माण हेतु ठेका लिये थे। निपनिया से दलको कोठर तक सड़क बनाने के लिये ठेका लिया गया था। जिसका पैकेज नंबर 3880 था। दोनों के मध्य पैसो के लेन देन का विवाद हो गया था। मेरे समक्ष अभियुक्त महेन्द्र सिंह ने 21,50,000/-रुपये का चैक परिवादी धीरेन्द्र सिंह को दियाथा। सड़क निर्माण के सम्बन्ध में चैक दिया गया था। मैं धीरेन्द्र सिंह के साथ सड़क निर्माण का कार्य कर रहा था। धीरेन्द्र सिंह ने मुझसे छः लाख रुपये काम हेतु उधार लिये थे। उन्होंने मुझसे कहा था कि महेन्द्र सिंह को 21,50,000/- रुपये देना है और कुछ रुपये कम पड़ रहे है। इसलिये मुझे कुछ पैसा उधार दे दो।

प्रतिपरीक्षण द्वारा श्री के.बी.सोनी अधिवक्ता वास्ते आरोपी

02. यह बात सही है कि मेरे सामने महेन्द्र सिंह और धीरेन्द्र सिंह के बीच पैसों का लेन-देन नहीं हुआ था। मैंने धीरेन्द्र सिंह को 15 अक्टूबर 2008 को छः लाख रुपया दिया था। चैक मेरे सामने दिया गया था। दिनांक 07.10.12 को मेरे समक्ष महेन्द्र सिंह ने धीरेन्द्र सिंह को 21,50,000/- रुपये का चैक दिया था। उक्त चैक बबलू श्रीवास्तव के मकान में दिया था जहां वह किराए से रहते थे। उस समय मैं धीरेन्द्र सिंह और महेन्द्र सिंह मौजूद थे और कोई व्यक्ति नहीं था। यह कहना सही है कि महेन्द्र सिंह ने धीरेन्द्र सिंह को चैक किस उपलक्ष्य में दिया था मैं नहीं बता सकता। यह बात सही है कि महेन्द्र सिंह द्वारा दिये गये चैक को मैं अपने हाथ से लेकर नहीं देखा था। यह बात सही है कि मैं यह नहीं बता सकता कि उक्त चैक हिन्दी में लिखा गया था अथवा अंग्रेजी में। मैंने उक्त चैक भरा हुआ देखा था। यह बात सही है कि उक्त चैक मेरे सामने नहीं भरा गया था। मैं यह नहीं बता सकता कि उक्त चैक किसने भरा था।

03. यह कहना गलत है कि मैं यह नहीं बता सकता कि चैक किस बैंक के लिये भरा गया था। स्वतः कहा कि स्टेट बैंक आफ इंदौर शाखा शहडोल के लिये चैक दिया गया था। मैं पैकेज क्रमांक 3880 में काम नहीं लिया था बल्कि मैं धीरेन्द्र सिंह के साथ काम कर रहा था। सड़क निर्माण का कार्य 4.4 किलोमीटर का था जिसकी लागत 1करोड़ 18 लाख थी। उस पैकेज में लगभग दस लोग काम कर रहे थे। अलग – अलग लोगों को अलग-अलग काम दिया गया था। सड़क निर्माण का कार्य अक्टूबर 2008 में प्रारम्भ हुआ था और जनवरी 2009 में समाप्त हो गया था। उक्त रोड से एक पैसा भी मुझे प्राप्त नहीं हुआ था। मैं स्वयं लागत नहीं लगाया था।

04. मुझे नहीं मालुम कि धीरेन्द्र सिंह ने कितनी लागत लगाया था। धीरेन्द्र सिंह ने मुझे सड़क के सम्बन्ध में यह बताये थे कि कितना पैसा लगा है और कितना काम हुआ है। धीरेन्द्र सिंह मुझे बता रहे थे कि उक्त निर्माण कार्य में पचासों लाख लग गया है। मैं यह नहीं बता सकता कि महेन्द्र सिंह उक्त निर्माण कार्य के सम्बन्ध में धीरेन्द्र सिंह को कितना पैसा दिये थे। उक्त सड़क निर्माण कार्य में मेरा धीरेन्द्र सिंह से कोई लेना देना नहीं था। मैं विवादित चैक का नम्बर नहीं बता सकता। यह बात सही है कि महेन्द्र सिंह और धीरेन्द्र सिंह के बीच कब-कब पैसे का लेन-देन हुआ मैं नहीं बता सकता। मुझे यह जानकारी नहीं है कि महेन्द्र सिंह ने धीरेन्द्र सिंह को कई बार चैक से

भुगतान किया था। यह बात सही है कि मेरा और धीरेन्द्र सिंह का पैसे का लेन-देन हमेशा चलता रहता है।

05. मैंने धीरेन्द्र सिंह को 6,00,000/-रूपया घर से लाकर दिया था। मैंने कुछ पैसा बैंक से निकाला था। कुछ पैसा स्टेट बैंक से और कुछ पैसा सेंट्रल बैंक से निकाला था। मुझे यह मालुम है कि 49,000/- रूपये तक नगद दिया जा सकता है, उससे अधिक की राशि एकाउंट पेयी चैक से दी जाती है। यह कहना गलत है कि मेरे सामने महेन्द्र सिंह ने धीरेन्द्र सिंह को कोई चैक नहीं दिया था। यह कहना गलत है कि इसी कारण से मैं चैक के सम्बन्ध में सही जानकारी नहीं बता सकता हूँ। यह कहना गलत है कि मैं झूठी गवाही दे रहा हूँ।”

39. Hence, if aforesaid testimonies of appellant/complainant Dheerendra Singh and his witness Upendra Singh are taken into consideration and are examined and assessed cumulatively, then, having regard to business relationship and transactions between appellant/complainant and respondent/accused as well as appellant/complainant's business, it cannot be said that appellant/complainant was not having financial capacity to advance an amount of Rs. 21,50,000/- to respondent/accused. With respect to aforesaid, it is also important to note that respondent/accused Mahendra Singh in his deposition has nowhere deposed that appellant/complainant was not having financial capacity to advance an amount of Rs. 21,50,000/- to respondent/accused. He is completely silent on above issue in his deposition.

40. Further, it is correct that appellant/complainant has not mentioned anything about source of amount of Rs. 21,50,000/- advanced to respondent/accused, i.e. no details pertaining thereto have been mentioned in complaint. With respect to aforesaid, it is noticeable that after appellant/complainant sent Ex. P/4's notice to respondent/accused and after respondent received the same, respondent/accused did not send any reply to aforesaid notice and no explanation for the same has been furnished on behalf of respondent/accused. Hence, in this court's opinion, in view

of absence of any reply to Ex. P/4's notice, appellant/complainant was not required or mandated by any provisions of law to mention details of source of amount in the complaint itself.

41. Issue pertaining to "source of amount" has also been dealt by Hon'ble Apex Court in **Rohitbhai Jivanlal Patel (supra), Ashok Singh (supra) and P. Rasiya Vs. Abdul Nazer and another (Cr.A. NO. 1233-1235 of 2022) decided on 12.08.2022.** With respect to aforesaid, Hon'ble Apex Court in **Rohitbhai Jivanlal Patel (supra)** has observed and has held as under:-

"5.1.1. There was no documentary evidence to show the source of income for advancing the loan to the accused;

8. The learned counsel has referred to the reasons assigned by the Trial Court to acquit the accused-appellant and has submitted that contradictory statements have been made by the complainant and the witness; that no clear and cogent evidence has been brought on record to prove the source of funds for advancing any loan by the complainant; that admittedly, the complainant did not have the amount of Rs. 22,50,000/- and the same was arranged through his friends and relatives but he made vacillating statement in that regard and none of such relatives or friends was examined as witness; that the witness for the complainant had more knowledge about the transaction than the complainant; that the complainant appeared to have rather no knowledge regarding the payments, funds and the period of transaction; and that there was no explanation as to how the complainant was claiming Rs. 22,50,000/- as the debt, when the sum total of the instalments (cheques) comes to Rs. 21,00,000/- only. The learned counsel would also argue that complainant has heavily relied on the stamp paper dated 21.03.2007 but then, admittedly, the complainant had not signed on the said stamp paper; and this

document, neither notarised nor registered anywhere and only bearing the signatures of the appellant and of the said Shri Jagdishbhai, is not of any evidentiary value for the case of the complainant.

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. The aspect relevant for consideration had been as to whether the appellant-accused has brought on record such facts/material/circumstances which could be of a reasonably probable defence.

20. Hereinabove, we have examined in detail the findings of the trial court and those of the High Court and have no hesitation in concluding that the present one was clearly a case where the decision of the trial court suffered from perversity and fundamental error of approach; and the High Court was justified in reversing the judgment of the trial court. The observations 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 witness, or that the witness of the complaint was more in the know of facts, etc. would have been relevant if the matter was to be examined with reference to the onus on the complainant to prove his case beyond reasonable doubt. These considerations and observations do not stand in conformity with the presumption existing in favour of the complainant by virtue of Sections 118 and 139 of the NI Act. Needless to reiterate that the result of such presumption is that existence of a legally enforceable debt is to be presumed in favour of the complainant. When such a presumption is drawn, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not. The other observations as regards any variance in the statement of complainant and witness; or want of knowledge about dates and other particulars of the cheques; or washing away of the earlier cheques in the rains though the office of the complainant being on the 8th floor had also been irrelevant factors for consideration of a probable defence of the appellant. Similarly, the factor that the complainant alleged the loan amount to be Rs 22,50,000 and seven cheques being of Rs 3,00,000 each leading to a deficit of Rs 1,50,000, is not even worth consideration for the purpose of the determination of real questions involved in the matter. May be, if the total amount of cheques exceeded the alleged amount of loan, a slender doubt might have arisen, but, in the present matter, the total amount of 7 cheques is lesser than the amount of loan. Significantly, the specific amount of loan (to the tune of Rs 22,50,000) was distinctly stated by the appellant-accused in the aforesaid acknowledgment dated 21-3-2017.”

42. Hon'ble Apex court in **Ashok Singh (supra) Cr.A. No. 4171/2024 (Ashok Singh Vs. State of UP) decided on 02.04.2025**, in paras 21 and 22 has held as under:-

*“21. One of the grounds, which weighed heavily with the High Court to acquit the respondent no.2 was that the appellant was unable to prove the source of Rs.22,00,000/- (Rupees Twenty-Two Lakhs) given to the respondent no.2 as loan. Admittedly, the signature on the cheque is of the respondent no.2 himself. The decision in **Rohitbhai Jivanlal Patel v. State of Gujarat, (2019) 18 SCC 106** can be profitably referred to:*

‘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. The aspect relevant for consideration had been as to whether the appellant-accused has brought on record such facts/material/circumstances which could be of a reasonably probable defence.

*20. Hereinabove, we have examined in detail the findings of the trial court and those of the High Court and have no hesitation in concluding that the present one was clearly a case where the decision of the trial court suffered from perversity and fundamental error of approach; and the High Court was justified in reversing the judgment of the trial court. **The observations 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 witness, or that the witness of the complaint was more in the know of facts, etc. would have been relevant if the matter was to be examined with reference to the onus on the complaint to prove his case beyond reasonable doubt. These considerations and observations do not stand in conformity with the presumption existing in favour of the complainant by virtue of Sections 118 and 139 of the NI Act. Needless to reiterate that the result of such presumption is that existence of a legally enforceable debt is to be presumed in favour of the complainant. When such a presumption is drawn, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not.....***”

(emphasis supplied)

22. The High Court while allowing the criminal revision has primarily proceeded on the presumption that it was obligatory on the part of the complainant to establish his case on the basis of evidence by giving

*the details of the bank account as well as the date and time of the withdrawal of the said amount which was given to the accused and also the date and time of the payment made to the accused, including the date and time of receiving of the cheque, which has not been done in the present case. Pausing here, such presumption on the complainant, by the High Court, appears to be erroneous. 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. In the case at hand, the appellant had categorically stated in his deposition and reiterated in the cross-examination that he had withdrawn the amount from the bank in Faizabad (Typed Copy of his deposition in the paper book wrongly mentions this as 'Firozabad'). The Court ought not to have summarily rejected such stand, more so when respondent no.2 did not make any serious attempt to dispel/negate such stand/statement of the appellant. Thus, on the one hand, the statement made before the Court, both in examination-in-chief and cross-examination, by the appellant with regard to withdrawing the money from the bank for giving it to the accused has been disbelieved whereas the argument on behalf of the accused that he had not received any payment of any loan amount has been accepted. In our decision in **M/s S. S. Production v. Tr. Pavithran Prasanth, 2024 INSC 1059**, we opined:*

'8. From the order impugned, it is clear that though the contention of the petitioners was that the said amounts were given for producing a film and were not by way of return of any loan taken, which may have been a probable

defence for the petitioners in the case, but rightly, the High Court has taken the view that evidence had to be adduced on this point which has not been done by the petitioners. Pausing here, the Court would only comment that the reasoning of the High Court as well as the First Appellate Court and Trial Court on this issue is sound. **Just by taking a counter-stand to raise a probable defence would not shift the onus on the complainant in such a case for the plea of defence has to be buttressed by evidence, either oral or documentary, which in the present cases, has not been done. Moreover, even if it is presumed that the complainant had not proved the source of the money given to the petitioners by way of loan by producing statement of accounts and/or Income Tax Returns, the same ipso facto, would not negate such claim for the reason that the cheques having being issued and signed by the petitioners has not been denied, and no evidence has been led to show that the respondent lacked capacity to provide the amount(s) in question. In this regard, we may make profitable reference to the decision in *Tedhi Singh v Narayan Dass Mahant*, (2022) 6 SCC 735:**

'10. The trial court and the first appellate court have noted that in the case under Section 138 of the NI Act the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the

*courts in our view were right in holding on those lines. However, **the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the crossexamination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.***

(emphasis supplied)'

(underlining in original; emphasis supplied by us in bold)

23. *In the present case, on an overall circumspection of the entire facts and circumstances of the case, we find that the appellant succeeded in establishing his case and the Orders passed by the Trial Court and the Appellate Court did not warrant any interference. The High Court erred in overturning the concurrent findings of guilt and consequential conviction by the Trial Court and the Appellate Court.*

24. Accordingly, for reasons aforesaid, the appeal is allowed. The Impugned Order is set aside.

43. Hon'ble Apex court in **P. Rasiya (supra)**, in para 7, 8 and 9 has held as under:-

“7. Feeling aggrieved and dissatisfied with the judgment and orders passed by the Appellate Court affirming the conviction of the accused under Section 138 of the N.I. Act, the accused preferred three different Revision Applications before the High Court. By the impugned common judgment and order, the High Court has reversed the concurrent findings recorded by both the courts below and has acquitted the accused on the ground that, in the complaint, the Complainant has not specifically stated the nature of transactions and the source of fund. However, the High Court has failed to note the presumption under Section 139 of the N.I. Act. 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 is 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. The aforesaid has not been dealt with and considered by the High Court. The High Court has also failed to appreciate that the High

Court was exercising the revisional jurisdiction and there were concurrent findings of fact recorded by the courts below.

8. In view of the above and for the reasons stated above, the impugned common judgment and order passed by the High Court is not sustainable and the same deserves to be quashed and set aside.

9. Under the circumstances, the impugned judgment and order passed by the High Court acquitting the accused for the offence punishable under Section 138 of the N.I. Act is hereby quashed and set aside and the order passed by the learned trial Court convicting the accused for the offence punishable under Section 138 of the N.I. Act confirmed/modified by the learned Sessions Court is hereby restored. Now, the accused be dealt with as per the order passed by the first Appellate Court/Sessions Court.”

44. Having regard to factual matrix of the case and evidence available on record and as discussed in preceding paras, in this Court’s opinion, principles laid down /observations made in **Rohitbhai Jivanlal Patel (supra)**, **Ashok Singh (supra)** and **P. Rasiya (supra)** squarely apply to the facts of the instant case. It is also so because factual matrix and evidence of instant case is also almost identical to that of aforesaid pronouncements.

45. Hence, in this Court’s opinion, it is not established in the instant case that appellant/complainant was not having financial capacity to advance an amount of Rs.21,50,000/- to respondent/accused.

46. So far as principles of law laid down by Hon’ble Apex Court in **Dattatraya (supra)** are concerned, on account of difference in factual matrix and evidence of the case, principles laid down/observations made, especially in paras 28, 30 and 32

do not apply in the instant case and do not help respondent/accused in the instant case in any manner whatsoever. In this Court's opinion, respondent/accused has failed to rebut the presumption drawn in favour of appellant/complainant under Sections 118 and 139 of N.I. Act.

47. Thus, from discussion in the forgoing paras, following facts clearly stands established:-

- (i) That, it is an admitted fact that Ex. P/1's cheque has signature of respondent/accused;
- (ii) That, respondent/accused has failed to establish that Ex. P/1's cheque was lost;
- (iii) That, Ex. P/4's notice was received by respondent/accused but respondent/accused did not send any reply to aforesaid notice;
- (iv) That, hence, there is a presumption in favour of appellant/complainant that there was a legally enforceable debt or liability and for discharge of the same, respondent/accused has issued Ex. P/1's cheque and gave it to appellant/complainant;
- (v) That, from evidence on record, aforesaid presumption in favour of appellant/complainant does not stand rebutted.

48. Resultantly, in view of discussion in the forgoing paras and having regard to evidence available on record, in this Court's considered opinion, ingredients constituting offence under Section 138 of N.I. Act stands clearly established in the instant case. Therefore, learned trial Court has wrongly acquitted respondent/accused of offence under Section 138 of N.I. Act. Hence, appeal filed

by the appellant/complainant is allowed and impugned judgment passed by the trial Court is set aside and respondent/accused is convicted under Section 138 of N.I. Act.

49. So far as sentence under Section 138 of N.I. Act is concerned, present case pertains to dishonour of Ex. P/1's cheque [dated 07.10.2012] of an amount of Rs. 21,50,000/-. Having regard to overall facts of the case, respondent/accused is sentenced under Section 138 of N.I. Act with fine to the extent of double of the amount of Ex.P/1's cheque, i.e. Rs.43,00,000/- (Rupees Forty Three Lacs) with default stipulation of imprisonment of R.I. of six months. Out of the aforesaid fine amount, a sum of Rs.40,00,000/- (Rupees Forty Lacs) be given to appellant/complainant as compensation.

50. Copy of judgment, alongwith record of the case, be sent forthwith to trial Court for information and necessary compliance.

51. Appeal filed by the appellant/complainant is allowed and disposed off accordingly.

(ACHAL KUMAR PALIWAL)

JUDGE