Before Vinod S. Bhardwaj, J.

MANGAT RAM—*Appellant*

versus

PARDEEP KUMAR—*Respondent*

CRM-A No.1971-MA of 2018

March 02, 2022

Negotiable Instruments Act, 1881—S.139—Evidence Act, 1872—S.4 —Dishonour of cheque—Order of acquittal—Legally enforceable debt—Presumption in favour of holder —Whether presumption under Section 139 of Negotiable Instruments Act, 1881 is absolute presumption and would operate even if complainant fails to establish existence of pre-existing liability and legally enforceable debt prior to issuance of cheque in question and whether such presumption should be read absolutely against accused solely for reason that signature on dishonoured instrument is not denied? — Held, presumption under Section 139 of Negotiable Instruments Act, 1881, stood discharged and burden of proof lay upon complainant— Burden not discharged to the satisfaction of Court by complainant by leading any cogent and convincing evidence or by bringing on record documents as would in all probability establish existence of valid and legally enforceable liability against accused—Hence, order of acquittal upheld.

Held that, that in view of the position of law as it emerges through the authoritative pronouncements of Hon'ble Supreme Court as also the circumstances noticed in the foregoing paragraphs, I am of the opinion that presumption under section 139 of the Negotiable Instruments Act, 1881, stood discharged and burden of proof lay upon the complainant-appellant. The said burden has not been discharged to the satisfaction of the Court by the complainant-appellant by leading any cogent and convincing evidence or by bringing on record the documents as would in all probability establish existence of a valid and legally enforceable liability against the respondent- accused. I find that there is no illegality, impropriety, perversity or non- appreciation of the evidence by the Additional Chief Judicial Magistrate in the impugned judgment. The same is accordingly upheld. The appeal is accordingly, dismissed as being without merits.

(Para 16)

Parminder Singh, Advocate
for the appellant.

VINOD BHARDWAJ, J.

(1) The question which arises for consideration in the instant appeal is as to whether the presumption under Section 139 of the Negotiable Instruments Act, 1881, is an absolute presumption and would operate even if the complainant fails to establish existence of a pre-existing liability and legally enforceable debt prior to the issuance of a cheque in question and whether such a presumption should be read absolutely against an accused solely for the reason that the signature on the dishonoured instrument is not denied.

(2) The instant appeal raises a challenge to the judgment dated 19.07.2018 passed by the Additional Chief Judicial Magistrate, Hoshiarpur, whereby the respondent has been acquitted in Complaint RBT No.77/16.05.2013 titled ***Mangat Ram Vs. Pardeep Kumar*** instituted under Section 138 of the Negotiable Instrument Act. Before examining the merits of the controversy, it is essential to understand the scope of presumption under Section 139 of the Negotiable Instrument Act and the interpretation thereof as done by the Hon'ble Supreme Court through various judicial pronouncements.

(3) Section 139 of the Negotiable Instruments Act raises a statutory presumption in favour of the holder of a cheque. The relevant provision is extracted as under:-

> '[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.]'

(4) It is a settled proposition of law that presumption under Section 139 of the Negotiable Instruments Act is a presumption of law, as distinguished from a presumption of fact. Such a presumption is a rebuttable presumption and the drawer of the cheque may dispel the same. The aforesaid position in law stands settled in the judgment of the Hon'ble Supreme Court in the matter of ***Hiten P. Dalal*** versus ***Bratindranath Banerjee***[1]. While dealing with the aspect of

[1] (2001) 6 SCC 16

presumption in terms of Section 139 of the Negotiable Instruments Act, the Hon'ble Supreme Court observed as under:-

> '21.The appellant's submission that the cheques were not drawn for the 'discharge in whole or in part of any debt or other liability' is answered by the third presumption available to the Bank under Section 139 of the Negotiable Instruments Act. This section provides that "it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability". The effect of these presumptions is to place the evidential burden on theappellant of proving that the cheque was not received by the Bank towards the discharge of any liability.
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> 22. Because both Sections 138 and 139 require that the Court "shall presume" the liability of the drawer of the cheques for the amounts for which the cheques are drawn, as noted in State of Madras vs. A. Vaidyanatha Iyer AIR 1958 SC 61, it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. "It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused" (ibid). Such a presumption is a presumption of law, as distinguished from a presumption of fact which describes provisions by which the court "may presume" a certain state of affairs. Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.
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> 23. In other words, provided the facts required to form the basis of a presumption of law exists, no discretion is left with the Court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when, "after considering the matters

before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists" . Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the Court in support of the defence that the Court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the 'prudent man'.

24. Judicial statements have differed as to the quantum of rebutting evidence required. In ***Kundan Lal Rallaram vs Custodian, Evacuee Property, Bombay*** AIR 1961 SC 1316, this Court held that the presumption of law under Section 118 of Negotiable Instruments Act could be rebutted, in certain circumstances, by a presumption of fact raised under Section 114 of the Evidence Act. The decision must be limited to the facts of that case. The more authoritative view has been laid down in the subsequent decision of the Constitution Bench in ***Dhanvantrai Balwantrai Desai vs State of Maharashtra*** AIR 1964 SC 575, where this Court reiterated the principle enunciated in State of ***Madras vs Vaidyanath Iyer*** (Supra) and clarified that the distinction between the two kinds of presumption lay not only in the mandate to the Court, but also in the nature of evidence required to rebut the two. In the case of a discretionary presumption the presumption if drawn may be rebutted by an explanation which "might reasonably be true and which is consistent with the innocence" of the accused. On the other hand in the case of a mandatory presumption "the burden resting on the accused person in such a case would not be as light as it is where a presumption is raised under S.114 of the Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The words 'unless the contrary is proved' which occur in this provision make it clear that the presumption has to be rebutted by 'proof' and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that

> a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted....."
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> [See also V.D. Jhingan vs. State of Uttar Pradesh AIR 1966 SC 1762; Sailendranath Bose vs. The State of Bihar AIR 1968 SC 1292 and Ram Krishna Bedu Rane vs. State of Maharashtra 1973 (1) SCC 366.]
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> (Emphasis supplied)

(5) It was, thus, held that the obligation on the prosecution may be discharged with the help of presumption of law or fact, unless, the accused adduces evidence showing reasonable possibility of the non-existence of the presumed fact. Thus, to say that if the facts required to form the basis of a presumption of law exist, there is no discretion left with the Court but to draw the statutory conclusion, but the same does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. The rebuttal does not have to be conclusively established, but such evidence must be adduced in support of the defence that the Court must either believe the defence to exist or consider its existence to be reasonably probable; the standard of reasonability being that of the 'prudent man'.

(6) Reference is also necessary to be made to the judgment of the Hon'ble Supreme Court in the matter of ***Kumar Exports*** versus ***Sharma Carpets***[2] . The relevant extract of the same is as under:-

> '13. In a significant departure from the general rule applicable to contracts, Section 118 of the Act provides certain presumptions to be raised. This Section lays down some special rules of evidence relating to presumptions. The reason for these presumptions is that, negotiable instrument passes from hand to hand on endorsement and it would make trading very difficult and negotiability of the instrument impossible, unless certain presumptions are made. The presumption, therefore, is a matter of principle to facilitate negotiability as well as trade. Section 118 of the Act provides presumptions to be raised until the contrary is proved (i) as to consideration, (ii) as to date of instrument, (iii) as to time of acceptance,(iv) as to time of transfer, (v)

[2] (2009) 2 SCC 513

as to order of indorsements,(vi) as to appropriate stamp and (vii) as to holder being a holder in due course.

14. Section 139 of the Act provides that 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.

15. Presumptions are devices by use of which the courts are enabled and entitled to pronounce on an issue notwithstanding that there is no evidence or insufficient evidence. Under the Indian Evidence Act all presumptions must come under one or the other class of the three classes mentioned in the Act, namely, (1) "may presume" (rebuttable), (2) "shall presume" (rebuttable) and (3) "conclusive presumptions" (irrebuttable). The term `presumption' isused to designate an inference, affirmative or disaffirmative of the existence a fact, conveniently called the "presumed fact" drawn by a judicial tribunal, by a process of probable reasoning from some matter of fact, either judicially noticed or admitted or established by legal evidence to the satisfaction of the tribunal. Presumption literally means "taking as true without examination or proof".

16. Section 4 of the Evidence Act inter-alia defines the words `may presume' and `shall presume as follows: -

"(a) `may presume' - Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it.

(b) `shall presume' - Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved."

In the former case the Court has an option to raise the presumption or not, but in the latter case, the Court must necessarily raise the presumption. If in a case the Court has an option to raise the presumption and raises the presumption, the distinction between the two categories of presumptions ceases and the fact is presumed, unless and until it is disproved.

17. Section 118 of the Act inter alia directs that it shall be presumed, until the contrary is proved, that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that unless the contrary is proved, it shall be presumed, that the holder of the cheque received the cheque, for the discharge of, whole or part of any debt or liability.

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 139of the Act read with definitions of "may presume" and "shall presume" 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 considerationand 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, thosementioned 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 nonexistence 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)

(7) The law is thus well settled that in order to rebut the statutory presumption, 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 instrument in question was not supported by consideration and that there was no debt or liability to be discharged by him. 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, bare denial of the passing of the consideration and existence of debt would not serve the purpose of the accused. To disprove the presumption, an 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 orthat their non-existence was so probable that a prudent man, under the circumstances of the case, would act upon the plea that they did not exist.

(8) In the mater of ***Rangappa*** versus ***Sri Mohan***[3], the Hon'ble Supreme Court observed on the matter of presumption cast under Section 139 of the Negotiable Instruments Act and held as under:-

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

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[3] (2010) 11 SCC 441

> 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 138can 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 privateparties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard or proof.
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> 28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of `preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.'

(9) In the matter of ***John K. Abraham*** versus ***Simon C. Abraham And Another***[4], the Hon'ble Supreme Court observed that in order to draw presumption under Section 118 read with Section 139 of the Negotiable Instruments Act, burden lies on the complainant to show (i) that he had the requisite funds for advancing the sum of money/loan in question to the accused, (ii) that the issuance of cheque by accused in support of repayment of money advanced was true, and (iii) that the accused was bound to make payment as had been agreed while issuing

[4] (2014) 2 SCC 236

cheque in favour of the complainant. Taking note of the fact that the complainant was not aware of the date when the substantial amount was advanced by him to the accused and his failure to produce relevant documents in support of the alleged source for advancing money to the accused, the judgment convicting the accused was set aside by holding the same to be perverse. The relevant facts noticed from the aforesaid judgment are extracted as under:-

> '6. When we examine the case of the respondentcomplainant as projected before the learned Chief Judicial Magistrate and the material evidence placed before the trial Court, we find that the trial Court had noted certain vital defects in the case of the respondentcomplainant. Such defects noted by the learned Chief Judicial Magistrate were as under:
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> a) Though the respondent as PW-1 deposed that the accused received the money at his house also stated that he did not remember the date when the said sum of Rs.1,50,000/- was paid to him.
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> b) As regards the source for advancing the sum of Rs.1,50,000/-, the respondent claimed that the same was from and out of the sale consideration of his share in the family property, apart from a sum of Rs.50,000/-, which he availed by way of loan from the co-operative society of the college where he was employed. Though the respondent stated before the Court below that he would be in a position to produce the documents in support of the said stand, it was noted that no documents were placed before the Court below.
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> c) In the course of cross-examination, the respondent stated that the cheque was signed on the date when the payment was made, nevertheless he stated that he was not aware of the date when he paid the sum of Rs.1,50,000/-.
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> d) According to the respondent, the cheque was in the handwriting of the accused himself and the very next moment he made a contradictory statement that the cheque was not in the handwriting of the appellant and that he (complainant) wrote the same.
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> e) The respondent also stated that the amount in words was written by him.

f) The trial Court has also noted that it was not the case of the respondent that the writing in the cheque and filling up of the figures were with the consent of the accused appellant.

9. It has to be stated that in order to draw the presumption under Section 118 read along with 139 of the Negotiable Instruments Act, the burden was heavily upon the complainant to have shown that he had required funds for having advanced the money to the accused; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant.

10. Keeping the said statutory requirements in mind, when we examine the facts as admitted by the respondent-complainant, as rightly concluded by the learned trial Judge, the respondent was not even aware of the date when substantial amount of Rs.1,50,000/- was advanced by him to the appellant, that he was not sure as to who wrote the cheque, that he was not even aware when exactly and where exactly the transaction took place for which the cheque came to be issued by the appellant. Apart from the said serious lacuna in the evidence of the complainant, he further admitted as PW.1 by stating once in the course of the crossexamination that the cheque was in the handwriting of the accused and the very next moment taking a diametrically opposite stand that it is not in the handwriting of the accused and that it was written by the complainant himself, by further reiterating that the amount in words was written by him.

11. We find that the various defects in the evidence of respondent, as noted by the trial Court, which we have set out in paragraph 7 of the judgment, were simply brushed aside by the High Court without assigning any valid reason. Such a serious lacuna in the evidence of the complainant, which strikes at the root of a complaint under Section 138, having been noted by the learned trial Judge, which factor was failed to be examined by the High Court while reversing the judgment of the trial Court, in our considered opinion would vitiate the ultimate conclusion reached by it.

> In effect, the conclusion of the learned Judge of the High Court would amount to a perverse one and, therefore, the said judgment of the High Court cannot be sustained.'
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> (Emphasis supplied)

(10) In the matter of ***Basalingappa*** versus ***Mudibasappa***[5], while dealing with the standard of proof and the presumption drawn under the Negotiable Instruments Act, the Hon'ble Supreme Court has observed as under:-

> '14. Justice S.B. Sinha in M.S. Narayana Menon Alias Mani Vs. State of Kerala and Another, (2006) 6 SCC 39 had considered Sections 118(a), 138 and 139 of the Act, 1881. It was held that presumptions both under Sections 118(a) and 139 are rebuttable in nature. Explaining the expressions "may presume" and "shall presume" referring to an earlier judgment, following was held in paragraph No.28:-
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> "28. What would be the effect of the expressions "may presume", 'shall presume"and "conclusive proof" has been considered by this Court in Union of India v. Pramod Gupta, (2005) 12 SCC 1, in the following terms: (SCC pp. 30-31, para 52)
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> "It is true that the legislature used two different phraseologies 'shall be presumed' and 'may be presumed' in Section 42 of the Punjab Land Revenue Act and furthermore although provided for the mode and manner of rebuttal of such presumption as regards the right to mines and minerals said to be vested in the Government vis-à-vis the absence thereof in relation to the lands presumed to be retained by the landowners but the same would not mean that the words 'shall presume' would be conclusive. The meaning of the expressions 'may presume' and 'shall presume' have been explained in Section 4 of the Evidence Act, 1872, from a perusal whereof it would be evident that whenever it is directed that the court shall presume a fact it shall regard such fact as proved unless disproved. In terms of the said provision, thus, the expression 'shall presume' cannot be held to be synonymous with 'conclusive proof'."

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[5] (2019) 5 SCC 418

15. It was noted that the expression "shall presume" cannot be held to be synonymous with conclusive proof. Referring to definition of words "proved" and "disproved" under Section 3 of the Evidence Act, following was laid down in paragraph No.30:

"30. Applying the said definitions of "proved" or "disproved" to the principle behind Section 118(a) of the Act, the court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the nonexistence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon."

16. This Court held that what is needed is to raise a probable defence, for which it is not necessary for the accused to disprove the existence of consideration by way of direct evidence and even the evidence adduced on behalf of the complainant can be relied upon. Dealing with standard of proof, following was observed in paragraph No.32:-

"32. The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which he relies."

17. In Krishna Janardhan Bhat Vs. Dattatraya G. Hegde, (2008) 4 SCC 54, this Court held that an accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. Following was laid down in Paragraph No.32:-

"32. An accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. An accused has a constitutional right to maintain silence. Standard of proof on the part of an accused and that of the prosecution in a criminal case is different."

18. This Court again reiterated that whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is "preponderance of probabilities". In paragraph No.34, following was laid down:-

"34. Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is "preponderance of probabilities". 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 he relies."

25. We having noticed the ratio laid down by this Court in above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:-

(i) 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.

(ii) 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.

(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or 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.

(iv) 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.

26. Applying the preposition of law as noted above, in facts of the present case, it is clear that signature on cheque having been admitted, a presumption shall be raised under Section 139 that cheque was issued in discharge of debt or liability. The question to be looked into is as to whether any

> probable defence was raised by the accused. In cross-examination of the PW1, when the specific question was put that cheque was issued in relation to loan of Rs.25,000/- taken by the accused, the PW1 said that he does not remember. PW1 in his evidence admitted that he retired in 1997 on which date he received monetary benefit of Rs. 8 lakhs, which was encashed by the complainant. It was also brought in the evidence that in the year 2010, the complainant entered into a sale agreement for which he paid an amount of Rs.4,50,000/- to Balana Gouda towards sale consideration. Payment of Rs.4,50,000/- being admitted in the year 2010 and further payment of loan of Rs.50,000/- with regard to which complaint No.119 of 2012 was filed by the complainant, copy of which complaint was also filed as Ex.D2, there was burden onthe complainant to prove his financial capacity. In the year 2010-2011, as per own case of the complainant, he made payment of Rs.18 lakhs. During his crossexamination, when financial capacity to pay Rs.6 lakhs to the accused was questioned, there was no satisfactory reply given by the complainant. The evidence on record, thus, is a probable defence on behalf of the accused, which shifted the burden on the complainant to prove his financial capacity and other facts.'
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> (Emphasis supplied)

(11) A perusal of the same shows that the failure of the complainant to display his financial capacity to advance the amount alleged to have been lent would shift the burden on the complainant to prove his financial capacity to lend the money as well as the other circumstances to establish existence of consideration prior to issuance of the cheque. After noticing that there was no evidence led before the Court to indicate the financial capacity of the complainant to lend the money in question, the Hon'ble Supreme Court held that the judgment of conviction suffered perversity and was thus, liable to be set aside. It was observed that the accused had raised a probable defence and that the complainant failed to prove his financial capacity on the basis of evidence led by him and thus, ordered acquittal of the accused.

FACTS

The facts of the instant case are now being examined in light of the aforesaid pronouncements of the Hon'ble Supreme Court, to ascertain

the correctness of the judgment of the trial Court. The facts that emerge from the consideration are summarized as under:

(i). The complainant-appellant is stated to have advanced money to the tune of Rs.3 Lakhs to the respondent-accused who was working as a property dealer and was in need of money, urgently, for his business. The same had been lent to him for a period of one month. However, when the amount in question was not paid, the complainant-appellant insisted upon refund thereof. Resultantly, the respondent is alleged to have issued cheque bearing No. 104292 dated 18.03.2013 drawn on Bank of Baroda for a sum of Rs. 3 Lakhs along with an assurance that the same would be honoured on presentation. However, when the said cheque was submitted by the appellant to his bank for collection, the same was returned with the remarks, "Fund Insufficient". A legal notice dated 16.04.2013 was issued and upon failure on the part of accused to remit the due amount, the proceedings were instituted.

(ii) The complainant-appellant Mangat Ram himself appeared in the witness box as CW-1 and reinforced the averments and allegations made by him in the complaint. He also proved the following documents:

Ex.C1 Original cheque
Ex.C2 Memo of the bank
Ex.C3 Copy of legal notice
Ex.C4 Postal receipt

(iii) Inderjit Singh has appeared as CW2 in additional evidence who had deposed that he knew the respondentaccused and that accused had agreed to pay due amount to the appellant during the settlement proceedings, but the same hasnot been paid.

(iv) After the conclusion of the evidence, statement under Section 313 Cr.P.C., was recorded to which the respondent pleaded innocence. However, no defence evidence was led by the respondent. He had however, tendered the following evidence:

Ex.D1/A—Certified copy of the judgment titled as Harjinder Singh Vs. Pardeep Kumar.

Ex.D1/B to Ex.D1/H—Copies of Zimni orders

Upon consideration of the rival submissions as well as evidence led by the respective parties, the Additional Chief Judicial Magistrate, Hoshiarpur, came to a conclusion that complainant/appellant had failed to prove that the cheque in question was issued by the respondent-accused in discharge of any legal liability and thus, acquitted the respondent on the notice of accusation. Aggrieved thereof, the instant appeal had been filed by the appellant-complainant.

ARGUMENTS

(12) Learned counsel has argued that learned Magistrate has failed to appreciate the evidence. It was pointed out that an amount of Rs. 3 Lakhs was advanced to the respondent-accused from the amount that the appellant had received by selling land for a sum of Rs. 4.5 Lakhs. Hence, the appellant had the financial capacity to lend the money as the source thereof was duly explained by him. It is further submitted that the respondent-accused has not denied the signatures on the cheque in question and as such, it has to be presumed that the cheque had been issued by himin discharge of his outstanding liability. No evidence has been led by the respondent-accused to rebut the presumption. There is no explanation as to how and under what circumstances he parted with the cheque. On the basis thereof, it is strongly argued that the trial Court was incorrect in extending the benefit in favour of the respondent-accused.

(13) I have heard learned counsel for the appellant and have gone through the case with his able assistance. While dealing with submissions advanced by the appellant, the trial Court has observed as under:-

> "12. First of all, it is to be noted that the Court is not unmindful of the fact that once a cheque relates to the account of the accused and accused accepted and admitted his signature on the cheque, then the initial presumption contemplated under Section 139 of N.I Act has to be raised by the Court in favour of the complainant that the cheque has been issued by the accused in discharge of his legal liability. However, at the same time, the accused is entitled to rebut this presumption but some plausible explanation on behalf of the accused is not sufficient and it must be by way of rebuttable evidence. Now adverting to the facts of the

present case. The signature upon the cheque in question (Ex.C1) are not disputed by the accused. However, same has been assailed by the accused firstly on the ground that the complainant has failed to prove any legal liability of the accused. Secondly, the complainant has failed to explain any date, time and year of the transaction between him and accused. In the first place, the case of the complainant is that he advanced an amount of Rs.3,00,000/- to the accused but it is not supported by any documentary evidence, which could show that any such transaction has ever taken place. So much so, the complainant neither in the complaint nor in his affidavit Ex.CW1/A has nowhere stated even a single work regarding the date, month or year on which the amount was demanded and advanced. Perusal of the entire complaint, as well as evidence of the complainant is blissfully silent about this aspect, thereby making the entire story doubtful. Not only this, not even a single word has been uttered by the complainant that the accused was having any friendly/family relations with him and there was any relation of trust between the parties due to which an amount of Rs. 3,00,000/- was orally advanced by the complainant to the accused. Therefore, absence of any detail with regard to the date, month and year coupled with the absence of documentary evidence to show that any such transaction has indeed taken place between the complainant and accused, is significant circumstance. Apart from that, it is also highly improbable that even though no document was executed or written at that time when money exchanges hands between the complainant and accused. Even the complainant has not examined any witness who could prove that the amount was paid in his presence. Therefore, it seems highly improbable that a reasonable prudent man would advance an amount of Rs.3,00,000/- to anyone without executing any written document or in he absence of any other third person, who can stand as a witness. Even, the complainant was crossexamined on this aspect and in his cross-examination, he clearly admitted that there was no writing between him and accused regarding the money given or taken. Even he admitted that there was no writing documentation or receipt regarding the transaction. Rather, he voluntarily stated that oral request was made to him to get the money. Even he

admitted in his future part of cross-examination that the relations between him and accused are not of friendly nature. Thus, in view of these admissions of the complainant, it creates suspicion that any amount of Rs.3,00,000/- indeed was advanced by the complainant to the accused.

13. Another aspect of the present case is with regard to the financial capacity of the complainant to pay the amount in question to the accused. In his cross-examination, the complainant has admitted this fact that he is an agriculturist and prior to that he was doing he the work of transport. He has stated that he has never done the work of property dealer. He has further stated that he is married having two children, out of which his one son is married and they are residing jointly and the total domestic expenses in total is Rs.25,000/- per months. He further stated that in a agricultural work, he is only earning hand to mouth and most of the time, there is loss in the said work. In his further cross-examination, he divulged that an amount of Rs.3,00,000/- was given by him to the accused by selling his land which he sold for sum of Rs. 4,50,000/. However, to this effect also, he has failed to produce any sale deed from which it could be inferred that after selling the said land for Rs.4,50,000/-, the complainant advanced an amount of Rs.3,00,000/- to the accused. Apart from that, no other bank account detail has been produced by the complainant from which it can be concluded that he amount was withdrawn for the purpose of making payment to to the accused. So, it is doubtful that the complainant had the financial capacity to lend such a huge amount of Rs.3,00,000/- to the accused and in such circumstances this Court is left with no option but to hold that actually no alleged amount is proved to have been borrowed by the accused from the complainant as such, accused deserves to be acquitted of the notice of accusation. To canvass this view, reliance can be placed upon the citation of Hon'ble Apex Court of the country reported as '2007 (4) RCR (Criminal), Page 588, 2008 (1) RCR (Criminal) Page 695' . Where it has been held that in case complainant fails to prove that he had with him that much amount to advance accused deserves to be acquitted as presumption of innocence is human right.

14. Furthermore, the complainant has nowhere stated that he has even been the partner of any firm namely Sansoya and Vashishth Property Dealer. However, during the crossexamination of the complainant, one copy of acknowledgment of Registration of firms Ex.CW1/N is produced which shows that in the column of description of partners to the firm, names of complainant Mangat Ram and accused Pardeep Kumar are duly mentioned. Even, the said form of Registration of firms bears the signature of complainant Mangat Ram and accused Pardeep Kumar on each and every leaf. When the signature of complainant Mangat Ram was put to him during his crossexamination, he admitted that form Ex.CW1/N bears his signatures as point Mark-P. Not only this, the said form bears the signature of two other persons as witnesses out of which one is Harjinder Singh. The accused has placed on record the certified copy of Judgment dated 11.08.2017 Ex.D1/A in a complaint under Section 138 of Negotiable Instrument Act, filed by said Harjinder Singh against the present accused Pardeep Kumar, in which accused Pardeep Kumar stood acquitted. However, it is categorically mentioned in para No.13 of the Judgment that Harjinder Singh who was the complainant in the said complainant in the said complaint case admitted himself to be witness of the partnership deed. Thus, from the admission of his signature by the complainant on the said partnership deed and the observation of the Learned Court regarding Harjinder Singh, being witness of the said partnership deed, it can be categorically concluded that the complainant entered into an agreement with the accused being the partner of the firm named above. But, in his cross-examination, when the complainant was grilled by Learned Defence Counsel in this aspect, he denied that ever entered into the registration of a firm, though, admitting his signature upon all the pages of said form Ex.CW1/N. Meaning thereby, the complainant and the accused were having priordealings with each other and this fact has been concealed by the complainant, in the present complaint, for the reasons best know to him. Therefore, defence of the accused that he had not issued the cheque in discharge of any legal liability and the judgment produced by the accused in defence, raises preponderance of

probabilities in favour of the accused. There is no reason much less the cogent one, suggested to the Court by the complainant for rejecting the admissions of the complainant and passing of the Judgment Ex.D1/A. Thus, the factum of concealment of business dealing by the complainant is itself a factor, which creates serious doubt and suspicion over the story put forward by the complainant.

15. Finally, it may be noted that allegedly a sum of Rs.3,00,000/- was advanced by the complainant to the accused but the said amount has not been paid through cheque as required under Section 299(ss) of the Income Tax Act. The Hon'ble Supreme Court in case titled as 'Krishna Janardhan Bhat vs. D. G. Hegde 2008(I) RCR (Criminal) 695' has observed that ordinarily in terms of Section 269 SS of the Income Tax Act, any advance taken by way of any loan of more than Rs.20,000/- was to be made by way of account payee cheque only. The above said ratio of law fully dovetails into the factual matrix of the case. It was incumbent upon the complainant to have paid an amount exceeding Rs.20,000/- through account payee cheque only. According to the complainant, the loan amount was paid in cash. Thus, there is violation of Section 269 SS of the Income Tax Act and it was the paramount duty of the complainant to pay such amount through account payee cheque only.

16. On the contrary, the accused has been successful in raising preponderance of probabilities to rebut the presumption by extending plausible explanation, therefore, I am of the considered opinion that the complainant has failed to prove that the cheque in question was issued by the accusedin discharge of any legal liability beyond shadow of reasonable doubt. In support of my findings, I am relying upon the citation in case ' ***Vijay vs. Lasman and another***, reported in 2013 (1) RCR (Civil) 980' wherein it has been held by Hon'ble Apex Court as under: “

According to the complainant cheque was issued by accused in repayment of loan- No. documentary or other material brought on record to prove loan transaction Date of demand of loan and giving of loan not stated in the complaint- It is a fatal-Accused admitted his signature and issued of cheque,

but was able to proved that Cheque was issued by way of security-Conviction set-aside."

A perusal of the aforesaid clearly shows that all these submissions have been duly taken into consideration and have been answered by the Judicial Magistrate.

(14) A perusal of the complaint as well as evidence adduced before the Court shows that the following aspects emerge from the same :

(i) The appellant-complainant has failed to prove any legal liability/legally enforceable debt against the respondentaccused.

(ii) The appellant-complainant has failed to sufficiently explain any date, time and year of the transaction between him and respondent-accused.

(iii) The appellant-complainant has failed to produce any evidence to substantiate that a sum of Rs.3,00,000/- was actually advanced by him to the respondent-accused.

(iv) Even though, the appellant-complainant has set up thecase that he had the means to advance the said amount by stating that he had sold the land, however, no such documentary evidence has been brought on file to substantiate sale of land and to supplement the said contention.

(v) The appellant-complainant has not stated anywhere that he was having any friendly/family connection with the respondent-accused. Hence, there was no fiduciary or friendly relationship. Thus, there was no occasion for the respondent-accused to seek any advance from the appellant-complainant.

(vi) The appellant-complainant has failed to assign any reasons as to why despite absence of any fiduciary/friendly relationship, such a huge amount was advanced without any documentation.

(vii) No man of ordinary prudence would lend such a huge sum of money without valid documentation.

(viii) Appellant-complainant has failed to adduce any evidence to show his financial capacity to advance such a

huge amount in the form of bank account or account statement.

(ix) Appellant-complainant has admitted in his crossexamination that no writing had been executed at the time of making advance.

(x) The appellant-complainant has also stated in the crossexamination that he is a farmer and that his earnings arebarely sufficient to make his ends meet. It would thus, be incomprehensible that a person of such limited means would lend any advance without exercising minimum precaution or ordinary prudence.

(xi) There is no explanation as to why the complainant preferred payment of cash instead of carrying out the transaction through banking procedure. Provisions of the Income Tax Act do not acknowledge or grant sanctity to a cash transaction exceeding Rs.20,000/- and mandate that all such payments beyond the above amount must be made through the banking channel only.

(xii) That the stand of the respondent-accused also pleads that there was no legally enforceable debt or payment to the complainant. The respondent-accused also denied any fiduciary/business relationship with the complainant-appellant.

(xiii) The counsel for the appellant has failed to refer to any evidence to dispel that the conclusions/inferences referred to above are not the possible or permissible conclusions on the analysis and assessment of the evidence brought on record.

A consideration of the circumstances indicated above would invariably shift the burden of proof on the complainant/appellant and that the presumption under Section 139 of Negotiable Instruments Act would not remain operative despite such overwhelming evidence available on record. It would thus, be incumbent upon the appellant/complainant toestablish having advanced the amount by leading cogent and affirmative evidence and not just rely upon preponderance of probabilities by taking refuge of the non-denial of signatures on the cheque in question.

When the circumstances indicating non-existence of a legally enforceable debt prior to execution of the Negotiable Instruments Act are pointed out before the Court, the respondent-accused cannot be called upon to discharge a negative burden and to bring-forth the circumstances under which the cheque in question was issued. Such a course can be adopted only when the primary burden stands discharged by the complainantappellant. The accused is required only to raise a probable defence and not necessary for an accused to disprove the same. He may discharge such burden on the basis of material already on record and need not step into a witness box.

LEGAL POSITION IN APPEAL AGAINST ACQUITTAL

(15) The same now leads to the scope of interference by the Court while hearing appeal against acquittal. The Hon'ble Supreme Court has held in the matter of ***M. G. Aggarwal*** versus ***State of Maharashtra***[6], the relevant part is extracted as under: "

(16) Section 423(1) prescribes the powers of the appellate Court in disposing of appeals preferred before it and clauses (a) and (b) deal with appeals against acquittals and appeals against convictions respectively. There is no doubt that the power conferred by clause (a) which deals with an appeal against an order of acquittal is as wide as the power conferred by clause (b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or againstconviction. That is one aspect of the question. The other aspect of the question centres round the approach which the High Court adopts in dealing with appeals against orders of acquittal. In dealing with such appeals, the High Court naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial Court and so, the fact that the accused person is entitled to the benefit of a reasonable doubt will always be present in the mind of the High Court when it deals with the merits of the case. As an

[6] AIR 1963 SC 200

appellate Court the High Court is generally slow in disturbing the finding of fact recorded by the trial Court, particularly when the said finding is based on an appreciation of oral evidence because the trial Court has the advantage of watching the demeanour of the witnesses who have given evidence. Thus, though the powers of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence. Sometimes, the width of the power is emphasized, while on other occasions, the necessity to adopt a cautious approach in dealing with appeals against acquittals is emphasised, and the emphasis is expressed in different words or phrases used from time to time. But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused. This position has been clarified by the Privy Council in Sheo Swarup v. The, King Emperor, 61 Ind App 398 : (AIR 1934 PC 227 (2)) and Nur Mohammad v. Emperor AIR 1945 PC 151.

(17) In some of the earlier decisions of this Court, however, inemphasizing the importance of adopting a cautious approach in dealing with appeals against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so, "the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for (1) (1934) L.R. 61 1. A. 398. (2) A.I.R. 1945 P.C. 151, very substantial and compelling reasons": vide ***Surajpal Singh v. The State***, 1952-3 SCR 193 at p.201 (AIR 1952 SC 52). Similarly in ***Ajmer Singh v. State of Punjab*** , 1953 SCR 418 : AIR 1953 SC 76, it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are "very substantial and compelling reasons to do so.' In some other decisions, it has been stated that an order of acquittal can be reversed only for "good and sufficiently cogent reasons" or for "strong reasons". In

> appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended- to introduce an additional condition in clause (a) of Section 423 (1) of the Code. All that the said observations are intended to em-phasise is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in the case of Sheo Swarup, the presumption of innocence in favour of the accused "is not certainly weakened by the fact that he has been acquitted at his trial." Therefore, the test suggested by the expression "substantial and compelling reasons" should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in ***Sanwat Singh v. State of Rajasthan,*** AIR 1961 SC 715 and ***Harbans Singh v. The State of Punjab***, AIR 1962 SC 439 ; and so, it is not necessary that before reversing ajudgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse. Therefore, the question which we have to ask ourselves in the present appeals is whether on the material produced by the prosecution, the High Court was justified in reaching the conclusion that the prosecution case against the appellants had been proved beyond a reasonable doubt, and that the contrary view taken by the trial Court was erroneous. In answering this question, we would, no doubt, consider the salient and broad features of the evidence in order to appreciate the grievance made by the appellants against the conclusions of the High Court. But under Article 136 we would ordinarily be reluctant to interfere with the findings of fact recorded by the High Court particularly where the said findings are based on appreciation of oral evidence.

Further, the Hon'ble Supreme Court has held in the matter of ***Nagbhushan*** versus ***State of Karnataka***[7], as under:

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[7] (2021) 5 SCC 212

"7.2 Before considering the appeal on merits, the law on the appeal against acquittal and the scope and ambit of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal is required to be considered.

7.2.1 In the case of ***Babu v. State of Kerala*** (2010) 9 SCC 189, this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C. In paragraphs 12 to 19, it is observed and held as under:

12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P (1975) 3 SCC 219, Shambhoo Missir v. State of Bihar (1990) 4 SCC 17, Shailendra Pratap v. State of U.P (2003) 1 SCC 761, Narendra Singh v. State of M.P (2004) 10 SCC 699, Budh Singh v. State of U.P (2006) 9 SCC 731, State of U.P. v. Ram Veer Singh (2007) 13 SCC 102, S. Rama v. S.Rami Reddy (2008) 5 SCC 535, Aruvelu v. State (2009) 10 SCC 206, Perla Somasekhara Reddy v. State of A.P. (2009) 16 SCC 98 and Ram Singh v. State of H.P. (2010) 2 SCC 445)

13. In Sheo Swarup v. King Emperor AIR 1934 PC 227, the Privy Council observed as under: (IA p. 404) "… the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has

been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."

14. The aforesaid principle of law has consistently been followed by this Court. (See Tulsiram Kanu v. State AIR 1954 SC 1, Balbir Singh v. State of Punjab AIR 1957 SC216, M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200, Khedu Mohton v. State of Bihar (1970) 2 SCC 450, Sambasivan v. State of Kerala (1998) 5 SCC 412, Bhagwan Singh v. State of M.P(2002) 4 SCC 85 and State of Goa v. Sanjay Thakran (2007) 3 SCC 755)

15. In Chandrappa v. State of Karnataka (2007) 4 SCC 415, this Court reiterated the legal position as under: (SCC p. 432, para 42) "(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the

presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

16. In ***Ghurey Lal v. State of U.P*** (2008) 10 SCC 450, this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In ***State of Rajasthan v. Naresh*** (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20) "20. … an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In ***State of U.P. v. Banne*** (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include: (SCC p. 286, para 28)"(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal." A similar view has been reiterated by this Court in Dhanpal v. State (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference." (emphasis supplied)

7.2.2 When the findings of fact recorded by a court can be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under:

"20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is"against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn (1984) 4 SCC 635, Excise and Taxation Officercum-Assessing Authority v. Gopi Nath & Sons 1992 Supp (2) SCC 312, Triveni Rubber & Plastics v. CCE 1994 Supp. (3) SCC 665, Gaya Din v. Hanuman Prasad (2001) 1 SCC 501, Aruvelu v. State (2009) 10 SCC 206 and Gamini Bala Koteswara Rao v. State of A.P.(2009) 10 SCC 636)."

(emphasis supplied)

7.2.3 It is further observed, after following the decision of this Court in the case ***of Kuldeep Singh v. Commissioner of Police*** (1999) 2 SCC 10, that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would

be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.

7.3 In the case of ***Vijay Mohan Singh v. State of Karnataka***, (2019) 5 SCC 436, this Court again had an occasion to consider the scope o Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal. This Court considered catena of decisions of this Court right from 1952 onwards. In paragraph 31, it is observed and held as under:

"31. An identical question came to be considered before this Court in ***Umedbhai Jadavbhai*** (1978) 1 SCC 228. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on re-appreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming thejudgment of the High Court, this Court observed and held in para 10 as under: (SCC p. 233) "10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case."

31.1 In ***Sambasivan v. State of Karala*** (1998) 5 SCC 412, the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on reappreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable.Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being

satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court. While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under: (SCC p. 416) "

8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down bythis Court in ***Ramesh Babula Doshi v. State of Gujarat*** (1996) 9 SCC 225 viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case."

31.2. In ***K. Ramakrishnan Unnithan v. State of Karala*** (1999) 3 SCC 309, after observing that though there is some substance in the grievance of the learned counselappearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappreciate the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. In ***Atley v. State of U.P. AIR 1955 SC 807***, in para 5, this Court observed and held as under: (AIR pp. 809-10)

"5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 Cr.PC came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well established rule that the presumption of innocence of the accused is not

weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, Surajpal Singh v. State AIR 1952 SC 52; Wilayat Khan v. State of U.P. AIR 1953 SC 122) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.

31.4. In K.Gopal Reddy v. State of A.P. (1979) 1 SCC 355, this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule." (emphasis supplied)

DECISION

(16) In view of the position of law as it emerges through the authoritative pronouncements of Hon'ble Supreme Court as also the circumstances noticed in the foregoing paragraphs, I am of the opinion that presumption under Section 139 of the Negotiable Instruments Act, 1881, stood discharged and burden of proof lay upon the complainant-appellant. The said burden has not been discharged to the satisfaction of the Court by the complainant-appellant by leading any cogent and convincing evidence or by bringing on record the documents as would in all probability establish existence of a valid and legally enforceable

liability against the respond entaccused. I find that there is no illegality, impropriety, perversity or non appreciation of the evidence by the Additional Chief Judicial Magistrate in the impugned judgment. The same is accordingly upheld. The appeal is accordingly, dismissed as being without merits.

Ritambhra Rishi