Before Jasjit Singh Bedi , J.

ASHOK KUMAR SONI —*Appellant*

versus

RAJINDER BAHADUR @ JINDER — *Respondents*

CRM-A No.486 of 2021

July 07, 2022

Negotiable Instruments Act, 1881— Ss.118 (a), 138, 139— Presumption – Friendly loan of Rs. 30,000/- taken by accused – Cheque to return the same dishonoured with remarks "funds insufficient". Accused acquitted in complaint under Section 138 NI Act. Trial Court concluded —Accused rebutted presumption of cheque being issued for discharge of legally enforceable debt – Established on record that accused repaid amount in cash and document executed. Though presumption as per Section 139 NI Act is in favour of the holder of cheque, said presumption duly rebutted by accused. In appeal against acquittal – There is double presumption in favour of innocence of accused - firstly on account of presumption of innocence available to accused and secondly on account of acquittal by competent Court—Appellate Court should not disturb finding of acquittal merely because different conclusion could have been arrived at.— Leave to appeal against acquittal dismissed.

Held, that after hearing the learned counsel for the complainant and the accused, the Trial Court came to the conclusion that the accused had been able to rebut the presumption of the cheque having been issued for the discharge of a legally enforceable debt as from the record it was established that the accused had repaid the borrowed amount in cash and a document dated 17.11.2018 (Ex.DA) had been executed between the parties.

(Para 6)

J.S. Lalli, Advocate, *for the applicant/appellant.*

JASJIT SINGH BEDI, J.

(1) The applicant/appellant has filed the present application for grant of leave to appeal against the order of acquittal dated 06.01.2020 passed by Judicial Magistrate, 1st Class, Jalandhar, whereby the accused- respondent has been acquitted of the charges under Section 138 of the Negotiable Instruments Act, 1881.

(2) The brief facts of the case are that the accused/respondent had friendly terms with the complainant. Taking the benefit of the same, he sought a friendly loan of Rs.30,000/- from the complainant and the complainant in view of the said friendly relations advanced the accused a sum of Rs.30,000/- in the month of July, 2018 and the accused assured the complainant that the accused would return the said amount in some time. The accused in order to discharge his legal enforceable liability and to repay the amount of the said friendly loan issued a cheque bearing No.000019 dated 10.09.2018 for Rs.30,000/- drawn on HDFC Bank, Ground Floor Green City, Mithapur Road, Alipur, Tehsil and District Jalandhar from account bearing No.50100202842203 being maintained and operated by the accused in favour of the complainant. At the time of issuing the above said cheque, the accused assured the complainant that the cheque in question would be honoured on its presentation for encashment. As per such assurance of the accused, the complainant accepted the said cheque under bonafide belief and faith and presented the same for encashment through his banker Oriental Bank of Commerce, Mithapur Jalandhar, but the same was returned as dishonored by the banker of the accused along with memo dated 12.09.2018 containing the remarks "Funds Insufficient". After receiving the above said dishonored cheque from his bank, the complainant immediately approached the accused and narrated about the fate of the cheque, then the accused requested the complainant to present the cheque in question again in the month of December, 2018 for encashment and the complainant reposed faith in the accused and presented the said cheque for encashment through his banker, but the complainant again was surprised to know that the cheque had been dishonored with the remarks "Funds Insufficient" vide memo dated 03.12.2018, meaning thereby that there was no sufficient funds in the account of the accused to meet the payment of the cheque in question on the relevant dates when the cheque in question was presented for encashment. The cheque in question along with memo was got received by the complainant through his banker later on. On the receipt of the said dishonored cheque along with memo, the complainant got issued/served a legal notice dated 06.12.2018 upon the accused through his counsel Sh. Rohit Gambhir, Advocate, through registered A.D. post. In the said notice, the accused was asked to pay the amount of the dishonored cheque in question i.e. Rs.30,000/- within fifteen days from the receipt of the legal notice. Since no payment was made the complaint came to be filed.

(3) In preliminary evidence, statement of complainant-Ashok

Kumar Soni as CW-1 was recorded in which the complainant tendered into evidence his duly sworn affidavit Ex.CA reiterating the facts as mentioned in his complaint. He also tendered cheque Ex.C1, memos Ex.C2 and Ex.C3, legal notice Ex.C4 and postal receipt Ex.C5 and complainant closed his preliminary evidence. Thereafter, the accused was ordered to be summoned to face trial under Section 138 of Negotiable Instruments Act vide order dated 08.01.2019.

(4) Thereafter, the statement of accused Rajinder Bahadur @ Jinder under Section 313 Cr.P.C. was recorded, wherein all the incriminating evidence appearing against him was put to him but he pleaded his false implication. He stated that he is innocent. He had been falsely implicated in the present case. He does not know the complainant. He had no friendly relations with the complainant as alleged by the complainant in his complaint. He never issued the cheque in question in favour of the complainant at any point of time. The cheque in question was never issued in favour of the complainant by him in discharge of any existing liability against him qua the complainant. The accused opted to lead evidence in defence.

(5) In his defence, the accused examined DW-1 R.K. Nahar and DW-2 Ashok Kumar who proved on record document Ex. DA. However, no other witness was examined and thereafter, accused closed his oral evidence vide separate statement dated 01.10.2019. However, the accused examined and tendered into defence evidence documents copy of reply to the legal notice dated 06.12.2018 as Ex.D1 and postal receipt Ex.D2. No documentary evidence was led and the accused closed his documentary evidence vide his statement dated 03.12.2019.

(6) After hearing the learned counsel for the complainant and the accused, the Trial Court came to the conclusion that the accused had been able to rebut the presumption of the cheque having been issued for the discharge of a legally enforceable debt as from the record it was established that the accused had repaid the borrowed amount in cash and a document dated 17.11.2018 (Ex. DA) had been executed between the parties.

(7) In view of the aforementioned facts, the Trial Court proceeded to acquit the accused.

(8) The learned counsel for the appellant-complainant has argued that in terms of Section 139 of the Negotiable Instruments Act, there was a presumption in favour of the holder that the cheque was

received by him in the discharge in whole or in part of some debt or other liability. In the present case, as per the learned counsel, the said presumption could not be rebutted by the accused and therefore, the acquittal ought to be set aside and the accused ought to be convicted for the offence in question.

(9) With respect to the contention of the complainant that a presumption in favour of the holder of the cheque existed in view of the provisions of the Act, it would be necessary to first examine the relevant provisions of the Negotiable Instruments Act.

Section 118(a) of the Negotiable Instruments Act, reads 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;"

Section 139 of the Negotiable Instruments Act, reads 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."

(10) The Hon'ble Supreme Court has dealt with the issue of statutory presumptions and rebuttal thereof in a number of judgments some of which have been discussed hereinbelow:-

In ***K.N. Beena*** *versus* ***Maniyappan***[1] the Hon'ble Supreme Court held as under:

> "6. In our view the impugned Judgment cannot be sustained at all. The Judgment erroneously proceeds on the basis that the burden of proving consideration for a dishonoured cheque is on the complainant. It appears that the learned Judge had lost sight of Sections 118 and 139 of the

[1] 2001(4)R.C.R (Crl) 545

> Negotiable Instruments Act. Under Section 118, unless the contrary was proved, it is to be presumed that the Negotiable Instrument (including a cheque) had been made or drawn for consideration. Under Section 139 the Court has to presume, unless the contrary was proved, that the holder of the cheque received the cheque for discharge, in whole or in part, of a debt or liability. **Thus in complaints under Section 138, the Court has to presume that the cheque had been issued for a debt or liability. This presumption is rebuttable. However the burden of proving that a cheque had not been issued for a debt or liability is on the accused.** This Court in the case of Hiten P. Dalal v. Bratindranath Banerjee, 2001(3) RCR (Criminal) 460 SC: 2001(6) SCC 16 has also taken an identical view."
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> (Emphasis Supplied)

In ***M.S. Narayana Menon @ Mani*** *versus* ***State of Kerala***[2] while dealing with the issue of statutory presumptions and rebuttal thereof the Hon'ble Supreme Court held as under:-

> "29. Presumptions both under Sections 118(a) and 139 of the Act are rebuttable in nature.
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> 30. 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 (UOI) v. Pramod Gupta (D) by L.Rs. and Ors., 2005(4) RCR (Civil) 235" [(2005) 12 SCC 1] in the following terms:
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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- a-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***

[2] 2006(3) R.C.R (Crl) 504

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".

31. In terms of Section 4 of the Evidence Act whenever it is provided by the Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved. The words 'proved' and 'disproved' have been defined in Section 3 of the Evidence Act (the interpretation clause) to mean: -

"Proved- 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.

Disproved- A fact is said to be disproved when, after considering the matters before it the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist."

32. Applying the said definitions of 'proved' or 'disproved' to 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 non-existence 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.

33. A Division Bench of this Court in Bharat Barrel & Drum Manufacturing Company v. Amin Chand Payrelal 1999(2) RCR (Civil) 615: [(1999) 3 SCC 35] albeit in a civil case laid down the law in the following terms:

"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 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".**

34. This Court, therefore, clearly opined that it is not necessary for the defendant to disprove the existence of consideration by way of direct evidence.

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

*** *** ***

42. A presumption is a legal or factual assumption drawn from the existence of certain facts.

43. In P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd edition, at page 3697, the term 'presumption' has been defined as under:

"A presumption is an inference as to the existence of a fact not actually known arising from its connection with another which is known.

A presumption is a conclusion drawn from the proof of facts or circumstances and stands as establishing facts until overcome by contrary proof.

A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged but of which there is no direct proof. It follows, therefore that a presumption of any fact is an inference of that fact from others that are known".(per ABBOTT, C.J., R. v. Burdett, 4 B. & Ald, 161).

The word 'Presumption' inherently imports an act of reasoning- a conclusion of the judgment; and it is applied to denote such facts or moral phenomena, as from experience we known to be invariably, or commonly, connected with some other related facts.(Wills on Circumstantial Evidence).

A presumption is a probable inference which common sense draws from circumstances usually occurring in such cases. The slightest presumption is of the nature of probability, and there are almost infinite shades from slight probability to the highest moral certainty. A presumption, strictly speaking, results from a previously *known and ascertained connection between the presumed fact and the fact from which the inference is made."*

44. Having noticed the effect of presumption which was required to be raised in terms of Section 118(a) of the Act, we may also notice a decision of this Court in regard to 'presumption' under Section 139 thereof.

45. In Hiten P. Dalal v. Bratindranath Banerjee, 2001(3) RCR (Criminal) 460:[(2001) 6 SCC 16], a 3- Judge Bench of this Court held that although by reason of Sections 138 and 139 of the Act, the presumption of law as distinguished from presumption of fact is drawn, the court has no other option but to draw the same in every case where the factual

basis of raising the presumption is established. Pal, J. speaking for a 3-Judge Bench, however, opined:

"..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.

In other words, provided the facts required to form the basis of a presumption of law exist, 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"."

46. The court, however, in the fact situation obtaining therein, was not required to go into the question as to whether an accused can discharge the onus placed on him even from the materials brought on records by the complainant himself. Evidently in law he is entitled to do so.

47. In Goaplast (P) Ltd. v. Chico Ursula D'Souza and Another [(2003) 3 SCC 232], upon which reliance was placed by the learned counsel, this Court held that the presumption arising under Section 139 of the Act can be rebutted by adducing evidence and the burden of proof is on the person who want to rebut the presumption. The question which arose for consideration therein was as to whether

closure of accounts or stoppage of payment is sufficient defence to escape from the penal liability under Section 138 of the Act. The answer to the question was rendered in the negative. Such a question does not arise in the instant case.

48. In Kundan Lal Rallaram v. Custodian, Evacuee Property, Bombay [AIR 1961 SC 1316], Subba Rao, J., as the learned Chief Justice then was, held that while considering the question as to whether burden of proof in terms of Section 118 had been discharged or not, relevant evidence cannot be permitted to be withheld. **If a relevant evidence is withheld, the court may draw a presumption to the effect that if the same was produced might have gone un-favorable to the plaintiff. Such a presumption was itself held to be sufficient to rebut the presumption arising under Section 118 of the Act stating:**

"Briefly stated, the burden of proof may be shifted by presumptions of law or fact, and presumptions of law or presumptions of fact may be rebutted not only by direct or circumstantial evidence but also by presumptions of law or fact. We are not concerned here with irrebuttable presumptions of law."

[Emphasis supplied]

The Hon'ble Supreme Court in ***M/s Kumar Exports*** *versus* ***M/s Sharma Carpets***[3], held as under:

"9. In order to determine the question whether offence punishable under Section 138 of the Act is made out against the appellant, it will be necessary to examine the scope and ambit of presumptions to be raised as envisaged by the provisions of Sections 118 and 139 of the Act. In a suit to enforce a simple contract, the plaintiff has to aver in his pleading that it was made for good consideration and must substantiate it by evidence. But to this rule, the negotiable instruments are an exception. 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,

[3] 2009(1) R.C.R (Crl) 478

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) as to order of endorsements, (vi) as to appropriate stamp and (vii) as to holder being a holder in due course. 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. 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" (ir-rebuttable). The term 'presumption' is used to designate an inference, affirmative or dis-affirmative 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". 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.

10. 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.

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 it- self evidence, but only makes a prima facie case for a party for whose benefit it exists.

11. 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" 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. 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. 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.

12. The defence of the appellant was that he had agreed to purchase woolen carpets from the respondent and had is- sued the cheques by way of advance and that the respondent did not supply the carpets. It is the specific case of the respondent that he had sold woolen carpets to the appellant on 6.8.1994 and in discharge of the said liability the appellant had issued two cheques, which were ultimately dishonored. In support of his case the respondent produced the carbon copy of the bill. A perusal of the bill makes it evident that there is no endorsement made by the respondent accepting the correctness of the contents of the bill. The bill is neither signed by the appellant. On the contrary, the appellant examined one official from the Sales Tax Department, who positively asserted before the Court that the respondent had filed sales tax return for the Assessment Year 1994-95 indicating that no sale of woolen carpets had taken place during the said Assessment Year and, therefore, sales tax was not paid. The said witness also produced the affidavit sworn by the respondent indicating that during the year 1994-95 there was no sale of woolen carpets by the respondent. Though the complain- ant was given sufficient opportunity to cross-examine the said witness, nothing could be elicited during his cross-examination so as to create doubt about his assertion that no transaction of sale of woolen carpets was effected by the respondent during the year 1994-95. Once the testimony of the official of the Sales Tax Department is accepted, it be- comes evident that no transaction of sale of woolen carpets had taken place between the respondent and the appellant, as alleged by

the respondent. When sale of woolen carpets had not taken place, there was no existing debt in discharge of which, the appellant was expected to issue cheques to the respondent. Thus the accused has discharged the onus of proving that the cheques were not received by the holder for discharge of a debt or liability. Under the circumstances the defence of the appellant that blank cheques were obtained by the respondent as advance payment also becomes probable and the onus of burden would shift on the complainant. The complainant did not produce any books of account or stock register maintained by him in the course of his regular business or any acknowledgement for delivery of goods, to establish that as a matter of fact woolen carpets were sold by him to the appellant on August 6, 1994 for a sum of Rs. 1,90,348.39. Having regard to the materials on record, this Court is of the opinion that the respondent failed to establish his case under Section 138 of the Act as required by law and, there- fore, the impugned judgment of the High Court is liable to be set aside.

(Emphasis supplied)

The Hon'ble Supreme Court in ***Rangappa*** *versus* ***Mohan***[4] held as under:-

> "9. Ordinarily in cheque bouncing cases, what the courts have to consider is whether the ingredients of the offence enumerated in Section 138 of the Act have been met and if so, whether the accused was able to rebut the statutory presumption contemplated by Section 139 of the Act. With respect to the facts of the present case, it must be clarified that contrary to the trial court's finding, Section 138 of the Act can indeed be attracted when a cheque is dishonoured on account of 'stop payment' instructions sent by the accused to his bank in respect of a post-dated cheque, irrespective of insufficiency of funds in the account. This position was clarified by this Court in Goa Plast (Pvt.) Ltd. v. Chico Ursula D'Souza, 2003(2) RCR (Criminal) 131 : 2004(1) Apex Criminal 55 : (2003) 3 SCC 232, wherein it was held :

[4] 2010(3) R.C.R (Crl) 164

"Chapter XVII containing Sections 138 to 142 was introduced in the Act by Act 66 of 1988 with the object of inculcating faith in the efficacy of banking operations and giving credibility to negotiable instruments in business transactions. These provisions were intended to discourage people from not honouring their commitments by way of payment through cheques. The court should lean in favour of an interpretation which serves the object of the statute. A post-dated cheque will lose its credibility and acceptability if its payment can be stopped routinely. The purpose of a post-dated cheque is to provide some accommodation to the drawer of the cheque. Therefore, it is all the more necessary that the drawer of the cheque should not be allowed to abuse the accommodation given to him by a creditor by way of acceptance of a post-dated cheque. In view of Section 139, it has to be presumed that a cheque is issued in discharge of any debt or other liability. The presumption can be rebutted by adducing evidence and the burden of proof is on the person who wants to rebut the presumption. This presumption coupled with the object of Chapter XVII of the Act leads to the conclusion that by countermanding payment of a post-dated cheque, a party should not be allowed to get away from the penal provision of Section 138. A contrary view would render Section 138 a dead letter and will provide a handle to persons trying to avoid payment under legal obligations undertaken by them through their own acts which in other words can be said to be taking advantage of one's own wrong "

10. It has been contended on behalf of the appellant-accused that the presumption mandated by Section 139 of the Act does not extend to the existence of a legally enforceable debt or liability and that the same stood rebutted in this case, keeping in mind the discrepancies in the complainant's version. It was reasoned that it is open to the accused to rely on the materials produced by the complainant for disproving the existence of a legally enforceable debt or liability. It has been contended that since the complainant did not conclusively show whether a debt was owed to him in respect of a hand loan or in relation to expenditure incurred during the construction of the accused's house, the existence of a legally enforceable debt or liability had not been shown,

thereby creating a probable defence for the accused. Counsel appearing for the appellant-accused has relied on a decision given by a division bench of this Court in Krishna Janardhan Bhat v. Dattatraya G. Hegde, 2008(1) RCR (Criminal) 695 : 2008(1) RCR (Civil) 498 : 2008(1) R.A.J. 279 : (2008) 4 SCC 54, the operative observations from which are reproduced below (S.B. Sinha, J. at Paras. 29-32, 34 and 45):

"29. Section 138 of the Act has three ingredients viz.:

(i) that there is a legally enforceable debt

(ii) that the cheque was drawn from the account of bank for discharge in whole or in part of any debt or other liability which presupposes a legally enforceable debt; and

(iii) that the cheque so issued had been returned due to insufficiency of funds.

30. The proviso appended to the said section provides for compliance with legal requirements before a complaint petition can be acted upon by a court of law. Section 139 of the Act merely raises a presumption in regard to the second aspect of the matter. Existence of legally recoverable debt is not a matter of presumption under Section 139 of the Act. It merely raises a presumption in favour of a holder of the cheque that the same has been issued for discharge of any debt or other liability.

31. The courts below, as noticed hereinbefore, proceeded on the basis that Section 139 raises a presumption in regard to existence of a debt also. The courts below, in our opinion, committed a serious error in proceeding on the basis that for proving the defence the accused is required to step into the witness box and unless he does so he would not be discharging his burden. Such an approach on the part of the courts, we feel, is not correct.

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 the accused and that of the

prosecution in a criminal case is different.

... .

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 the 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."

(emphasis supplied)

Specifically in relation to the nature of the presumption contemplated by Section 139 of the Act, it was observed;

"45. We are not oblivious of the fact that the said provision has been inserted to regulate the growing business, trade, commerce and industrial activities of the country and the strict liability to promote greater vigilance in financial matters and to safeguard the faith of the creditor in the drawer of the cheque which is essential to the economic life of a developing country like India. This however, shall not mean that the courts shall put a blind eye to the ground realities. Statute mandates raising of presumption but it stops at that. It does not say how presumption drawn should be held to have been rebutted. Other important principles of legal jurisprudence, namely, presumption of innocence as a human right and the doctrine of reverse burden introduced by Section 139 should be delicately balanced. Such balancing acts, indisputably would largely depend upon the factual matrix of each case, the materials brought on record and having regard to legal principles governing the same."

(emphasis supplied)

11. With respect to the decision cited above, counsel appearing for the respondent-claimant has submitted that the observations to the effect that the 'existence of legally recoverable debt is not a matter of presumption under Section 139 of the Act' and that 'it merely raises a presumption in favour of a holder of the cheque that the same has been issued for discharge of any debt or other liability' [See Para. 30 in Krishna Janardhan Bhat (supra)]

are in conflict with the statutory provisions as well as an established line of precedents of this Court. It will thus be necessary to examine some of the extracts cited by the respondent-claimant. For instance, in Hiten P. Dalal v. Bratindranath Banerjee, 2001(3) RCR (Criminal) 460 : (2001) 6 SCC 16, it was held (Ruma Pal, J. at Paras. 22-23):

"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, , it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption has 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 (). 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 probability of the non- existence of the presumed fact.

23. In other words, provided the facts required to form the basis of a presumption of law exists, the discretion is left with the Court 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."

(emphasis supplied)

12. The respondent-claimant has also referred to the decision reported as Mallavarapu Kasivisweswara Rao v. Thadikonda Ramulu Firm & Ors., 2008(3) RCR (Criminal) 205 : 2008(3) RCR (Civil) 336 : 2008(4) R.A.J. 54 : 2008 (8) Scale 680, wherein it was observed :

"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 "

This decision then proceeded to cite an extract from the earlier decision in Bharat Barrel & Drum Manufacturing Company v. Amin Chand Pyarelal, (1993) 3 SCC 35 (Para. 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 improbably or doubtful or the same was illegal, the onus 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, act upon the plea that it did not exist."

Interestingly, the very same extract has also been approvingly cited in Krishna Janardhan Bhat (supra).

13. With regard to the facts in the present case, we can also refer to the following observations in M.M.T.C. Ltd. and Anr. v. Medchl Chemicals & Pharma (P) Ltd., 2002(1) RCR (Criminal) 318 : (2002) 1 SCC 234 (Para. 19) :

"... The authority shows that even when the cheque is dishonoured by reason of stop payment instruction, by virtue of Section 139 the Court has to presume that the cheque was received by the holder for the discharge in whole or in part, of any debt or liability. Of course this is a rebuttable presumption. The accused can thus show that the 'stop payment' instructions were not issued because of insufficiency or paucity of funds. If the accused shows that in his account there was sufficient funds to clear the amount of the cheque at the time of presentation of the cheque for encashment at the drawer bank and that the stop payment notice had been issued because of other valid causes including that there was no existing debt or liability at the time of presentation of cheque for encashment, then offence

under Section 138 would not be made out. The important thing is that the burden of so proving would be on the accused "

14. **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. 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 accused/defendant cannot be expected to discharge an unduly high standard or proof. 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."

(Emphasis supplied)

The Hon'ble Supreme Court in ***Basalingappa*** *versus* ***Mudibasappa***[5] held as under:-

"23. 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 follow- ing 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 rebutta- ble 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.**

(v) **It is not necessary for the accused to come in the witness box to support his defence"**

(Emphasis supplied)

[5] 2019(2) R.C.R (Crl) 863

(11) A perusal of the aforementioned judgments would show that the presumption under the provisions of the Negotiable Instruments Act is a rebuttable one and the onus is on the accused to raise a probable defence. He can either show that the 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 ought to suppose that no consideration and debt existed. Further, specific defence in this regard may not have to be led by the accused but he can rely on the cross-examination of the complainant and his witnesses to rebut the said presumption. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

(12) In the present case, the cheque was dishonored on 12.09.2018. As per document Ex.DA, on 17.11.2018 a sum of Rs.30,000/- had been given by the accused-respondent to the petitioner-complainant in cash in the presence of DW1-R.K. Nahar and DW2-Ashok Kumar son of Sohan Lal. As per the defence witnesses, the complainant had promised to return the aforesaid cheque in lieu of the cash payment made but did not do the same. It may also be relevant to mention here that mere denial by the complainant of his signatures on Ex.DA would not be sufficient to disprove the said document because the complainant himself did not examine any handwriting expert to establish that the signatures on the said document were not affixed by him. Further, no complaint of any forgery had been filed by the complainant against the accused-respondent and or the defence witnesses. On the contrary, the said document had also been signed by Rakesh Soni, brother of the complainant who for reasons best known to the complainant was not brought to the witness box as a complainant witness or to deny his signatures on the said document.

(13) In view of the above, the accused-respondent has been able to rebut the presumption of there being a legally enforceable debt.

(14) As regards the legal position in an appeal against acquittal and the scope of interference called for by the Court, the Hon'ble Supreme Court in the matter of M.G. Aggarwal Versus State of Maharashtra, AIR 1963 SC 200, held 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 against conviction. 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 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 demeanor 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 emphasized, 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, (1934) L.R. 61 I.A. 398: AIR 1934 PC 227 and Nur Mohammad v. Emperor AIR 1945 PC 151.*

(17) In some of the earlier decisions of this Court, however, in emphasizing 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 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 emphasise 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 a judgment of acquittal, the High Court must necessarily characterize 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 finding of fact recorded by the High Court particularly where the said findings are based on appreciation of oral evidence.

The Hon'ble Supreme Court in ***C. Antony*** *versus* ***K.G. Raghavan Nair***[6]**,** held as under:-

> **"6.This Court in a number of cases has held that though the appellate court has full power to review the evidence upon which the order of acquittal is founded, still while exercising such an appellate power in a case of acquittal, the appellate court, should not only consider every matter on record having a bearing on the question of fact and the reasons given by the courts below in support of its order of acquittal, it must express its reasons in the judgment which led it to hold that the acquittal is not justified. In those line of cases this Court has also held that the appellate court must also bear in mind the fact that the trial court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the order of acquittal, and in such cases if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial court. See Bhim Singh Rup Singh v. State of Maharashtra (1974(3) SCC 762) and Dharamdeo Singh & Ors. v. The State of Bihar (1976(1) SCC 610)**.
>
> (Emphasis supplied)

The Hon'ble Supreme Court ***in State of Rajasthan*** *versus* ***Mohan Lal***[7], held as under:-

> "5. In view of rival submissions of the parties, we think it

[6] 2002(4) R.C.R. (Crl) 750
[7] 2009(2) R.C.R. (Crl) 812

proper to consider and clarify the legal position first. Chapter XXIX (Sections 372- 394) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the present Code") deals with appeals. Section 372 expressly declares that no appeal shall lie from any judgment or order of a criminal court except as provided by the Code or by any other law for the time being in force. Section 373 provides for filing of appeals in certain cases. Section 374 allows appeals from convictions. Section 375 bars appeals in cases where the accused pleads guilty. Likewise, no appeal is maintainable in petty cases (Section 376). Section 377 permits appeals by the State for enhancement of sentence. Section 378 confers power on the State to present an appeal to the High Court from an order of acquittal. The said section is material and may be quoted in extenso:

"378. Appeal in case of acquittal.--(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court, or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal, subject to the provisions of sub-section (3), to the High Court from the order of acquittal.

(3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of

special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub- section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub- section (1) or under sub-section (2).

6. Whereas Sections 379-380 cover special cases of appeals, other sections lay down procedure to be followed by appellate courts.

7. It may be stated that more or less similar provisions were found in the Code of Criminal Procedure, 1898 (hereinafter referred to as "the old Code") which came up for consideration before various High Courts, Judicial Committee of the Privy Council as also before this Court. Since in the present appeal, we have been called upon to decide the ambit and scope of the power of an appellate court in an appeal against an order of acquittal, we have confined ourselves to one aspect only i.e. an appeal against an order of acquittal.

8. Bare reading of Section 378 of the present Code (appeal in case of acquittal) quoted above, makes it clear that no restrictions have been imposed by the legislature on the powers of the appellate court in dealing with appeals against acquittal. When such an appeal is filed, the High Court has full power to re- appreciate, review and reconsider the evidence at large, the material on which the order of acquittal is founded and to reach its own conclusions on such evidence. Both questions of fact and of law are open to determination by the High Court in an appeal against an order of acquittal.

9. It cannot, however, be forgotten that in case of acquittal, there is a 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 should be presumed to be innocent unless he is proved to be guilty

by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial court.

*** *** ***

34. From the above decisions, in Chandrappa and Ors. v. State of Karnataka, 2007(2) RCR (Criminal) 92: 2007(4) SCC 415), the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal were culled out:

(1) **An appellate court has full power to review, re-appreciate 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 emphasis 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.**

[Emphasis supplied]

The Hon'ble Supreme Court in ***Lunaram*** *versus* ***Bhupat Singh & others***[8], held as under:-

> **"6. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.** The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See Bhagwan Singh v. State of M.P, 2003 (3) SCC 21). The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are substantial reasons for doing so. If the impugned judgment is clearly unreasonable and irrelevant and convincing materials have been unjustifiably eliminated in the process, it is a substantial reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra (1973 (2) SCC 793), Ramesh Babulal Doshi v. State of Gujarat (1996 (9) SCC 225), Jaswant Singh v. State of Haryana (2000 (4) SCC 484), Raj Kishore Jha v. State of Bihar (2003 (11) SCC 519), State of Punjab

[8] 2010(5) R.C.R. (Crl) 530

v. Karnail Singh (2003 (11) SCC 271), State of Punjab v. Phola Singh (2003 (11) SCC 58), Suchand Pal v. Phani Pal (2003 (11) SCC 527) and Sachchey Lal Tiwari v. State of U.P. (2004 (11) SCC 410).

[Emphasis supplied]

The Hon'ble Supreme Court has held in the matter of ***Nagbhushan*** *versus* ***State of Karnataka***[9] **as under:**

"5.2 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.

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. 1973 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**

[9] (2021) 5 SCC 222,

Singh (2007) 13 SCC 102, S. Rama VS. 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 SC 216, 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 emphasis 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 demeanor 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 summarized 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)

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

Officer-cum-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)

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.

5.3 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., 1973 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 the judgment 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 re-appreciate 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 re-appreciation 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 by this 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."

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 counsel appearing 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 re-appreciate the evidence and record its own conclusion. This Court scrutinized 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.

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 demean our 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.

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]

This Court ***"Karan Anand*** *versus* ***Kamal Bakshi***[10]**,** held as under:-

> "5. In the circumstances, the finding of acquittal recorded by the trial Court cannot be said to be perverse or contrary to the material on record. In fact there is no infirmity in the reasoning assigned by the trial Court for acquitting the accused/respondent. It is a settled law as has been held in C. Antony Vs. K.G. Raghavan Nair, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.
>
> [Emphasis supplied]

This Court ***Rekha*** *versus* ***State of Haryana & another***[11]**,** held as under:-

> "13.While granting the leave applied for, this Court is to bear in mind that in case of acquittal there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the Fundamental principles of criminal jurisprudence that every person is presumed to be innocent unless he is proved to be guilty by a competent Court of law. Secondly, the accused having secured acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court. When two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."
>
> [Emphasis supplied]

(15) The judgments of the Hon'ble Supreme Court and this Court are to the effect that while an Appellate Court has full power to review,

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[10] 2015(4) R.C.R. (Crl) 595
[11] 2019(4) R.C.R. (Crl) 294

re-appreciate and reconsider the evidence upon which the order of acquittal is founded, it is equally true that there is a double presumption in favour of the innocence of the accused, firstly on account of the presumption of innocence available to an accused and secondly on account of the fact that the competent Court has acquitted the accused and therefore, if two reasonable conclusions were possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the Trial Court, merely, because the Appellate Court could have arrived at a different conclusion than that of the Trial Court. However, where the judgment appealed against is totally perverse and the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant or inadmissible material, then the Appellate Court would be well within its powers to interfere with the said findings and set them aside.

(16) In view of the detailed discussions hereinabove as also the law enunciated by the Hon'ble Supreme Court and this Court, the respondent- accused has been able to rebut the presumption that the cheque was issued in the discharge of a legally enforceable debt and the view taken by the Trial Court while acquitting the accused is a reasonable view based on the evidence on the record and cannot be said to be perverse and as such is not required to be interfered with.

(17) In view of the above, this Court sees no reason to interfere with the well reasoned judgment of the Trial Court and therefore, the leave to appeal is hereby dismissed.

Shubreet Kaur