IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

ON THE 5th OF DECEMBER, 2025

CRIMINAL APPEAL No. 11571 of 2022

ISMAIL BEG

Versus

VISHAL JAIN

Appearance:

Shri Shafiquallah - Advocate for the appellant.

Shri J.L. Soni - Advocate for the respondent.

ORDER

I.A. No.23461/2022, an application under Section 378(4) of Cr.P.C. has been filed seeking leave to appeal against the judgment of acquittal dated 17.10.2022 passed in Criminal Appeal No.82/2021 (Vishal Jain Vs. Ismail Beg) by 14th Additional Sessions Judge, Bhopal (M.P.) arising out of judgment dated 11.02.2020 passed in Criminal Case No.13398/2016 by JMFC, Bhopal, whereby the appellate court allowing the appeal has set aside the judgment of the Trial Court and has acquitted the respondent/accused (for short "accused") from the charge of offence punishable under Section 138 of the Negotiable Instruments Act.

2 . I have gone through the impugned judgments of the Courts below. On due consideration leave is granted to appellant. I.A. No.23461/2022 is disposed of accordingly.

3. With the consent of learned counsel for the parties, the matter is heard finally.

4. The brief facts of the case, as alleged by the appellant/complainant (in short "complainant") in the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (for short '**the NI Act**") are that both the parties are known to each other. The complainant had given Rs.4,00,000/- for a month to accused to fulfill his personal needs. The accused did not return the aforesaid amount after a month and on being made demand of the aforesaid amount by the complainant, he handed over a cheque bearing No.042514 dated 05.03.2015 of Rs.4,00,000/- to complainant. On being presented the said cheque in the bank, the same got dishonoured due to the reason "Payment stopped by Drawer". Again on presenting the cheque in the bank, the same got dishonoured on the same ground. The accused/respondent did not return the amount even after receipt of demand notice dated 10.06.2015 on behalf of complainant.

5. The accused denied the allegations made in the complaint and stated that he has been falsely implicated in the case. His defence is that he had borrowed Rs.1,50,000/- in lieu of cheque and gold given to one Tabrez Khan. The aforesaid amount has been repaid by him but the cheque has not been returned by Tabrez Khan rather he while misusing the cheque gave it to the complainant.

6. The learned Trial Court, after hearing the parties and

considering the material on record, vide judgment dated 11.02.2020 convicted the accused for the offence punishable under Section 138 of the N.I. Act and sentenced to undergo R.I. for six months and directed to pay compensation of Rs.5,77,592/- to the complainant under Section 357 (3) of Cr.P.C. with default stipulations. In addition, the accused was further directed to pay Rs.20,000/- for expenses to complainant under the provisions of Section 359 of Cr.P.C.

7. Being aggrieved by the judgment passed by the learned Trial Court, the accused preferred an appeal. The learned appellate Court setting aside the judgment passed by the learned Trial Court allowed the appeal and eventually acquitted the accused of the offence under Section 138 of NI Act. Hence, the present appeal.

8. It is submitted by the learned counsel for the appellant/complainant that the learned Trial Court has convicted the respondent/accused, however the learned appellate court has acquitted the accused on the grounds that the present appellant/complainant could not prove his financial capacity to advance Rs.4,00,000/- and only on this ground the order of acquittal has been passed, which is erroneous. He has a good case on merits. He prays to set aside the order of acquittal of learned appellate court and to restore the judgment of conviction and sentence of learned trial court.

9. *Per contra,* learned counsel for the respondent/accused has submitted that the learned appellate court has considered various factual

aspects and rightly came to the conclusion that the present appellant/complainant has no financial capacity to lend Rs.4,00,000/- to the respondent/accused, therefore, the order of acquittal has rightly been passed by the learned appellate court.

10. Heard learned counsel for the parties and perused the record.

11. The appellant herein is the complainant, who filed a complaint under Section 138 of the Negotiable Instruments Act against respondent/accused-Vishal Jain. The learned Trial Court has convicted the respondent/accused for the offence and sentenced as mentioned in para 4 herein above, while in appeal the learned appellate court acquitted the respondent of the charges levelled against him under Section 138 of the NI Act on the ground that it could not be proved by the complainant that the cheque in question (Ex.P/1) was given by the respondent-accused for discharging in whole or in part of any debt or other liability. It is found proved by the appellate court that the notice (Ex.P/4) has been received by the accused which was served at the address given by the accused as per para 17 of the impugned judgment.

12. As regards, the essential ingredients required to establish the commission of an offence under Section 138 of the NI Act, the Hon"ble Supreme Court, in the case of **Gimpex (P) Ltd. v. Manoj Goel: (2022) 11 SCC 705**, has lucidly enumerated the same in the following terms:

"26. The ingredients of the offence under Section 138 are:

26.1. The drawing of a cheque by person on an account

maintained by him with the banker for the payment of any amount of money to another from that account;

26.2. The cheque being drawn for the discharge in whole or in part of any debt or other liability;

26.3. Presentation of the cheque to the bank;

26.4. The return of the cheque by the drawee bank as unpaid either because the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account;

26.5. A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within 30 days of the receipt of information from the bank in regard to the return of the cheque; and

26.6. The drawer of the cheque failing to make payment of the amount of money to the payee or the holder in due course within 15 days of the receipt of the notice."

13. It is not in dispute that to constitute an offence under Section 138 of the NI Act, the cheque in question must have been issued in discharge of a legally enforceable debt or liability. However, Section 139 of the NI Act provides that once the drawer admits his signature on the cheque, a statutory presumption arises that the cheque was issued for the discharge, in whole or in part, of a debt or other liability. Section 118 of the NI Act further lays down a presumption that every negotiable instrument, when held by a holder in due course, has been made or drawn for consideration. In addition, Section 20 of the NI Act stipulates that when a person signs and delivers a stamped but otherwise incomplete negotiable instrument, he thereby authorizes the holder to complete it for any amount not exceeding the value covered by the

stamp. The scope and effect of these presumptions have been comprehensively explained by the Hon"ble Supreme Court in **Bir Singh v. Mukesh Kumar: (2019) 4 SCC 197**, wherein 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."*

14. Here in this case, when we travel through the evidence on record, it is found that complainant Ismail Beg (PW-1) has categorically stated in his statement that he had friendly terms with the accused; and for his personal need the accused borrowed an amount of Rs.4.00 lakhs from him for a period of one month, but when he did not return the amount; on demand being by him, accused gave him a cheque bearing No.042514 dated 05.03.2015 of Rs.4.00 lakhs of the State Bank of India, Branch Mukherjee Chowk, Mandsaur. He presented the cheque for payment in his bank on 05/03/2015 and on the request of accused on 09.04.2015 and 09.05.2015 but it has been returned with an endorsement "Payment Stopped by Drawer". When the complainant received information dated 12.05.2015 of the Bank on 14.05.2015, he

issued a notice (Ex.P/4) dated 10.06.2015 to the accused and demanded the cheque amount. This notice has been served upon the accused at his address on 26.06.2015 and at his official address on 18.06.2015, in respect of which the postal receipts have been filed. The cheque is Ex.P/1, bank return memos are Ex.P/2 & Ex.P/3, notice is Ex.P/4 and postal receipts are Ex.P/5, P/6 & P/7, and acknowledgement receipts are Ex.P/8 & P/9.

15. Though the complainant Ismail Beg (PW-1) has been cross-examined by accused in respect of his financial capacity to advance the amount to accused, in response to that, he categorically stated that he is a teacher and his initial income was Rs.6000/-, which is now Rs.10,000/- per month. In para 32 he has stated that his earning is Rs.25000-30000/- per month. He has further stated that the amount paid to the accused originated from the sale proceeds of his wife's ancestral property (land). The aforesaid ancestral property was sold for the consideration of Rs.21-22 lakhs. Though he stated that at the time of advancing the amount to the accused, it has been reduced into writing but that document has lost. In respect of these statements, he remained intact in cross-examination.

16. The defence of the respondent-accused from inception is that of his non-acquaintance with the complainant. He stated during his examination under Section 313 of Cr.P.C. especially in reply to question 5 and 25 that the cheque in question along with gold was given

to Tabrez Khan by him and he borrowed Rs.1,50,000/- from Tabrez Khan. Thereafter, he paid Rs.1,80,000/- to Tabrez Khan but Tabrez Khan did not return the cheque in question along with gold. He does not know the present appellant/complainant The aforesaid cheque has been misused by the complainant. He also admits this fact that he had stopped the payment of the aforesaid cheque when it was produced in the bank by the complainant for its encashment. The same defence has also been taken by accused in his statement as DW-1 and he stated that the cheque Ex.P/1 was given to Tabrez Khan as security and he has deposited 140 gms gold with Tabrez Khan but Tabrez Khan despite payment of Rs.1,80,000/- has not returned the aforesaid gold and cheque. However the accused admitted in his cross-examination that he has not filed any complaint or FIR in Police Station or elsewhere against Tabrez Khan to the effect that he has not returned his gold and cheque in question which was given as security to Tabrez Khan, but why such complaint or FIR has not been lodged by the accused, has not been clarified.

17. From the defence taken by the accused and keeping in view his statement as well as the facts stated in his examination under Section 313 of Cr.P.C., it is categorically established that the execution of cheque (Ex.P/1) has been admitted by the accused which in turn establishes that the cheque (Ex.P/1) bears the signature of respondent/accused. A bare comparison with naked eyes also makes it evident that the remaining writing on the cheque also made by same

person who has signed it. It was not a defence of the respondent/accused in his statement under Section 313 of Cr.P.C. and in his statement as DW-1 that the cheque Ex.P/1 does not bear his signature and that the complainant has no financial means to advance him Rs.4.00 lakhs rather his defence is of non-acquaintance with the complainant.

18. Recently in the case of **Sanjabij Tari Vs. Kishore S. Borcar & another, in Criminal Appeal No.1755 of 2010**, the Hon'ble Apex Court in para 15 to 18 has held as under :

> *"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 Judges Bench in Krishna Janardhan Bhat vs. Dattatraya G. Hegde, (2008) 4 SCC 54 have been set aside by a three Judges 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 vs. Mukesh Kumar, (2019) 4 SCC 197**].*
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> *18. The judgment of this Court in A**PS Forex Services Private Limited** (supra) relied upon by learned counsel for the Respondent No.1-Accused only says that presumption under Section 139 of the NI Act is rebuttable and when the same is rebutted, the onus would shift back to the complainant to prove his financial capacity, more particularly, when it is a case of giving loan by cash. This*

judgment nowhere states, as was sought to be contended by learned counsel for the Respondent No.1-Accused, that in cases of dishonour of cheques, in lieu of cash loans, the presumption under Section 139 of the NI Act does not arise"

19. Here in this case, as discussed earlier that the financial capacity of complainant to advance Rs.4.00 lakhs has not been questioned by the respondent/accused from inception though he has cross-examined on this point to the complainant during which the complainant reveals the sources satisfactorily and which remains unrebutted. While examination under Section 313 of Cr.P.C. and deposing as a witness DW-1 present respondent/accused has not uttered anything in this regard rather he took a defence that he did not know the complainant. Thus, the initial burden in respect of financial capacity to advance the aforesaid amount of Rs.4.00 lakhs to the accused has been well established by the complainant in this case. In this view of the matter, the presumption under Section 118 and 139 of the NI Act coupled with the provisions of Section 20 of the NI Act applies in this case and accused had utterly failed to rebut it.

20. In the case of **Satish Kumar Vs. State (Govt. NCT Delhi) and another, 2025 SCC OnLine Del 8429**, in para 15 the Delhi High Court has observed that once the petitioner admitted his signatures on the cheques in question, the statutory presumptions under Sections 118 and 139 of the NI Act stood attracted against him. It was, therefore, incumbent upon the petitioner to rebut these presumptions by leading cogent and credible evidence to show that the cheques were not issued in

discharge of any legally enforceable debt or liability.

21. The Hon'ble Apex Court in **Sanjabij Tari (supra)** in para 22 and 23 has held as infra :

> *"22. It is pertinent to mention that in the present case, the Respondent No.1- Accused has filed no documents and/or examined any independent witness or led any evidence with regard to the financial incapacity of the Appellant-Complainant to advance the loans in question. For instance, this Court in* ***Rajaram S/o Sriramulu Naidu (Since Deceased) Through LRs. vs. Maruthachalam (Since Deceased) Through LRs., (2023) 16 SCC 125*** *has held that presumptions under Sections 118 and 139 of the NI Act can be rebutted by the accused examining the Income Tax Officer and bank officials of the complainant/drawee.*
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> *WHEN THE EVIDENCE OF PW-1 IS READ IN ITS ENTIRETY, IT CANNOT BE SAID THAT THE APPELLANT-COMPLAINANT HAD NO WHEREWITHAL TO ADVANCE LOAN*
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> *23. Most certainly, the accused can rely upon the evidence adduced by the complainant to rebut the presumption with regard to the existence of a legally enforceable debt or liability, yet in the present case, when the evidence of Appellant-Complainant (PW-1) is read in its entirety, like it should be, it cannot be said that the Appellant-Complainant had no wherewithal to advance any loan to the Respondent No.1-Accused."*

22. Keeping in view the law laid down in the aforesaid cases, the complainant has established the fact that the cheque in question (Ex.P/1) was given by the accused for the discharge of legally enforceable debt or liability and in this respect the presumption arises under Section 118 and 139 of NI Act which could not be rebutted by the accused.

23. One more important fact is also referable in this regard that though the accused has denied to receive the notice (Ex.P/4) but it has

not been challenged by the accused that the address on Ex.P/4 is not his address. The service of Ex.P/4 on the accused has been well established in the light of postal receipts Ex.P/5 P/6 & P/7 and the track record of the post as Ex.P/8 and Ex.P/9, which shows that the notice has been delivered at the home and official address of respondent/accused.

24. In the case of **Sanjabij Tari (supra),** the Hon'ble Apex Court in para 29, 30 & 31 has held that when the accused has failed to reply to the statutory notice under Section 138 of the NI Act that leads to an inference that there is merit in the complainant's version, the accused has the initial burden to set up the defence in his reply to the demand notice that the complainant did not have the financial capacity to advance the loan. When a statutory notice is not replied, it has to be presumed that the cheque was issued towards the discharge of liability. Paragraphs 29, 30 & 31 of the said decision read as under :-

> *"29. Furthermore, the fact that the accused has failed to reply to the statutory notice under Section 138 of the NI Act leads to an inference that there is merit in the Appellant-Complainant's version. This Court in* ***Tedhi Singh vs. Narayan Dass Mahant, (2022) 6 SCC 735*** *has held that the accused has the initial burden to set up the defence in his reply to the demand notice that the complainant did not have the financial capacity to advance the loan. The relevant portion of the said judgment is reproduced hereinbelow:-*
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> > *"10. … 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 cross-examination 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)

30. This Court in ***MMTC Ltd. and Another vs. Medchl Chemicals & Pharma (P) Ltd. and Another, (2002) 1 SCC 234*** *has specifically held that when a statutory notice is not replied, it has to be presumed that the cheque was issued towards the discharge of liability.*

31. Also, after receipt of the legal notice, wherein the Appellant-Complainant alleged that the Respondent No.1-Accused's cheque had bounced, no complaint or legal proceeding was initiated by the Respondent No.1-Accused alleging that the cheque was not to be encashed. Consequently, the defence of financial incapacity of Appellant-Complainant advanced by the Respondent No.1-Accused is an afterthought."

25. As far as the defence of the respondent/accused is concerned,

Tabrez Khan was the important witness in this respect but Tabrez Khan has not been examined on behalf of the accused for the reasons best known to him. If Tabrez Khan had received the cheque in question and 140 gms gold as security from the accused/respondent and even after returning the amount of Rs.1,80,000/- by the accused, he has not returned the said cheque and gold, as a natural corollary the accused must have lodged an FIR or complaint against said Tabrez Khan or must have been produced in evidence on behalf of the accused/respondent as a witness before the Trial Court to establish his defence but non-examination of Tabrez Khan and non-filing of any FIR or complaint against Tabrez Khan draws an adverse inference against the accused.

26. As a result, as per the statutory requirement, the complainant has succeeded in proving its case against respondent/accused. The learned appellate court erroneously acquitted the accused/respondent, despite there being evidence available on record that the cheque (Ex.P/1) was issued for the discharge of a legally enforceable debt. The impugned judgment and order of acquittal passed by the learned appellate court is liable to be set aside. As far as the conclusion of learned Trial Court in respect of conviction of respondent/accused under Section 138 of N.I. Act is concerned, the same is founded on the cogent basis. Moreover, the punishment under aforesaid section, which is six months RI with compensation of Rs.5,77,592/- under Section 357(3) of Cr.P.C. and Rs.20,000/- for expenses and sentence in default is concerned, the same

is not found to be unreasonable or inappropriate rather it is found to be lawful and appropriate.

27. Resultantly, this appeal is **allowed**. The impugned judgment of acquittal passed by the lower appellate court is hereby set aside and the impugned judgment of conviction and order of sentence passed by the Trial Court is hereby restored and upheld . The learned Trial Court is directed to take the accused/respondent in custody and send him to jail as per the order of sentence passed by it.

28. Let a copy of this order along with the record be sent to the trial Court for necessary compliance.

(RAJENDRA KUMAR VANI)
JUDGE

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