IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 4176 of 2013
Reserved on: 01.12.2025
Date of Decision: 01.01.2026

Gian Chand Singal ...Appellant

Versus

Puneet Gautam ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No

For the Appellant : Mr Bhupender Gupta, Sr. Advocate, with Mr Janesh Gupta, Advocate.

For the Respondent : Mr Pranshul Sharma, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 31.12.2012, passed by learned Judicial Magistrate First Class, Solan, District Solan, H.P. (learned Trial Court) vide which the respondent (accused before the learned trial court) was acquitted of the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

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[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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2. Briefly stated, the facts giving rise to the present appeal are that the complainant filed a complaint against the accused before the learned Trial Court for the commission of an offence punishable under Section 138 of the NI Act. It was asserted that the accused was dealing in the business of the sale and supply of surgical and other items. He used to borrow money from the complainant to augment his business. He assured the complainant that he would set up an industry at Baddi in partnership with the complainant. The complainant later on found that the accused was facing financial difficulties, hence, he requested the accused to return the borrowed amount. The accused issued a cheque of ₹6,50,000/- drawn at HDFC Bank Ltd on 07.05.2010 to discharge his liability. The complainant presented the cheque to his bank, but it was returned with the endorsement 'funds insufficient'. The complainant issued a legal notice to the accused asking him to repay the amount. The notice was served upon the accused on 18.05.2010. The accused failed to repay the amount and sent a reply to the notice on 04.06.2010 denying the contents of the notice and claiming that blank signed cheques were taken by the complainant as security. This plea was false as no blank signed cheque was obtained by the complainant from the accused. Hence,

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it was prayed that an action be taken against the accused as per the law.

3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of an offence punishable under Section 138 of the NI Act, to which he pleaded not guilty and claimed to be tried.

4. The complainant examined himself (CW1), Bhupender Kumar (CW2) and Ankush Sandhu (CW3) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of Cr. P.C. admitted that he had received a notice and sent its reply. He claimed that the cheque was forged by the accused. He stated that he wanted to lead the defence evidence, but subsequently his learned counsel made a statement on his behalf that no evidence was to be led.

6. Learned Trial Court held that the complainant had failed to prove that the cheque was issued to discharge the debt/legal liability. The complainant asserted that the accused had borrowed money from him from time to time. He had not specified the amount advanced by him, the date, the month or the year of

the transactions. He stated in the cross-examination that the accused had borrowed ₹15-16 lakhs from him, but the cheque was issued for ₹6,50,000/-. The cheque contains a presumption, but the presumption is rebuttable, and the cross-examination of the complainant was sufficient to rebut the presumption. Therefore, the complaint was dismissed.

7. Being aggrieved by the judgment passed by the learned Trial Court, the complainant filed the present appeal, asserting that the learned Trial Court failed to appreciate the significance of the presumption. The onus of proof was wrongly put upon the complainant to establish the existence of the debt. The defence taken by the accused in the cross-examination and the statement recorded under Section 313 of Cr.P.C. was not established. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

8. I have heard Mr Bhupender Gupta, learned Sr. Advocate, assisted by Mr Janesh Gupta, learned counsel, for the appellant/complainant and Mr Pranshul Sharma, learned counsel, for the respondent/accused.

9. Mr Bhupender Gupta, learned Senior Counsel for the appellant/complainant, submitted that the learned Trial Court erred in shifting the burden of proof to the complainant. The cheque carried with it a presumption. It was issued for consideration to discharge the debt/liability. The burden was upon the accused to rebut the presumption and not upon the complainant to establish the existence of the debt/liability. The learned Trial Court failed to appreciate the significance of the presumption. He prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside. He relied upon the judgment of this Court in ***Lazi Ram Thakur versus. Kamlender Rattan, 2024:HHC:10405, Ashwani Kumar versus. Rakesh Kumar, 2024:HHC:9979, Kanwar Negi versus. Rajesh Kumar, 2024:HHC:9138*** and ***Ashok Kumar vs. Daulat Ram, 2024 (Supp) SLC 2855,*** in support of his submission.

10. Mr Pranshul Sharma, learned counsel for the respondent/accused, submitted that the cross-examination of the complainant demonstrated that the complainant had no financial capacity to advance the loan. The plea taken by him that he had advanced the money to the accused was not supported by any document. Learned Trial Court had taken a reasonable view while

acquitting the accused, and no interference is required with it while deciding the appeal against acquittal; hence, he prayed that the present appeal be dismissed.

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

12. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in ***Surendra Singh v. State of Uttarakhand, (2025) 5 SCC 433: 2025 SCC OnLine SC 176*** that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading of evidence, omission to consider the material evidence and no reasonable person could have recorded the acquittal based on the evidence led before the learned Trial Court. It was observed at page 438:

> "**24.** It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial Judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."

13. This position was reiterated in ***State of M.P. v. Ramveer Singh, 2025 SCC OnLine SC 1743,*** wherein it was observed:

> "**21.** We may note that the present appeal is one against acquittal. Law is well-settled by a plethora of judgments of this Court that, in an appeal against acquittal, unless the finding of acquittal is perverse on the face of the record and the only possible view based on the evidence is consistent with the guilt of the accused, only in such an event, should the appellate Court interfere with a judgment of acquittal. Where two views are possible, i.e., one consistent with the acquittal and the other holding the accused guilty, the appellate Court should refuse to interfere with the judgment of acquittal. Reference in this regard may be made to the judgments of this Court in the cases of ***Babu Sahebagouda Rudragoudar*** **v.** ***State of Karnataka (2024) 8 SCC 149***; ***H.D. Sundara*** **v.** ***State of Karnataka (2023) 9 SCC 581***, and ***Rajesh Prasad*** **v.** ***State of Bihar (2022) 3 SCC 471***."

14. While dealing with the appeal against the acquittal in a complaint filed for the commission of an offence punishable under Section 138 of the NI Act the Hon'ble Supreme Court held in ***Rohitbhai Jivanlal Patel v. State of Gujarat (2019) 18 SCC 106*** that the normal rules with same rigour cannot be applied to the cases under Negotiable Instruments Act because there is a presumption that the holder had received the cheque for discharge of legal liability. The Appellate Court is entitled to look into the evidence to determine whether the accused has discharged the burden or not. It was observed:-

> **12.** According to the learned counsel for the appellant-accused, the impugned judgment is contrary to the principles laid down by this Court in ***Arulvelu [Arulvelum v. State, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288]*** because the High Court has set aside the judgment of the trial court

without pointing out any perversity therein. The said case of ***Arulvelu [Arulvelum v. State, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288]*** related to the offences under Sections 304-B and 498-A IPC. Therein, on the scope of the powers of the appellate court in an appeal against acquittal, this Court observed as follows : (SCC p. 221, para 36)

> "*36*. Careful scrutiny of all these judgments leads to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal, particularly in a case where two views are possible. The trial court judgment cannot be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."

The principles aforesaid are not of much debate. In other words, ordinarily, the appellate court will not be upsetting the judgment of acquittal, if the view taken by the trial court is one of the possible views of the matter and unless the appellate court arrives at a clear finding that the judgment of the trial court is perverse i.e. not supported by evidence on record or contrary to what is regarded as normal or reasonable; or is wholly unsustainable in law. Such general restrictions are essential to remind the appellate court that an accused is presumed to be innocent unless proven guilty beyond a reasonable doubt, and a judgment of acquittal further strengthens such presumption in favour of the accused. However, such restrictions need to be visualised in the context of the particular matter before the appellate court and the nature of the inquiry therein. The same rule with the same rigour cannot be applied in a matter relating to the offence under Section 138 of the NI Act, particularly where a presumption is drawn that the holder has received the cheque for the discharge, wholly or in part, of any debt or liability. Of course, the accused is entitled to bring on record the relevant material to rebut such presumption and to show that preponderance of probabilities are in favour of

> his defence but while examining if the accused has brought about a probable defence so as to rebut the presumption, the appellate court is certainly entitled to examine the evidence on record in order to find if preponderance indeed leans in favour of the accused.
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> **13.** For determination of the point as to whether the High Court was justified in reversing the judgment and orders of the trial court and convicting the appellant for the offence under Section 138 of the NI Act, the basic questions to be addressed are twofold: as to whether the complainant Respondent 2 had established the ingredients of Sections 118 and 139 of the NI Act, so as to justify drawing of the presumption envisaged therein; and if so, as to whether the appellant-accused had been able to displace such presumption and to establish a probable defence whereby, the onus would again shift to the complainant?

15. The present appeal has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

16. The ingredients of the offence punishable under Section 138 of the NI Act were explained by the Hon'ble Supreme Court in ***Kaveri Plastics v. Mahdoom Bawa Bahrudeen Noorul, 2025 SCC OnLine SC 2019*** as under:-

> "**5.1.1.** In ***K.R. Indira v. Dr. G. Adinarayana(2003) 8 SCC 300***, this Court enlisted the components, aspects and the acts, the concatenation of which would make the offence under Section 138 of the Act complete, to be these (i) drawing of the cheque by a person on an account maintained by him with a banker, for payment to another person from out of that account for discharge in whole/in part of any debt or liability, (ii) presentation of the cheque by the payee or the holder in due course to the bank, (iii) returning the cheque unpaid by the drawee bank for want of sufficient funds to the credit of the drawer or any arrangement with the banker

> to pay the sum covered by the cheque, (iv) giving notice in writing to the drawer of the cheque within 15 days of the receipt of information by the payee from the bank regarding the return of the cheque as unpaid, demanding payment of the cheque amount, and (v) failure of the drawer to make payment to the payee or the holder in due course of the cheque, of the amount covered by the cheque, within 15 days of the receipt of the notice."

17. The accused stated in his statement recorded under Section 313 of the CrPC that the cheque was forged by the complainant. However, he had sent a reply (Ex. CW-1/J) to the notice in which he claimed that he had taken a loan of ₹4 lakhs from the complainant and issued four blank signed cheques to the complainant. This was the earliest version and has to be preferred to the version in the Court. Thus, the issuance of the cheque and the signature on the cheque were not disputed. It was laid down by the Hon'ble Supreme Court in ***APS Forex Services (P) Ltd. v. Shakti International Fashion Linkers (2020) 12 SCC 724,*** that when the issuance of a cheque and signature on the cheque are not disputed, a presumption would arise that the cheque was issued in discharge of the legal liability. It was observed: -

> "9. Coming back to the facts in the present case and considering the fact that the accused has admitted the issuance of the cheques and his signature on the cheque and that the cheque in question was issued for the second time after the earlier cheques were dishonoured and that even according to the accused some amount was due and payable,

there is a presumption under Section 139 of the NI Act that there exists a legally enforceable debt or liability. Of course, such a presumption is rebuttable. However, to rebut the presumption, the accused was required to lead evidence that the full amount due and payable to the complainant had been paid. In the present case, no such evidence has been led by the accused. The story put forward by the accused that the cheques were given by way of security is not believable in the absence of further evidence to rebut the presumption, and more particularly, the cheque in question was issued for the second time after the earlier cheques were dishonoured. Therefore, both the courts below have materially erred in not properly appreciating and considering the presumption in favour of the complainant that there exists a legally enforceable debt or liability as per Section 139 of the NI Act. It appears that both the learned trial court as well as the High Court have committed an error in shifting the burden upon the complainant to prove the debt or liability, without appreciating the presumption under Section 139 of the NI Act. As observed above, Section 139 of the Act is an example of reverse onus clause and therefore, once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter, it is for the accused to rebut such presumption by leading evidence."

18. A similar view was taken in ***N. Vijay Kumar v. Vishwanath Rao N., 2025 SCC OnLine SC 873,*** wherein it was held as under:

"6. Section 118 (a) assumes that every negotiable instrument is made or drawn for consideration, while Section 139 creates a presumption that the holder of a cheque has received the cheque in discharge of a debt or liability. Presumptions under both are rebuttable, meaning they can be rebutted by the accused by raising a probable defence."

19. A similar view was taken in ***Sanjabij Tari v. Kishore S. Borcar, 2025 SCC OnLine SC 2069***, wherein it was observed:

> *"ONCE EXECUTION OF A CHEQUE IS ADMITTED, PRESUMPTIONS UNDER SECTIONS 118 AND 139 OF THE NI ACT ARISE*
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> 15. In the present case, the cheque in question has admittedly been signed by the Respondent No. 1-Accused. This Court is of the view that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability arises against the accused. It is pertinent to mention that observations to the contrary by a two-Judge Bench in ***Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54,*** have been set aside by a three-Judge Bench in ***Rangappa*** (supra).
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> 16. This Court is further of the view that by creating this presumption, the law reinforces the reliability of cheques as a mode of payment in commercial transactions.
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> 17. Needless to mention that the presumption contemplated under Section 139 of the NI Act is a rebuttable presumption. However, the initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused/drawer of the cheque [See: ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197***].

20. Thus, the Court has to start with the presumption that the cheque was issued in discharge of the liability for consideration, and the burden is upon the accused to rebut this presumption.

21. The accused stated in the reply (Ex. CW-1/J) that he had borrowed ₹4 lakhs from the complainant, which he had returned. Bhupinder Kumar (CW-2) proved the complainant's statement of the account (Ex. CW-2/A), which mentions the payment of ₹ 1 lakh on 08.02.2008, ₹ 1 lakh on 12.03.2008, ₹ 15,000/- on 26.03.2008, ₹70,000/- on 31.05.2008, ₹1 lakh on 10.06.2008, ₹1 lakh on 28.07.2008, ₹50,000/- on 30.10.2008, ₹1.5 lakh on 15.11.2008, ₹50,000/- on 13.03.2009, ₹ 85,000/- on 30.04.2009, and ₹1 lakh on 11.05.2009 to Puneet. Thus, a total amount of ₹9,20,000/- was paid to the accused by the complainant.

22. The accused did not claim in his statement recorded under Section 313 of CrPC that he had borrowed ₹ 4 lakhs from the complainant, which were repaid by him. He only claimed that he had not issued the cheque and the cheque was forged, which plea is contrary to the reply sent by him. His statement of account (Ext.CW-3/A) does not show that he had ₹ 4 lakh in his account. He did not examine any witnesses to prove this plea. The complainant denied in his cross-examination that the accused had borrowed ₹4 lakh from him and had returned it. A denied suggestion does not amount to any proof and was not sufficient to

prove the return of the money. Thus, there was no evidence to prove that the accused had repaid the borrowed money.

23. The accused claimed in the reply (Ext.CW-1/J) to the notice that the cheques were issued as security. This plea will not help the accused. The complainant's statement of account proves that the accused had borrowed ₹ 9,20,000/- from the complainant. Thus, the accused was liable to pay ₹ 6.5 lakh to the complainant, and the complainant had sufficient authority to present the cheque to the bank even if it was issued as a security. It was laid down by this Court in ***Hamid Mohammad Versus Jaimal Dass 2016 (1) HLJ 456***, that even if the cheque is issued towards the security, the accused is liable. It was observed:

> "9. Submission of learned Advocate appearing on behalf of the revisionist that the cheque in question was issued to the complainant as security, and on this ground, the criminal revision petition is rejected as being devoid of any force for the reasons hereinafter mentioned. As per Section 138 of the Negotiable Instruments Act 1881, if any cheque is issued on account of other liability, then the provisions of Section 138 of the Negotiable Instruments Act 1881 would be attracted. The court has perused the original cheque, Ext. C-1 dated 30.10.2008, placed on record. There is no recital in the cheque Ext. C-1, that cheque was issued as a security cheque. It is well-settled law that a cheque issued as security would also come under the provisions of Section 138 of the Negotiable Instruments Act 1881. See ***2016 (3) SCC page 1 titled Don Ayengia v. State of Assam & another***. It is well-settled law that where there is a conflict between

> former law and subsequent law, then subsequent law always prevails."

24. It was laid down by the Hon'ble Supreme Court in ***Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited 2016(10) SCC 458*** that issuing a cheque towards security will also attract the liability for the commission of an offence punishable under Section 138 of the NI Act. It was observed: -

> "10. We have given due consideration to the submission advanced on behalf of the appellant as well as the observations of this Court in ***Indus Airways Private Limited versus Magnum Aviation Private Limited (2014) 12 SCC 53*** with reference to the explanation to Section 138 of the Act and the expression "for the discharge of any debt or other liability" occurring in Section 138 of the Act. We are of the view that the question of whether a post-dated cheque is for "discharge of debt or liability" depends on the nature of the transaction. *If on the date of the cheque, liability or debt exists or the amount has become legally recoverable, the Section is attracted and not otherwise*.
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> 11. Reference to the facts of the present case clearly shows that though the word "security" is used in clause 3.1(iii) of the agreement, the said expression refers to the cheques being towards repayment of instalments. The repayment becomes due under the agreement, the moment the loan is advanced, and the instalment falls due. It is undisputed that the loan was duly disbursed on 28th February 2002, which was prior to the date of the cheques. Once the loan was disbursed and instalments had fallen due on the date of the cheque as per the agreement, the dishonour of such cheques would fall under Section 138 of the Act. The cheques undoubtedly represent the outstanding liability.
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> 12. Judgment in ***Indus Airways (supra)*** is clearly distinguish-

able. As already noted, it was held therein that liability arising out of a claim for breach of contract under Section 138, which arises on account of dishonour of a cheque issued, was not by itself at par with a criminal liability towards discharge of acknowledged and admitted debt under a loan transaction. Dishonour of a cheque issued for the discharge of a later liability is clearly covered by the statute in question. Admittedly, on the date of the cheque, there was a debt/liability in praesenti in terms of the loan agreement, as against the case of ***Indus Airways (supra)***, where the purchase order had been cancelled, and a cheque issued towards advance payment for the purchase order was dishonoured. In that case, it was found that the cheque had not been issued for the discharge of liability but as an advance for the purchase order, which was cancelled. Keeping in mind this fine, but the real distinction, the said judgment cannot be applied to a case of the present nature, where the cheque was for repayment of a loan instalment which had fallen due, though such a deposit of cheques towards repayment of instalments was also described as "security" in the loan agreement. In applying the judgment in Indus Airways (supra), one cannot lose sight of the difference between a transaction of the purchase order which is cancelled and that of a loan transaction where the loan has actually been advanced, and its repayment is due on the date of the cheque.

13. The crucial question to determine the applicability of Section 138 of the Act is whether the cheque represents the discharge of existing enforceable debt or liability, or whether it represents an advance payment without there being a subsisting debt or liability. While approving the views of different High Courts noted earlier, this is the underlying principle as can be discerned from the discussion of the said cases in the judgment of this Court." (Emphasis supplied)

25. This position was reiterated in ***Sripati Singh v. State of Jharkhand, 2021 SCC OnLine SC 1002: AIR 2021 SC 5732***, and it was

held that a cheque issued as security is not waste paper and a complaint under section 138 of the NI Act can be filed on its dishonour. It was observed:

> "17. A cheque issued as security pursuant to a financial transaction cannot be considered a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe, and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of the amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such a presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of the NI Act would flow.
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> 18. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such a cheque, which is issued as 'security, cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form, and in that manner, if the amount of the loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be an understanding between the parties is a sine qua non to not

> present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in proceedings initiated under Section 138 of the N.I. Act. Therefore, there cannot be a hard and fast rule that a cheque, which is issued as security, can never be presented by the drawee of the cheque. If such is the understanding, a cheque would also be reduced to an 'on-demand promissory note', and in all circumstances, it would only be civil litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security' the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation."

26. Therefore, the accused cannot escape from the liability on the ground that he had issued the cheque as security to the complainant.

27. It was submitted that the signatures on the cheque and the body of the cheque are in different inks, which shows that the cheque was filled in by the complainant. This submission will not help the accused. It was laid down by the Hon'ble Supreme Court in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 138***, that a person is liable for the commission of an offence punishable under Section

138 of the Negotiable Instruments Act even if the cheque is filled by some other person. It was observed:

> "**33.** A meaningful reading of the provisions of the Negotiable Instruments Act, including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.
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> **34.** If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.
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> **35.** It is not the case that the respondent accused him of either signing the cheque or parting with it under any threat or coercion. Nor is it the case that the respondent accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.
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> **36.** Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

28. This position was reiterated in ***Oriental Bank of Commerce v. Prabodh Kumar Tewari, 2022 SCC OnLine SC 1089,*** wherein it was observed:

> "12. The submission, which has been urged on behalf of the appellant, is that even assuming, as the first respondent submits, that the details in the cheque were not filled in by the drawer, this would not make any difference to the liability of the drawer.
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> xxxxxx
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> 32. A drawer who signs a cheque and hands it over to the payee is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in the discharge of a liability. The presumption arises under Section 139.

29. Therefore, the cheque is not bad even if it is not filled in by the complainant.

30. The complainant admitted in his cross-examination that he had no relationship or friendship with the accused. It was submitted that this admission makes the complainant's case highly suspect, as no person would advance money to a stranger. This submission will not help the accused because the accused did not dispute the borrowing of money from the complainant in the reply to the notice or the cross-examination of the complainant.

31. It was submitted that the particulars of the advancement of the loan were not given, and the complainant's

version is suspect. This submission overlooks the statement of account proved on record. Hence, failure to mention the details of the money advanced will not be fatal to the complainant's case.

32. Thus, the finding of the learned Trial Court holding that the complainant had failed to prove the advancement of money and the existence of the debt cannot be sustained.

33. Ankush Sandhu (CW-3) proved that the cheque was dishonoured for want of funds in the account of the accused. He proved the dishonour memo (Ext. CW-1/D). He was not cross-examined at all, which means that his testimony was accepted by the accused. Hence, it was duly proved that the cheque was dishonoured with an endorsement, "insufficient funds".

34. The accused admitted the receipt of the notice. He sent a reply to the notice claiming that he had repaid the borrowed money, which is not proven on record. He did not pay any money to the complainant after the receipt of the notice. Hence, it was duly proved on record that the accused had failed to repay the money despite the receipt of the notice.

35. Thus, it was duly proved on record that the accused had issued a cheque to discharge debt/liability, which was dishonoured

with an endorsement, "insufficient funds, and the accused failed to repay the amount despite the receipt of a valid notice of demand. Hence, all the ingredients of the commission of an offence punishable under Section 138 of the NI Act were satisfied.

36. Learned Trial Court had not noticed the reply to the notice, and the complainant's statement of account. Learned Trial Court wrongly proceeded to shift the burden upon the complainant to prove the existence of liability. This was impermissible because of the presumption attached to the cheque. It was laid down in ***Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148: 2023 SCC OnLine SC 1275*** that when the court failed to consider the presumption under Section 139 of the Negotiable Instruments Act, its judgment could be interfered with. It was observed at page 166:

> **54.** As rightly contended by the appellant, there is a fundamental flaw in the way both the courts below have proceeded to appreciate the evidence on record. Once the presumption under Section 139 was given effect to, the courts ought to have proceeded on the premise that the cheque was, indeed, issued in discharge of a debt/liability. The entire focus would then necessarily have to shift to the case set up by the accused, since the activation of the presumption has the effect of shifting the evidential burden on the accused. The nature of inquiry would then be to see whether the accused has discharged his onus of rebutting the presumption. If he fails to do so, the court can straightaway proceed to convict him, subject to the satisfaction of the other ingredients of Section 138. If the

court finds that the evidential burden placed on the accused has been discharged, the complainant would be expected to prove the said fact independently, without taking the aid of the presumption. The court would then take an overall view based on the evidence on record and decide accordingly.

55. At the stage when the courts concluded that the signature had been admitted, the court ought to have inquired into either of the two questions (*depending on the method in which the accused has chosen to rebut the presumption*): Has the accused led any defence evidence to prove and conclusively establish that there existed no debt/liability at the time of issuance of cheque? In the absence of rebuttal evidence being led, the inquiry would entail: Has the accused proved the non-existence of debt/liability by a preponderance of probabilities by referring to the "*particular circumstances of the case"*?

56. The perversity in the approach of the trial court is noticeable from the way it proceeded to frame a question at trial. According to the trial court, the question to be decided was "*whether a legally valid and enforceable debt existed qua the complainant and the cheque in question (Ext. CW I/A) was issued in discharge of said liability/debt*". When the initial framing of the question itself being erroneous, one cannot expect the outcome to be right. The onus, instead of being fixed on the accused, has been fixed on the complainant. A lack of proper understanding of the nature of the presumption in Section 139 and its effect has resulted in an erroneous order being passed.

57. Einstein had famously said:

> "If I had an hour to solve a problem, I'd spend 55 minutes thinking about the problem and 5 minutes thinking about solutions."

Exaggerated as it may sound, he is believed to have suggested that the quality of the solution one generates is directly proportionate to one's ability to identify the problem. A well-defined problem often contains its own solution within it.

> **58.** Drawing from Einstein's quote, if the issue had been properly framed after careful thought and application of judicial mind, and the onus correctly fixed, perhaps, the outcome at trial would have been very different, and this litigation might not have travelled all the way up to this Court."

37. Thus, the judgment passed by the learned Trial Court, acquitting the accused, cannot be sustained and is set aside. The accused is convicted of the commission of an offence punishable under Section 138 of the NI Act. Let him be produced on **27th February, 2026**, for hearing him on the quantum of sentence.

(Rakesh Kainthla)
Judge

1st January, 2026
(Nikita)