**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. Appeal No. 4153 of 2013**
**Reserved on: 02.04.2026**
**Date of Decision: 18.05.2026**

Ramesh Sharma ...Appellant

Versus

Amina Chauhan ...Respondent

*Coram*

***Hon'ble Mr Justice Rakesh Kainthla, Judge.***

***Whether approved for reporting?[1] No.***

For the Appellant : Mr Ashok Kumar Tyagi, Advocate.

For the Respondent : Mr Rajesh Verma, Advocate.

**Rakesh Kainthla, Judge**

The present appeal is directed against the judgment dated 18.07.2013, passed by the learned Judicial Magistrate, First Class, Nahan, District Sirmour, 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 (N I Act). *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

[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 before the learned Trial Court against the accused for the commission of an offence punishable under section 138 of the NI Act. It was asserted that the complainant and the accused had cordial relations. The complainant advanced an amount of ₹57,000/- to the accused on his request, and the accused promised to return the amount within 20 days. She issued a cheque of ₹57,000/- in the complainant's favour to discharge her liability. The complainant presented the cheque before the bank, but it was dishonoured with an endorsement 'insufficient funds'. The complainant told the accused about this fact, and she promised to return the amount, but she failed to do so. The complainant served a notice upon the accused asking her to repay the amount within 15 days of the receipt of the notice. The notice was returned with the endorsement 'unclaimed'. Hence, the complaint was filed before the Court for taking action 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 her for the commission of an offence

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punishable under section 138 of the NI Act, to which she pleaded not guilty and claimed to be tried.

4. The parties were called upon to produce the evidence, and the complainant examined himself (CW-1) and Pankaj Sharma (CW-2).

5. The accused, in her statement recorded under section 313 of the Code of Criminal Procedure (CrPC), admitted that she had a cordial relationship with the complainant's family. She denied the rest of the complainant's case. She stated that she had not maintained any account in Punjab National Bank and did not have any cheque book. She came to know about the present case after receiving the summons from the Court. She had not received any money from the complainant and is not liable to repay any amount. She examined Pardeep Sharma (RW-1) in her defence.

6. The learned Trial Court held that the accused suggested to the complainant in his cross-examination that she had lost the cheque and reported the matter to the police, Post Kala Amb. She failed to establish this defence by examining any witness or producing any document. She had also not taken any steps to stop the payment of the cheque. She did not state in her

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statement recorded under Section 313 of the Cr.P.C that she had lost the cheque which was misused by the complainant. Therefore, the plea taken by the accused was not probable. The statement of the defence witness proved that the signatures on the cheque and the specimen signatures in the bank were different. This statement rebutted the presumption attached to the cheque. Hence, the learned Trial Court acquitted the accused.

7. Being aggrieved by the judgment passed by the learned Trial Court, the complainant has filed the present appeal asserting that the learned trial Court had failed to properly appreciate the material on record. It was duly proved on record that the accused had issued a cheque in the complainant's favour to discharge her legal liability. The suggestions given to the complainant regarding the loss of the cheque were not corroborated by any evidence, and the learned Trial Court had rightly rejected the defence of the accused. The cheque was dishonoured with an endorsement 'funds insufficient', and the Learned Trial Court erred in acquitting the accused because of the difference in the signatures. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned trial Court be set aside.

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8. I have heard Mr Ashok Kumar Tyagi, learned counsel for the appellant/complainant and Mr Rajesh Verma, learned counsel for the respondent/accused.

9. Mr Ashok Kumar Tyagi, learned counsel for the appellant/complainant, submitted that the learned Trial Court erred in acquitting the accused on the ground of a difference in signatures. The dishonour of the cheque due to signature mismatch would attract the provisions of 138 of the NI Act, and the learned Trial Court did not consider this aspect. The complainant's evidence proved that the accused had issued a cheque in favour of the complainant to discharge her legal liability. All the ingredients of the commission of an offence punishable under section 138 of the NI Act were duly satisfied. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr Rajesh Verma, learned counsel for the respondent/accused, submitted that the signatures on the cheque differed from the signatures in the bank, which supported the defence taken by the accused that she had lost her cheque book, which was misused by the complainant. Learned Trial Court had taken a reasonable view, and this court should

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not interfere with the reasonable view of the learned Trial Court, even if another view is possible. 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 SCC OnLine SC 176: (2025) 5 SCC 433*** that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading/omission to consider the material evidence and reached at a conclusion which no reasonable person could have reached. It was observed at page 440:

> "**12.** 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 ***P. Somaraju v. State of A.P., 2025 SCC OnLine SC 2291,*** wherein it was observed:

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> " 12. To summarise, an Appellate Court undoubtedly has full power to review and reappreciate evidence in an appeal against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. However, due to the reinforced or 'double' presumption of innocence after acquittal, interference must be limited. If two reasonable views are possible on the basis of the record, the acquittal should not be disturbed. Judicial intervention is only warranted where the Trial Court's view is perverse, based on misreading or ignoring material evidence, or results in a manifest miscarriage of justice. Moreover, the Appellate Court must address the reasons given by the Trial Court for acquittal before reversing it and assigning its own. A catena of the recent judgments of this Court has more firmly entrenched this position, including, *inter alia*, ***Mallappa* v. *State of Karnataka* 2024 *INSC* 104, *Ballu @ Balram @ Balmukund v. The State of Madhya Pradesh* 2024 *INSC* 258, *Babu Sahebagouda Rudragoudar* v. *State of Karnataka* 2024 *INSC* 320,** and ***Constable* 907 *Surendra Singh v. State of Uttarakhand* 2025 *INSC* 114**."

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 consideration to discharge the debt/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: -

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"**12....** 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.

**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 complainant supported the contents of the complaint in his statement on oath. He stated in his cross-examination that he has an orchard at Haripur Khol, which is in his family's name. He also has a shop of spare parts at Ranital. He also filed the Income Tax returns, but had not filed the copies

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of the income tax returns on record. He denied that the accused had lost the cheque (Ext.C-1), and she has reported the matter to the Police Post. He denied that the cheque did not bear the signatures of the accused, that he had forged the signatures of the accused, that he had not paid money to the accused or that he had filed a false complaint before the Court.

18. The cross-examination of the complainant shows that the accused had taken a defence of the misuse of the lost cheque. Learned Trial Court had rightly held that this defence was not established. The complainant denied suggestions made to him about the loss of the cheque and denied suggestions do not amount to any proof. The accused claimed in her statement recorded under Section 313 of the Cr.P.C. that she did not have any account in Punjab National Bank, and she did not have any cheque book with her, so the question of issuance of a cheque did not arise. This plea was falsified by the statement of Pardeep Sharma (RW-1). He brought the specimen signatures of the accused to the Court and exhibited a copy (R-1), which clearly shows that the accused had a bank account with the bank and a cheque was issued to her.

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19. The complainant stated that he had a cordial relationship with the family of the accused. The accused admitted in reply to question No.2 in her statement recorded under Section 313 of Cr.P.C. that she had a cordial relationship with the complainant's family. She subsequently stated that she did not know the complainant, and she knew the complainant by face. These contradictory statements under Section 313 of the Cr.P.C. would shake the credibility of the accused.

20. Therefore, the explanation provided by the accused that she had lost the cheque, or she did not have any account with the bank or no cheque book was issued to her, was not established, and the complainant's version is to be accepted as correct that the cheque was issued to him by the accused in discharge of her liability.

21. It was laid down in ***N. Vijay Kumar v. Vishwanath Rao N., 2025 SCC OnLine SC 873,*** that a cheque carries with it presumptions that it was issued for consideration to discharge debt/liability. It was observed:

> "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,

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> meaning they can be rebutted by the accused by raising a probable defence."

22. 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.

23. Learned Trial Court heavily relied upon the statement of Pardeep Sharma and the specimen signatures (Ext. R-1) produced by him to conclude that the signatures on the cheque and the specimen signatures differed from each other, which was sufficient to rebut the presumption attached to the cheque. This conclusion cannot be sustained. It was laid down by the Hon'ble Supreme Court in ***Laxmi Dyechem v. State of Gujarat, (2012) 13 SCC 375: (2012) 4 SCC (Cri) 283: 2012 SCC OnLine SC 970***, that the dishonour of a cheque with an endorsement of signature mismatch attracts the provisions of section 138 of N.I. Act. It was observed at page 388: -

> **16.** The above line of decisions leaves no room for holding that the two contingencies envisaged under Section 138 of the Act must be interpreted strictly or literally. We find ourselves in respectful agreement with the decision in the ***Magma case [(1999) 4 SCC 253: 1999 SCC (Cri) 524***] that the expression "amount of money ... is insufficient" appearing in Section 138 of the Act is a genus and dishonour for reasons such "as account closed", "payment stopped", "referred to the drawer" are only species of that genus.

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> *Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Section 138, so also dishonour on the ground that the "signatures do not match" or that the "image is not found", which too implies that the specimen signatures do not match the signatures on the cheque would constitute a dishonour within the meaning of Section 138 of the Act.*" (Emphasis supplied)

24. Karnataka High Court held in ***Peeranbi v. Hajimalang, 2013 SCC OnLine Kar 10420: (2013) 2 Kant LJ 569 : (2013) 3 KCCR 2223 : (2014) 1 AIR Kant R 405 : (2013) 3 BC 532 : (2014) 5 RCR (Cri) 757*** that the dishonour of the cheque due to signature mismatch will attract penal liability under Section 138 of the NI Act. It was observed:

> "**9.** In the facts and circumstances, as rightly contended by the learned Counsel for the appellant, the cheque, having been drawn on the account of the respondent, is not in dispute. However, it is the defence set up that there was a business relationship between the appellant and the respondent, and the appellant could have accessed a cheque leaf belonging to the respondent, which is sought to be misused. In this regard, there is no positive evidence put forward by the respondent. In other words, in terms of Section 139, the presumption is in favour of the holder of the cheque of the same having been issued by the account holder in discharge of a legal liability. It is for the person issuing the cheque to prove otherwise. This, the Apex Court has held in the case of ***Rangappa v. Sri Mohan. [AIR 2010 SC 1898 : (2010) 11 SCC 441 : (2011) 1 SCC (Cri) 184: 2010 Cri. L.J. 2871 (SC)]*** That, not only is it possible for the accused to establish this by leading positive evidence, but he could also place reliance on the evidence tendered by the complainant himself to discharge that burden. Hence, if it was the contention of the respondent that there were

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cheque leaves misplaced by him and which were sought to be misused by the appellant, it was for the respondent to have tendered evidence of the approximate date when there was a dissolution of the partnership business between the appellant and the respondent, and the respondent having operated his Bank Account thereafter using other cheque leaves and that the cheque leaves which were left behind upon such dissolution having fallen into disuse over a period of time, sought to be forged and fabricated at a later date by the appellant, was clearly on the respondent. There is no such evidence forthcoming except the self-serving evidence of the respondent. Further, in the event that any such cheque leaves were misused, a duty was cast on the respondent to inform his banker to stop payment, against such cheques which were lost or misplaced. There is no such evidence forthcoming. Nor is it the case of the respondent that the cheques being misplaced, he had reported to the nearest Police Station of such loss. There was no demand made on the appellant to return such cheque leaves left behind. Therefore, the evidence of the respondent was clearly self-serving, and it was a burden cast on the respondent to establish the fact that there were cheque leaves which were left behind, and it was possible for the appellant to misuse the same. If once it is apparent that the cheque had been issued on the account held by the respondent, the presumption under Section 139 is clearly in favour of the appellant to establish that it was forged by the accused. The burden is clearly on the respondent, and it is not for the appellant to establish that the respondent had deliberately changed his signature in order that it would be dishonoured by his Bank. This may indeed have been the intention in changing his signature at the time of issuing the cheque. As already stated, the burden to establish that it was lost and that it has been misused by the appellant was clearly on the respondent. The Court below has also committed an error in holding that the liability in respect of which the cheque had been issued was required to be proved by the appellant. The proceedings were not in the nature of a suit for recovery of

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> money but for prosecution of an offence punishable under Section 138 of the NI Act. The limited scope of those proceedings is whether there was dishonour of the cheque issued by the accused. That aspect of the matter has been established on the face of it. Therefore, the Court below has clearly committed an error in addressing the case of the complainant and in dismissing the complaint. Consequently, the appeal is allowed. The complainant has established his case beyond a reasonable doubt. The respondent, therefore, is liable for punishment. Accordingly, he shall pay a fine of Rs. 3,50,000/- in default of which, the respondent shall suffer simple imprisonment for a period of six months. The fine amount shall be paid forthwith, in any event, within a period of 15 days. Out of the fine amount, a sum of Rs. 3,40,000/- shall be paid as compensation to the appellant."

25. Madras High Court also held in ***R. Manimehalai v. Banumathi, 2018 SCC OnLine Mad 13802,*** that the dishonour of a cheque due to signature mismatch attracts the provision of Section 138 of the NI Act. It was observed:

> **"10.**... It is true that the impugned cheque was returned on two grounds, namely, (a) insufficient funds, and (b) the signature of the drawer differs. On receipt of the statutory notice, dated 31.12.2013, [EX-P3] from the complainant, the accused has sent a belated reply notice, dated 17.3.2014, [EX-P5], in which the accused also did not take the plea that her signature has been forged in the cheque. She has taken a plea that the impugned cheque was issued by her for a different debt. The accused took pains to examine Ganeshamoorthy, Senior Manager of Syndicate Bank, in which the accused has an account, to say that the signature in the cheque differed from the specimen signature with the Bank. This only shows that the accused had deliberately put her signature differently in the impugned cheque with the intention of cheating the complainant. However, a charge of cheating has not been

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> framed against the accused. This conduct of the accused in giving the cheque by affixing her signature differently is relevant under Section 8 of the Indian Evidence Act, 1872. The presumption under. Section 139 of the Negotiable Instruments Act, 1881, comes into force, when once the cheque has been issued by the accused for the debt in question. Of course, this is a rebuttable presumption and the same can be dislodged by the accused by preponderance of probabilities and not by proof beyond reasonable doubt, as held by the Supreme Court in ***Rangappa v. Sri Mohan, (2010) 2 BC 693 (SC): II (2010) CCR 433 (SC) : (2010) 4 SLT 56 : (2010) 2 DLT (Cri) 699 (SC) : (2010) 11 SCC 441***. In this case, the accused has failed to discharge her burden even by a preponderance of probabilities. She was trying to take advantage of the difference in signature in order to wriggle out of the prosecution..."

26. Therefore, the difference in the signatures will not result in the acquittal of the accused.

27. It was submitted on behalf of the accused that the difference in signatures corroborates the plea taken by the accused that she had lost her cheque book, which was misused by the complainant by forging her signature. This submission is only stated to be rejected. It has been held that the plea of the accused regarding the loss of the cheque is not established, and the difference in the signatures cannot be used to conclude that the accused had lost her cheque.

28. The evidence of the accused is not sufficient to rebut the presumption attached to the cheque. She had taken

contradictory pleas and had not succeeded in establishing them. Therefore, the learned Trial Court had erred in holding that the accused had rebutted the presumption attached to the cheque.

29. The complainant asserted that the cheque was dishonoured with an endorsement 'insufficient funds'. This is corroborated by the memo (Ext.C-2), wherein the reason for the dishonour of the cheque has been mentioned as 'funds insufficient'. It was laid down by the Hon'ble Supreme Court in ***Mandvi Cooperative Bank Ltd. v. Nimesh B. Thakore*, *(2010) 3 SCC 83: (2010) 1 SCC (Civ) 625: (2010) 2 SCC (Cri) 1: 2010 SCC OnLine SC 155*** that the memo issued by the Bank is presumed to be correct and the burden is upon the accused to rebut the presumption. It was observed at page 95:

> **24.** Section 146, making a major departure from the principles of the Evidence Act, provides that the bank's slip or memo with the official mark showing that the cheque was dishonoured would, by itself, give rise to the presumption of dishonour of the cheque, unless and until that fact was disproved. Section 147 makes the offences punishable under the Act compoundable.

30. In the present case, no evidence was produced to rebut the presumption, and it is held that the cheque was dishonoured with an endorsement 'insufficient funds.'

31. The complainant stated that he had issued a notice to the accused, which was returned with the endorsement 'unclaimed'. This is duly corroborated by the envelope (Ext.C7), which bears an endorsement of unclaimed. It also bears the endorsements of not met, and out of station. It was laid down by the Supreme Court in ***D. Vinod Shivappa v. Nanda Belliappa, (2006) 6 SCC 456*** that where a notice is returned with the endorsement not met or unclaimed, it is deemed to be served. It was observed at page 462:

> "**14.** If a notice is issued and served upon the drawer of the cheque, no controversy arises. Similarly, if the notice is refused by the addressee, it may be presumed to have been served. This is also not disputed. This leaves us with the third situation where the notice could not be served on the addressee for one or the other reason, such as his non-availability at the time of delivery, or premises remaining locked on account of his having gone elsewhere, etc. etc. If in each such case the law is understood to mean that there has been no service of notice, it would completely defeat the very purpose of the Act. It would then be very easy for an unscrupulous and dishonest drawer of a cheque to make himself scarce for some time after issuing the cheque so that the requisite statutory notice can never be served upon him, and consequently, he can never be prosecuted. There is good authority to support the proposition that once the complainant, the payee of the cheque, issues notice to the drawer of the cheque, the cause of action to file a complaint arises on the expiry of the period prescribed for payment by the drawer of the cheque. If he does not file a complaint within one month of the date on which the cause of action arises under clause (*c*) of the proviso to Section 138 of the Act, his complaint

gets barred by time. Thus, a person who can dodge the postman for about a month or two, or a person who can get a fake endorsement made regarding his non-availability, can successfully avoid his prosecution because the payee is bound to issue notice to him within a period of 30 days from the date of receipt of information from the bank regarding the return of the cheque as unpaid. He is, therefore, bound to issue the legal notice, which may be returned with an endorsement that the addressee is not available at the given address.

**xxxxx**

**18.** This Court noticed the position well settled in law that the notice refused to be accepted by the drawer can be presumed to have been served on him. In that case, the notice was returned as "unclaimed" and not as refused. The Court posed the question, "Will there be any significant difference between the two so far as the presumption of service is concerned?" Their Lordships referred to Section 27 of the General Clauses Act and observed that the principle incorporated therein could profitably be imported in a case where the sender had dispatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee, unless he proves that it was not really served and that he was not responsible for such non-service. This Court dismissed the appeal preferred by the drawer, holding that where the notice is returned by the addressee as unclaimed, such date of return to the sender would be the commencing date in reckoning the period of 15 days contemplated in clause (*c*) of the proviso to Section 138 of the Act. This would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address. Since the appellant did not attempt to discharge the burden to rebut the aforesaid presumption, the appeal was dismissed by this Court. The aforesaid decision is significant for two reasons. Firstly, it was held that the principle incorporated in Section 27 of the General Clauses Act would apply in a case where the sender dispatched the

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> notice by post with the correct address written on it, but that would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address."

32. It was laid down by the Hon'ble Supreme Court of India in ***C.C. Allavi Haji vs. Pala Pelly Mohd. 2007(6) SCC 555,*** that when a notice is returned unclaimed, it is deemed to be served. It was observed:

> "8. Since in ***Bhaskaran's case (supra)***, the notice issued in terms of Clause (b) had been returned unclaimed and not as refused, the Court, posed the question: "Will there be any significant difference between the two so far as the presumption of service is concerned?" It was observed that though Section 138 of the Act does not require that the notice should be given only by "post", yet in a case where the sender has dispatched the notice by post with the correct address written on it, the principle incorporated in Section 27 of the General Clauses Act, 1897 (for short 'G.C. Act') could profitably be imported in such a case. It was held that in this situation service of notice is deemed to have been effected on the sendee unless he proves that it was not really served and that he was not responsible for such non-service."

33. This position was reiterated in ***Priyanka Kumari vs. Shailendra Kumar (13.10.2023- SC Order): MANU/ SCOR/ 133284/ 2023,*** wherein it was observed:

> "As it was held by the Hon'ble Supreme Court in ***K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, (1999) 7 Supreme Court Cases 51***0, that when notice is returned as 'unclaimed', it shall be deemed to be duly served upon the addressee, and it is a proper service of notice. In the case of ***Ajeet Seeds Limited Vs. K. Gopala Krishnaiah (2014) 12 SCC 685 (2014)***, the Hon'ble Court, while interpreting Section

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27 of the General Clauses Act 1897 and also Section 114 of the Evidence Act 1872, held as under: -

> "Section 114 of the Evidence Act, 1872, enables the court to presume that in the common course of natural events, the communication sent by post would have been delivered at the address of the addressee. Further, Section 27 of the General Clauses Act, 1897 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. It is not necessary to aver in the complaint that, despite the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business."

34. A similar view was taken in ***Krishna Swaroop Agarwal v. Arvind Kumar, 2025 SCC OnLine SC 1458,*** wherein it was observed:

> **"13.** Section 27 of the General Clauses Act, 1887, deals with service by post:
>
> > "27. **Meaning of Service by post.**-Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post".

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**14.** The concept of deemed service has been discussed by this Court on various occasions. It shall be useful to refer to some instances:14.1 In ***Madan and Co. v. Wazir Jaivir Chand (1989) 1 SCC 264,*** which was a case concerned with the payment of arrears of rent under the J&K Houses and Shops Rent Control Act, 1966. The proviso to Section 11, which is titled "Protection of a Tenant against Eviction", states that unless the landlord serves notice upon the rent becoming due, through the Post Office under a registered cover, no amount shall be deemed to be in arrears. Regarding service of notice by post, it was observed that in order to comply with the proviso, all that is within the landlord's domain to do is to post a pre-paid registered letter containing the correct address and nothing further. It is then presumed to be delivered under Section 27 of the GC Act. Irrespective of whether the addressee accepts or rejects, "*there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by the addressee."*

14.2 In the context of Section 138 of the Negotiable Instruments Act, 1881, it was held that when the payee dispatches the notice by registered post, the requirement under Clause (b) of the proviso of Section 138 of the NI Act stands complied with and the cause of action to file a complaint arises on the expiry of that period prescribed in Clause (c) thereof. [See: ***C.C. Alavi Haji v. Palapetty Mouhammed (2007) 6 SCC 555***]

14.3 The findings in ***C.C. Alavi*** (supra) were followed in Vishwabandhu ***v. Srikrishna (2021) 19 SCC 549***. In this case, the summons issued by the Registered AD post was received back with endorsement "refusal". In accordance with Sub-Rule (5) of Order V Rule 9 of CPC, refusal to accept delivery of the summons would be deemed to be due service in accordance with law. To substantiate this view, a reference was made to the judgment referred to supra.

14.4 A similar position as in ***C.C. Alavi*** (supra) stands adopted by this Court in various judgments of this Court in ***Greater Mohali Area Development Authority v. Manju Jain (2010) 9 SCC 157; Gujarat Electricity Board v. Atmaram Sungomal Posani (1989) 2 SCC 602; CIT v. V. K. Gururaj (1996)***

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> ***7 SCC 275; Poonam Verma v. DDA (2007) 13 SCC 154; Sarav Investment & Financial Consultancy (P) Ltd. v. Lloyds Register of Shipping Indian Office Staff Provident Fund (2007) 14 SCC 753; Union of India v. S.P. Singh (2008) 5 SCC 438; Municipal Corpn., Ludhiana v. Inderjit Singh (2008) 13 SCC 506***; and ***V.N. Bharat v. DDA (2008) 17 SCC 321.***

35. In the present case, the accused has not proved that she was not responsible for the non-service of the notice; therefore, it is duly proved that the notice was duly served upon the accused.

36. In any case, it was laid down in ***C.C. Allavi Haji vs. Pala Pelly Mohd. 2007(6) SCC 555,*** that the person who claims that he had not received the notice has to pay the amount within 15 days from the date of the receipt of the summons from the Court and in case of failure to do so, he cannot take the advantage of the fact that notice was not received by him. It was observed:

> "It is also to be borne in mind that the requirement of giving notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving notice before filing a complaint. *Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of the complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court, along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required*

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> *under Section 138, by ignoring the statutory presumption to the contrary under Section 27 of the G.C. Act and Section 114 of the Evidence Act.* In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in ***Bhaskaran's case*** (supra), if the giving of notice in the context of Clause (b) of the proviso was the same as the receipt of notice, a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from the legal consequences of Section 138 of the Act." (Emphasis supplied)

37. The accused did not claim that she had repaid the amount to the complainant; therefore, it was duly proved on record that the accused had failed to repay the amount despite the deemed receipt of the notice.

38. Therefore, it was duly proved before the learned Trial Court that the accused had issued a cheque to discharge her legal liability, the cheque was dishonoured with an endorsement 'insufficient funds', and the accused failed to pay the money despite the deemed receipt of a notice of demand. Hence, all the ingredients of the offence punishable under Section 138 of the NI Act were duly satisfied. Learned Trial Court had failed to appreciate the significance of the presumption and the manner of its rebuttal. 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 the 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

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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."

43. Therefore, the judgment of the learned Trial Court cannot be sustained and is liable to be set aside.

44. In view of the above, the present appeal is allowed, and the accused is convicted of the commission of an offence punishable under section 138 of the NI Act. She be produced before the Court for hearing her on the quantum of sentence on 03.06.2026.

**( Rakesh Kainthla)**
**Judge**

**18th May 2026**
*(ravinder)*