2025 INSC 537

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 5305 OF 2024

N. VIJAY KUMAR … APPELLANT

Versus

VISHWANATH RAO N. … RESPONDENT

J U D G M E N T

SANJAY KAROL J.

1. The present appeal is filed assailing the judgment dated 21st December 2020 passed by the High Court of Karnataka at Bengaluru in Criminal Appeal No.94 of 2011, whereby the High Court reversed the order of acquittal passed by the Court of XV Additional Chief Metropolitan Magistrate, Bangalore City[1] and

[1] Hereinafter referred to as 'Trial Court'

convicted the appellant-accused under Section 138 of the Negotiable Instruments Act, 1881[2].

2. The factual matrix giving rise to the present appeal is as follows :

2.1. The appellant[3] and the respondent[4] had known each other for over a decade and shared a friendly relationship. The case of the complainant is that he extended a hand loan of Rs.20,00,000/- (twenty lakh rupees) to the accused, to help him produce a Kannada feature film titled '*Indian Police History*'. In discharge of this alleged loan, the accused issued a cheque bearing No.015138, dated 14th October 2008, in favour of the complainant. However, upon presentation for encashment, the cheque was dishonoured on 20th October 2008 with an endorsement '*Refer to Drawer*', indicating insufficient funds in the accused's account.

2.2. Consequently, the complainant issued a statutory legal notice dated 25th October 2008, demanding repayment of the amount. The accused, through his reply dated 7th November 2008, denied any liability and raised the following contentions:

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[2] Hereinafter the 'N.I. Act'
[3] Hereinafter referred to as the 'Accused'
[4] Hereinafter referred to as the 'Complainant'

(i) The cheque in question was issued merely as a security instrument for a smaller loan of Rs.3,50,000/- (three lakh fifty thousand rupees), availed by the appellant-accused for production of *Indian Police History*, which was completed in 2003. This loan had already been settled in terms of a Memorandum of Understanding (MoU) dated 29th March 2008, which recorded a full and final settlement of Rs.5,50,000/- (five lakh fifty thousand rupees), inclusive of interest.

(ii) At the time of availing the said loan of Rs.3,50,000/-, the accused had handed over two blank signed cheques to the complainant as security. However, when the accused sought their return upon signing the MoU, the complainant informed him that the cheques had been misplaced but assured that they would not be misused. The same was also recorded in the MoU. It was only upon receiving the legal notice, that the accused became aware that the complainant had allegedly misused one of these cheques.

(iii) The accused had lodged a police complaint, being NCR No.256/2008 dated 24th July 2008, reporting the loss of the two cheques at the instance of

the complainant and alleging that the complainant had failed to return them despite repeated requests.

2.3. Since the alleged amount remained unpaid, the complainant preferred a complaint against the accused under Section 200 of the Code of Criminal Procedure 1973[5], being CC No.1191 of 2009, before the Trial Court, in relation to an offence punishable under Section 138 of the N.I. Act.

2.4. After considering the oral and documentary evidence, the Trial Court *vide* judgment dated 20th November 2010, acquitted the accused, holding that the accused had successfully rebutted the presumption under Section 139 of the N.I. Act. To hold the same, reliance was placed on ***Rangappa v. Sri Mohan***[6]. The relevant extract of the Trial Court judgment in the instant case is as follows :

> "I have gone through the said decision very carefully with due respect to their lordships. The ratio laid down in the aforesaid decision is applicable and supports the defence taken by the accused. Thus over all materials available on record and under the facts and circumstances of the case, the arguments advanced by the learned Counsel for the complainant does not holds water except Ex. D.2. Wherein the arguments advanced by the learned counsel for the accused holds water. Hence a doubt has arised in the mind of the court about the alleged loan amount of Rs. 20 lakhs to the accused. Hence the accused has rebutted the presumption U / s.

[5] For short 'CrPC'
[6] (2010) 11 SCC 441

> 118 and 139 of NI Act and proves that there is no existence of legally recoverable debt by the accused to the complainant by relying upon the oral evidence of pw. 1, DWs. 1 to 3 and documents available on record."

2.5. Aggrieved by the said order of acquittal, the complainant preferred an appeal before the High Court bearing Criminal Appeal No.94/2011. *Vide* the impugned judgment dated 21st December 2020, the High Court reversed the finding of acquittal returned by the Trial Court and convicted the accused for an offence punishable under Section 138 of the N.I. Act and directed him to pay Rs.22,00,000/- (twenty two lakh rupees) within eight weeks, in default whereof he was to undergo simple imprisonment for one year. The reasoning for such a conclusion, as can be understood from the perusal of the judgment, is that :

> "30. Having taken note of the evidence of DW.2, it is clear that the amounts are not given to the complainant. DW.3 though in his evidence, he says that the amount was paid in his presence and the complainant has affixed the signature on Ex.D2. It is elicited in the cross-examination that he does not know anything about the payment of money by the complainant to the accused and also how much amount was paid to him, but he claims that the complainant told him that the accused has availed an amount of Rs.3,50,000/- and insisted him to get the money from the accused. He also claims that in the Hotel, it was decided to return the amount of Rs.5,50,000/-. All of them have signed the documents in the Kanishka Hotel, DW.2 was also present and he claims that an amount of Rs.2 lakhs was paid, but he came to know that already an amount of Rs.3,50,000/- was paid prior to that. DW.2 says that in his presence the

amount was not paid and he subsequently signed the documents-Exs.D2. But DW.3 claims that in his presence only after receiving the amount of Rs.2 Lakhs, the complainant has signed the documents. It is suggested that while signing the document - Ex.D2, the complainant was not present and the same was denied. DW.1 himself says that he obtained the signature of DWs.2 and 3 after the complainant left the place by receiving the money. There are material contradictions in the evidence of DWs.1 to 3 for having repaid the amount of Rs.5,50,000/-. Though, the accused relies upon the document-Ex.D2, it is proved that the said document is forged and the evidence of the handwriting expert is unchallenged and also the accused did not examine the handwriting expert and did not dispute the opinion of the handwriting expert. When such being the case, the evidence of the accused cannot be relied upon and the Court cannot give any credence to the evidence of DW.1. For having repaid the amount, the evidence of DWs. 1 to 3 are contradictory to each other and even the document-Ex.D2 came into existence is also under the suspicious circumstances. The trial Judge has failed to appreciate these materials before the Court.

31. The Trial Judge though considered the Judgment in **Rangappa's** case (supra), an observation has been made that the ratio laid down in the aforesaid decision is applicable and supports the defense taken by the accused. The very observation is erroneous. How it supports the case of the defense has not been stated in the judgment. Instead of that the same judgment is helpful to the complainant since the complainant has caused the legal notice in terms of Ex.P4 and also produced Ex.PS-Postal receipt, Ex.P6-UCP receipts, Ex.P7- notice and Ex.P7(a)-envelope.

32. The Judgment of this Court in **Sri Yogesh Poojary's** case (supra), is aptly applicable to the case on hand with regard to the service of notice is concerned and so also the Apex Court in the Judgment of **Rangappa's** case (supra), categorically held that when the notice is issued and the accused did not dispute the

> issuance of cheque and signature, the presumption available in favour of the complainant unless the evidence of the complainant is rebutted. In the case on hand, though the accused made all efforts to rebut the case of complainant nothing is elicited in the cross-examination of PW.1 and instead of the evidence, which he has adduced as DW.1 and also DWs.2 and 3 and the same falsifies the case of the accused. The very defense of the accused is that in one breath he borrowed an amount of Rs.3 Lakhs and in another breath an amount of Rs.3,50,000/-, totally, repaid the amount of Rs.5,50,000/-, In view of the admission, it is narrow down the case of the complainant since the accused admitted the transaction but only the defense is that he repaid the amount of Rs.5,50,000/-."

OUR VIEW

3. In the present special leave petition, while passing order on the application seeking exemption from surrendering, learned Judge in Chambers *vide* order dated 15th March 2021 directed Rs.11,00,000/- (eleven lakh rupees) to be deposited with the Registry without prejudice to the rights and contentions. Notice was issued on 12th April 2021, and the remaining amount of Rs.9,00,000/- (the total disputed amount being, allegedly, twenty lakh) was directed to be deposited within eight weeks. The operation of the impugned judgment was stayed. The amount stood deposited in the Registry of this Court.

4. We have heard learned counsel for the parties and perused the written submissions and material on record. The primary question to be considered is as to whether, in the instant facts, the

accused has been able to discharge the burden under Sections 118 (a) and 139 of the N.I. Act and whether the High Court was justified in overturning the order of acquittal passed by the Trial Court.

5. The N.I. Act raises two presumptions, one under Section 118; and the other in Section 139 thereof. The Sections read as under :

> "**118. Presumptions as to negotiable instruments.—** Until the contrary is proved, the following presumptions shall be made:—
>
> (a) **of consideration:—**that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;
>
> x x x
>
> **139. Presumption in favour of holder.—** It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

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. This Court through various

pronouncements, has consistently clarified the nature and extent of these presumptions and the standard of proof required by the accused to rebut them. We may consider a few such pronouncements.

6.1. In ***Mallavarapu Kasiviswesara Rao v. Thadikonda Ramulu Firm***[7], this Court observed as under :

> "**17.** Under Section 118(*a*) of the Negotiable Instruments Act, the court is obliged to presume, until the contrary is proved, that the promissory note was made for consideration. It is also a settled position that the initial burden in this regard lies on the defendant to prove the non-existence of consideration by bringing on record such facts and circumstances which would lead the court to believe the non-existence of the consideration either by direct evidence or by preponderance of probabilities showing that the existence of consideration was improbable, doubtful or illegal. In this connection, reference may be made to a decision of this Court in *Bharat Barrel & Drum Mfg. Co.* v. *Amin Chand Payrelal* [(1999) 3 SCC 35] . In para 12 of the said decision, this Court observed as under : (SCC pp. 50-51)
>
> > "*12.* Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(*a*) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus

[7] (2008) 7 SCC 655

would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(*a*) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist."

From the above decision of this Court, it is pellucid that if the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the

onus would shift to the plaintiff who would be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. It is also discernible from the above decision that if the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(*a*) in his favour."

(Emphasis Supplied)

6.2. In ***Kumar Exports v. Sharma Carpets***[8], this Court examined the presumptions raised by the N.I. Act, and held as follows :

"**18.** Applying the definition of the word "proved" in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.

19. The use of the phrase "until the contrary is proved" in Section 118 of the Act and use of the words "unless the contrary is proved" in Section 139 of the Act read with definitions of "may presume" and "shall presume"

[8] (2009) 2 SCC 513

as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over.

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

> may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act.
>
> **21.** The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, thereafter, the presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue."
>
> (Emphasis Supplied)

6.3. A three-Judge Bench of this Court in ***Rangappa*** (supra) had the occasion to consider Section 139 elaborately. The Court reiterated that where the signature on the cheque is acknowledged, a presumption has to be raised that the cheque pertained to a legally enforceable debt or liability, however, this presumption is of a rebuttal nature and the onus is then on the accused to raise a probable defence. It was further stated that :

> "**27.** Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the

> dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof.
>
> **28.** In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."

6.4. T.S. Thakur J., (as his lordship then was) in his supplementing opinion in ***Vijay v. Laxman***[9], observed as under:

> "**20.** The High Court has rightly accepted the version given by the respondent-accused herein. We say so for reasons more than one. In the first place the story of the complainant that he advanced a loan to the respondent-accused is unsupported by any material leave alone any documentary evidence that any such loan transaction had

[9] (2013) 3 SCC 86

> ever taken place. So much so, the complaint does not even indicate the date on which the loan was demanded and advanced. It is blissfully silent about these aspects thereby making the entire story suspect. We are not unmindful of the fact that there is a presumption that the issue of a cheque is for consideration. Sections 118 and 139 of the Negotiable Instruments Act make that abundantly clear. That presumption is, however, rebuttable in nature. What is most important is that the standard of proof required for rebutting any such presumption is not as high as that required of the prosecution. So long as the accused can make his version reasonably probable, the burden of rebutting the presumption would stand discharged. Whether or not it is so in a given case depends upon the facts and circumstances of that case. It is trite that the courts can take into consideration the circumstances appearing in the evidence to determine whether the presumption should be held to be sufficiently rebutted. The legal position regarding the standard of proof required for rebutting a presumption is fairly well settled by a long line of decisions of this Court."

6.5. This Court in the case of ***Baslingappa v. Mudibasappa***[10], summarized the principles on Sections 118(a) and 139 of the N.I. Act. The same is reproduced with profit as under :

> "**25.** We having noticed the ratio laid down by this Court in the above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:
>
> **25.1.** Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

[10] (2019) 5 SCC 418

> **25.2.** The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.
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> **25.3.** To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.
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> **25.4.** That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.
>
> **25.5.** It is not necessary for the accused to come in the witness box to support his defence."

6.6. Recently, a coordinate Bench of this Court in ***Rajaram v. Maruthachalam***[11], through Gavai J., observed as under :

> "**27.** It can thus be seen that this Court has held that once the execution of cheque is admitted, Section 139 of the N.I. Act mandates a presumption that the cheque was for the discharge of any debt or other liability. It has however been held that the presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities. It has further been held that to rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. It has been held that

[11] (2023) 16 SCC 125

> inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely."

7. The position of law, as is evident from the above, is clear.

8. Now, in the instant facts, let us consider whether the presumption stands sufficiently rebutted or not. In the cross-examination of DW-1 (appellant) it has been stated that he had issued two blank signed cheques for availing the hand loan of Rs.3,50,000/- (three lakh fifty thousand rupees) from the complainant. Further, the accused in the affidavit, submitted in the Trial Court, stated as under:

> "At that time I have approached the complainant for hand loan of Rs. 3,50,000/- (Rupees Three Lakhs Fifty Thousand only). At the time of giving the above said amount the complainant was took two blank cheques signed by me for security purpose and both the cheques were drawn on Canara Bank, Sampangi Ramanagara, Bangalore- 560 027."

9. Very clearly, therefore, it can be seen that the cheques issued were against an enforceable debt and held by the complainant as such, even though there was no paperwork to that effect. The onus, as such, was shifted upon the other party, i.e., the accused, to raise a probable defence against such presumption.

10. A perusal of the record reveals the following aspects which constitute the accused's 'probable defence' :

(a) Both parties were friends and the money exchanged hands only as a hand loan;

(b) The movie, because of which the loan was allegedly taken, was produced, completed and exhibited many years prior to the cheque being presented for realisation, i.e., 2003 and 2008, respectively;

(c) The parties to the dispute entered into a Memorandum of Understanding dated 29th March 2008 which recorded that the accused took Rs.3,50,000/- and in payment thereof, the former gave, inclusive of interest, Rs.5,50,000/-;

(d) The accused had lodged a complaint with the police on 24th July 2008 asking the authorities to take steps to have the complainant return the said two cheques to him, since the loan taken by the accused was returned with interest, totalling to Rs.5,50,000/- (five lakh fifty thousand rupees);

(e) The cheque, a copy of which is appended as Annexure-P3, was dated 14th October 2008. The date of dishonour was 20th October 2008, as is clear from Annexure-P7, i.e., the complaint under Section 200 CrPC. Evidently, the presentation and subsequent dishonour were both after the lodging of the police complaint by the accused.

11. Considering the sum total of the above, we find that the probable defence on the part of the accused has been established. Once such a defence is established, the burden again shifts upon the complainant to now establish his case beyond a reasonable doubt, for after all, the effect of Section 138 of the N.I. Act is a criminal conviction. Reference may be made to ***Rajesh Jain v. Ajay Singh***[12] and, more particularly Para 44 thereof, which reads as under :

> "**44.** Therefore, in fine, it can be said that once the accused adduces evidence to the satisfaction of the Court that on a preponderance of probabilities there exists no debt/liability in the manner pleaded in the complaint or the demand notice or the affidavit-evidence, the burden shifts to the complainant and the presumption "*disappears*" and does not haunt the accused any longer. The onus having now shifted to the complainant, he will be obliged to prove the existence of a debt/liability as a matter of fact and his failure to prove would result in dismissal of his complaint case. Thereafter, the presumption under Section 139 does not again come to the complainant's rescue. Once both parties have adduced evidence, the Court has to consider the same and the burden of proof loses all its importance. [*Basalingappa* v. *Mudibasappa* {*Basalingappa* v. *Mudi basappa*, (2019) 5 SCC 418 : (2019) 2 SCC (Cri) 571 : AIR 2019 SC 1983] ; see also, *Rangappa* v. *Sri Mohan* [*Rangappa* v. *Sri Mohan*, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184 : AIR 2010 SC 1898}]"

[12] (2023) 10 SCC 148

12. In our considered view, the complainant has failed to discharge this burden. In his cross-examination, the complainant has stated as follows :

> "During the year 2002, I have paid loan to the accused on 7-8 times. I have maintained the account on which dates I have paid the loan to the accused. In that regard, I have subscribed my signatures in the book which was with the accused. Accused issued cheques for having obtained 7-8 times loan from me. I have paid the amount to the accused two times in my house and 5-6 times in my lodge. I have not obtained the receipt for having received the loan amount by the accused."

It has also come on record that the cheque, subject matter of controversy, was given to the complainant in the presence of common well-wishers. However, none of the above statements stands scrutiny. The alleged well-wishers who could have proved the discussion and context in which the cheque was given, remained unexamined. As stated by the complainant himself, there is no official record, such as income tax documents which would show that such an amount was extended by way of a loan to the accused, neither have the books of account, which the complainant allegedly maintained, being produced to evidence the seven or eight transactions *inter se* the parties totalling the claimed amount.

13. Keeping in view the above factors, it cannot be said that the complainant was able to discharge the burden once it had

shifted back upon him, with the accused having discharged the burden of Sections 118 and 139 of the N.I. Act.

14. Consequent to the above discussion, we are of the view that the Trial Court was correct in recording a finding of acquittal in favour of the accused and reversal thereof by the High Court in terms of the impugned judgment, with particulars as in Para 1, was unjustified. As a result, the appeal is allowed.

15. The judgment of the High Court is set aside, and that of the Trial Court is hereby restored.

16. The amount deposited in the Registry of this Court in compliance with the orders dated 15th March 2021 and 12th April 2021, be released to the appellant along with the interest accrued thereon.

Pending application(s), if any, shall stand disposed of.

.....J.
(PANKAJ MITHAL)

.....J.
(SANJAY KAROL)

New Delhi;
22nd April, 2025.