IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1187 of 2017
With
R/CRIMINAL APPEAL NO. 1191 of 2017
With
R/CRIMINAL APPEAL NO. 1192 of 2017
With
R/CRIMINAL APPEAL NO. 1193 of 2017
With
R/CRIMINAL APPEAL NO. 1194 of 2017
With
R/CRIMINAL APPEAL NO. 1195 of 2017
With
R/CRIMINAL APPEAL NO. 1196 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS JUSTICE SONIA GOKANI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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SHASHI MOHAN GOYANKA
Versus
STATE OF GUJARAT

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Appearance:
MR ABHIRAJ R TRIVEDI(5576) for the PETITIONER(s) No. 1
MR P P MAJMUDAR(5284) for the RESPONDENT(s) No. 2

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CORAM: HONOURABLE MS JUSTICE SONIA GOKANI

Date : 08/01/2018

ORAL COMMON JUDGMENT

1. This group of applications since arise out of the selfsame facts and involve identical questions of law, as also the same parties, this Court deems it fit to decide them by way of present common judgment. For the purpose of adjudicating the matter, the facts are drawn from Criminal Appeal No.1187 of 2017.

:: *FACTS* ::

2. Shorn off unnecessary details, the case of the appellant-original complainant-Shashi Mohan Goyanka is that the appellant had his office in Windsor Plaza. His friend Jagdishbhai has a shop in National Plaza, Alkapuri and the complainant used to go to the shop of his friend Jagdishbhai and near the shop of Jagdishbhai, there was a shop of the respondent No.2-accused of edible spices and, thereby all three came in contact. Their frequent visits turned into good acquaintance and friendship. The respondent No.2 had financial difficulty and, therefore, had demanded certain amount from the complainant,

who had given a sum of Rs.22.50 lakh with an assurance from the respondent No.2 to be returned within a stipulated time limit.

2.1 It is further the case of the appellant after a long time, on the repeated demands of the appellant, certain cheques were issued by the respondent No.2 in favour of the appellant. He also admitted his dues on a stamp paper. One of the cheques was bearing No.763352 dated December 01, 2008, for Rs.3,00,000/-, drawn on Corporation Bank, Alkapuri Branch, Vadodara. Under the signature of the respondent No.2, with written assurance that once deposited, the cheque will be honoured.

2.2 The appellant had deposited the said cheque in his bank, viz. Karnataka Bank. The said cheque came to be dishonoured on December 02, 2008, with an endorsement as "*Account Closed*".

2.3 A legal notice was issued on December 18, 2008 through an RPAD and also sent through Under Postal Certificate (UPC), which

ultimately came to be served, however, neither any reply was received nor had the respondent complied with the direction issued in the said notice.

2.4 Having found the alleged commission of the offence punishable under section 138 of the Negotiable Instruments Act, a complaint came to be filed before the Court of the learned Additional Chief Judicial Magistrate, Vadodara. After verifying the record, the complaint came to be registered and cognizance was taken by the Court under section 138 of the Negotiable Instruments Act and the process came to be issued against the respondent No.2.

2.5 On appearance of the respondent No.2, the documents were provided to him under section 207 of the Code of Criminal Procedure and his plea was recorded, where he pleaded not guilty to the charge and claimed to be tried.

2.6 It is necessary to make a mention at this stage that six other cheques for which six other complaints came to be lodged by the

present appellant, the details of the same are as follows :

Sr. No.	Cheque No.	Cheque Date	Amount	Bank
1.	763346	01.04.2008	3,00,000/-	Corporation Bank, Alkapuri Branch, Vadodara
2.	763347	01.05.2008	3,00,000/-	Corporation Bank, Alkapuri Branch, Vadodara
3.	763348	01.07.2008	3,00,000/-	Corporation Bank, Alkapuri Branch, Vadodara
4.	763349	01.08.2008	3,00,000/-	Corporation Bank, Alkapuri Branch, Vadodara
5.	763350	01.10.2008	3,00,000/-	Corporation Bank, Alkapuri Branch, Vadodara
6.	763351	01.11.2008	3,00,000/-	Corporation Bank, Alkapuri Branch, Vadodara
7.	763352	01.12.2008	3,00,000/-	Corporation Bank, Alkapuri Branch, Vadodara

3. Oral evidence as well as documentary evidence were allowed to be adduced. In the oral evidence, there is examination of the appellant as well as that of his friend Jagdishbhai Hundraj, have been recorded at Exhibits 13 and 60 respectively.

List of documentary evidence is reproduced as under :

Sr. No.	Particulars	Exhibit
1.	Written notes over stamp paper.	24
2.	Original cheque No.763352 dt.1/12/08.	25
3.	Original bank Return Memo dated.	26
4.	Original Bank intimation letter.	27
5.	Legal demand notice by complainant of dt.18/12/08.	28
6.	Post window slip & UPC certificate.	29
7.	Post acknowledgment card.	30
8.	Closing pursis.	31

4. After completion of recordance of the oral as well as documentary evidence, further statement of the respondent No.2 was recorded under the provision of the Code of Criminal Procedure.

4.1 According to him, he had never borrowed money from the appellant and had no transaction with the appellant/ complainant at all. He refused to have known the appellant-original complainant. However, according to him, his friend Jagdishbhai had advanced him money for which he had already paid with interest at the rate of 3 *per cent*. The

cheques which had been issued in the name of the complainant were also written by him under threat. He agreed to have closed the bank account and as per his explanation, for enhancing cash credit limit (C.C. limit), his account was closed. It is also his say that the notice which had been issued to the respondent No.2 after dishonour of the cheque was replied by him through his advocate. With regard to the written admission of having borrowed money from the appellant, he stated in his further statement that on a blank paper, the said Jagdishbhai had taken his signature and writing was made by him subsequently.

5. It is pertinent to note that the trial of the present cases was over in the year 2013, however, with the change of the learned Presiding Officer and on account of the ratio of the decision of the Apex Court in the case of ***Nitin Sevantilal Shah and another v. Manubhai***

Manjibhai Panchal[1], all such cases were once again tried with the change of learned Presiding Officer, as it was held in the said decision that with the change of the learned Presiding Officer, there has to be a *de novo* trial so far as summary trial is concerned.

6. Section 143 of the Negotiable Instruments Act provides that all offences under the said Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials, which are the provisions made for trying the case by way of summary trial under Chapter XXI. As the evidence partly recorded by one learned Presiding Officer and partly recorded by another learned Presiding Officer, the succeeding learned Presiding Officer is permissible to act on the evidence recorded by his predecessor or partly recorded by his predecessor, such permission is not available under the Code of

1 ***AIR 2011 SC 3076***

Criminal Procedure for summary trials. As provided under section 326 of the Code of Criminal Procedure, of course, the second proviso to section 143(1) permits that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

7. These provisions had given rise to various debates on the issue of *de novo* trial, which was set to rest after the decision of the Apex Court in the case of ***J.V. Baharuni (supra)***, wherein the Apex Court held that in a case that under the law is supposed to be tried summarily, the Court records evidence elaborately and in

verbatim and gives defence full scope to cross-examine witnesses, such procedure adopted is indicative that it is not summary procedure. Further, the Court held that before arriving at any conclusion with regard to nature of trial, there should be proper application of judicial mind and evidence on record must be thoroughly perused. Thus, when case in substance is not tried in summary way, though triable summarily, and is tried as regular summons case, successor Magistrate need not hear the case *de novo* and can act on evidence recorded by his predecessor to decide th case.

8. This had led to *de novo* trial of the entire matter and recording of further statement once again under section 313 of the Code of Criminal Procedure. Therefore, this Court needs to consider the further statement given by the respondent No.2 after the *de novo* trial on March 23, 2017 in Criminal Case No.44345 of 2009.

9. This Court notices that later on after the new number had been given to the case, his further

statement was recorded once again and in the second statement, he has stated in every answer that it was a wrong version put forth by the complainant. However, at the end of the same, he explained that he does not know the complainant and there is no money transaction. It was Jagdishbhai who used to give money for a scheme which he was running and for which he had no knowledge and the written acknowledgment that had been given on a stamp paper was taken under threat. It was given to Jagdishbhai and there was no transaction as such with Jagdishbhai.

The respondent No.2 chose not to examine anyone as his witness.

10. The trial Court, thus, after availing apt opportunities to both the sides and hearing the parties, on due appreciation concluded that there was no proof of legally enforceable debt and thereby, acquitted the respondent-accused from the charge of the offence punishable under section 138 of the Negotiable Instruments Act vide judgment and order of acquittal dated June 09, 2017. Aggrieved by the said decision, the

present appellant has moved this Court under section 378 of the Code of Criminal Procedure, 1973.

:: ***SUBMISSIONS ON BEHALF OF APPELLANT*** ::

11. This Court has heard Shri Abhiraj Trivedi, learned counsel appearing for the appellant-original complainant in all the matters. He has made his oral submissions at length and also given written submissions for and on behalf of the appellant. *A fortiori*, he has urged that the cheques have been issued by the respondent in discharge of his financial liability/ debt. These cheques were deposited within the period of their validity i.e. within six months. After the same were dishonoured, a notice had been issued to the respondent-accused within a period of 30 days from the date of receipt of the endorsement from the Bank. It is further stated that the respondent-accused failed to make payment within a period of 15 days from the date of receipt of such notice and, therefore, a complaint came to be filed within a period of 30

days after expiry of statutory period of 15 days in respective matter.

11.1 He has urged that the trial Court ought to have considered the written acknowledgment given on a separate stamp paper by the respondent acknowledging his dues to tune of Rs.22,50,000/-.

11.2 He has also further argued that the dishonour of cheque was on account of closure of the account and the return memo is indicative of the respondent having given cheque in discharge of his financial responsibility. He has further urged that the complainant had reasonably proved his initial burden of existence of legally enforceable debt and, therefore, the onus would shift upon the respondent-accused to rebut the legal presumption available to the complainant, who has failed to discharge such presumption. There has been a complete mis-application of law to the facts of the present case. Moreover, there has been a failure to reply to

the statutory notice, which is also an additional factor, which also ought to have weighed with the Court.

11.3 It is further his say that the trial Court had an ample power to compare the handwritings and signatures as provided under section 73 of the Indian Evidence Act.

11.4 In support of his submissions, he has sought to rely upon the following authorities :

(i) Kusum Ingots And Alloys Limited v. Pennar Peterson Securities Limited[2].

(ii) Anchor Capitals of India Ltd. v. State of Gujarat and another[3].

(iii) Girishbhai Natvarbhai Patel v. State of Gujarat and another[4].

(iv) Sri. Gurupadaswamy v. Sri M. Partha[5].

2 *(2000) 2 SCC 745*

3 *(1998(2) GLH 263*

4 *2006 (1) GLH 530*

5 *2015 (1) DCR 459*

(v) Santosh Mittal v. Sudha Dayal[6].

(vi) C.Duraisamy v. K. Balakrishnan[7].

(vii) Sayed Naushad Ali v. Siddhartha Sankar Dey and another[8].

(viii) Vijay Power Generators Ltd. v. Sumit Seth[9].

(ix) M/s.Investor Plaza v. Vijay Sachdeva and others[10].

(x) V. Thangaraj v. Sankaran Financiers[11].

(xi) Krishna Gupta and another v. State of West Bengal and another[12].

(xii) S. Prakash v. A. Palaniappan[13].

(xiii) L. Ashok Chand v. C. Ramabai Rep.by Ms.Suryakant[14].

:: *CONTENTIONS ON BEHALF OF RESPONDENT-ACCUSED* ::

12. *A contrario sensu*, Shri P.P. Majmudar, learned counsel appearing with the learned

6 ***2015 (1) DCR 445***

7 ***2015(1) DCR 289***

8 ***2014 (2) DCR 505***

9 ***2014 (2) DCR 470***

10 ***2012(1) DCR 393***

11 ***2008(2) DCR 615***

12 ***2008(2) DCR 277***

13 ***2017(1) DCR 612***

14 ***2017(1) DCR 595***

counsel Shri Vipul Sundesha for the respondent No.2, has fervently urged that the trial Court has acted in accordance with law and, therefore, this Court may not intervene. He has disputed the signature of the respondent No.2 on all the cheques. It is further urged that there is sheer misuse of cheques by the complainant and his friend. He has also emphasised the scope of the appeal and urged that the Appellate Court can have a different conclusion, that itself cannot be a ground to intervene and disturb the findings of the trial Court, unless they are found to be absolutely perverse, unsound and illegal. It is further urged that in four matters, notices have been replied by the respondent and in the rest of the matters, they were not replied, however, nothing would turn on that. It is also urged that the complainant was an Income-tax assessee, which had been admitted and yet he had not shown any amount in his Income-tax returns. He has not produced on record his statement that he was capable of lending such a huge amount to the respondent

No.2. It is further urged that only on oral version that the loan was advanced, in absence of any other reliable evidence, to say that the advancement has already taken place between the parties, it cannot be held that the initial burden itself has been discharged. The presumption would come into play at a much later stage. It is further urged by the learned counsel appearing for the respondent No.2 that the prosecution must prove the guilt beyond reasonable doubt. Preponderance of probabilities which in this case has been discharged by him and, therefore also, the trial Court committed no error.

12.1 It is the say of the learned counsel appearing for respondent No.2 that the version of the complainant has been rebutted. He had spoken of his office at the 8th floor, however, there was no question of rainy water at that floor to have damaged his office, and yet when he had stated of reissuance of all the cheques. The purpose of presumption is over when the presumption is rebutted and the only

parameter is whether a wise person can presume relying upon the substantial circumstances to say that the same rebutted.

12.2 He has emphasised that the source of income of the complainant has not been revealed and, therefore, that itself is a ground for acquittal. In the complaint, he has stated of knowing the respondent No.2 since the year 1995, whereas the witness has stated of their acquaintance from the year 2006. There is a gap of a decade. Cumulatively, when the Court has arrived at a conclusion properly, no disturbance by way of an appeal is necessary.

12.3 He has relied upon the following authorities in support of his version :

(i) Krishna Janardhan Bhat v. Dattatraya G. Hegde[15].

(ii) K. Subramani v. K. Damodara Naidu[16].

15 ***(2008) 4 SCC 54***

16 ***(2015) 1 SCC 99***

(iii) M.S. Narayana Menon @ Mani v. State of Kerala[17].

(iv) Kumar Exports v. Sharma Carpets[18].

(v) B.S. Gopal v. M.Krishna Murthy[19].

(vi) Vijay v. Laxman and another[20].

:: *SUBMISSIONS ON BEHALF OF RESPONDENT-STATE* ::

13. Shri L.R. Pujari, learned Additional Public Prosecutor appearing for the respondent-State, has urged that there is a serious flaw in the judgment and order of acquittal passed by the trial Court and, therefore, he has supported the case of the appellant-original complainant.

:: *LAW ON THE SUBJECT* ::

14. Considering the law on the subject, at the outset, the decision of the Apex Court in the case of ***Kusum Ingots and Alloys Limited v. Pennar Peterson Securities Limited***[21], shall need to be considered, wherein the moot question

17 *(2006) 6 SCC 39*

18 *(2009) 2 SCC 513*

19 *2009 (2) KCCR 1138*

20 *(2013) 3 SCC 86*

21 *(2000) 2 SCC 745*

before the Apex Court was whether a company and its Directors can be proceeded against for having committed an offence under section 138 of the Negotiable Instruments Act, which had been declared sick under the provisions of the Sick Industrial Companies Act, 1985. However, while deciding the said question, the Apex Court has threadbare considered the provisions of sections 138 to 141 of the Act and particularly, the dishonour of cheques for insufficiency of funds in the account.

Apt it would be to reproduce the relevant observations of the said decision, which read as under :

> *"10. On a reading of the provisions of S. 138 NI Act it is clear that the ingredients which are to be satisfied for making out a case under the provisions are :*
> *(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;*

(ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier;

(iii) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice;

xxx xxx xxx

12. Section 141 NI Act is a provision specifically dealing with the offences by companies. Therein it is laid down, inter

alia, that if the person committing an offence under S. 138 NI Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Under the proviso to sub-section (1) it is laid down that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his acknowledge, or that he had exercised all due diligence to prevent the commission of such offence."

14.1 This Court in the decision in the case of ***Anchor Capitals of India Ltd. (supra***) held that in the case of dishonour of cheque no specific averment in the complaint that the cheque which was issued was in fact issued in the discharge of a debt or a liability, is necessary. It is not fatal that such an averment is not made. The Court held that it is also not necessary for the complainant to specifically plead that the cheque which was issued to him and dishonoured was in fact

issued in the discharge of a debt or a liability.

14.2 In yet another decision of this Court in the case of ***Girishbhai Natvarbhai Patel (supra)***, the Court while discussing the presumption under section 139 of the Negotiable Instruments Act has held that the presumption is not merely required to be rebutted, but is required to be positively proved by the drawer that the cheques were not issued against the discharge of any liability or debt. In absence of any cogent evidence on the part of the accused, the trial Court could not come to the conclusion that the cheques were not issued against any existing liability. On the strength of leading cogent and convincing evidence in support of his claim, the positive proof needs to be dislodged by the accused. This presumption is a presumption in law requires to be demolished by the accused with cogent evidence and unless and until the same is demolished, it cannot be

said that the accused has discharged his burden successfully.

14.3 In the decision of the Karnataka High Court in the case of ***Sri.Gurupadaswamy (supra)***, the Court held that the complainant has to establish that he has means to lend money to the accused. Relying on the decision of the Apex Court in the case of ***Krishna Janardhan Bhat (supra)*** as well as ***Rangappa (supra)***, the High Court held that the presumption mandated by section 139 of the Negotiable Instruments Act does indeed include the existence of a legally enforceable debt or liability and to that extent the observation in the decision in the case of ***Krishna Janardhan Bhat (supra)*** was not correct. It was further held that presumption, however, is a rebuttable presumption and that it was open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. There is an initial presumption which favours the complainant. Section 139 of the Negotiable

Instruments 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. It is a device to prevent undue delay in the course of litigation.

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. The accused may even rely on materials submitted by the complainant himself, without having to lead any independent evidence, in order to raise such a defence. On facts, the Karnataka High Court chose not to interfere as the contentions were urged for the first time before the Appellate Court in the second round. None of the findings was found worth interfering with by the Karnataka High Court.

14.4 The Delhi High Court in the decision in the case of ***Santosh Mittal (supra***) has held that failure on the part of the accused to reply to the statutory notice under section

138 of the Negotiable Instruments Act leads to inference that there was merit in the complaint. The Delhi High Court held that the offence made punishable under section 138 of the Negotiable Instruments Act 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. 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 as observed in the case of ***Rangappa (supra)***.

14.5 In the decision of the Apex Court in the case of ***Kumar Exports (supra)***, the Apex Court has at length discussed the scope and ambit of the presumption to be raised as envisaged under sections 118 and 139 of the Negotiable Instruments Act. The Court held that unless contrary is proved, it shall be presumed that the holder in due course of the cheque received the cheque of the nature referred to under section 138 of the Negotiable Instruments Act in discharge of debt or liability.

Apt it would be reproduce the relevant observations of the said decision, which read as under :

"9. .. .. 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' is used to designate an inference, affirmative or disaffirrnative 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 itself 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."

14.6 The Apex Court in the case of ***Krishna Janardhan Bhat (supra***) was considering the question of burden of proof and presumption as to existence of the debt.

It would be appropriate to regurgitate relevant observations of the said decision, which read as under :

"20. Indisputably, a mandatory presumption is required to be raised in terms of Section 118(b) and Section 139 of the Act. Section 13(1) of the Act defines "negotiable instrument" to mean "a

promissory note, bill of exchange or cheque payable either to order or to bearer."
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.

21. The proviso appended to the said section provides for compliance of 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.

22. 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.

23. 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 records. 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.

24. In Bharat Barrel and Drum Manufacturing Company v. Amin Chand Pyarelal [(1999) 3 SCC 35] interpreting Section 118(a) of the Act, this Court opined : "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..."

25. 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 records by the parties but also by reference to the circumstances upon which he relies."

In totality of circumstances, the Apex Court held the decision of the High Court as justifiable that the prosecution has failed to make out a case against the accused.

14.7 In yet another decision of the Apex Court in the case of ***M.S. Narayana Menon @ Mani (supra)***, the Apex Court was considering the question of cheque issued for security or any other purpose and held that the same would not

fall under the purview of section 138 of the Negotiable Instruments Act.

Apt it would be to regurgitate relevant observations of the said decision, which read as under :

"33. What would be the effect of a presumption and the nature thereof fell for consideration before a Full Bench of the Andhra Pradesh High Court in G. Vasu v. Syed Yaseen Sifuddin Quadri [AIR 1987 AP 139]. In an instructive judgment, Rao, J. (as His Lordship then was) speaking for the Full Bench noticed various provisions of the Evidence Act as also a large number of case laws and authorities in opining:

"From the aforesaid authorities, we hold that once the defendant adduces evidence to the satisfaction of the Court that on a preponderance of probabilities there is no consideration in the manner pleaded in the plaint or suit notice or the plaintiff's evidence, the burden shifts to the plaintiff and the presumption 'disappears' and does not haunt the defendant any longer."

It was further held:

"For the aforesaid reasons, we are of the view that where, in a suit on a promissory note, the case of the defendant as to the circumstances under which the promissory note was executed is not accepted, it is open to the defendant to prove that the case set up by the plaintiff on the basis of the recitals in the promissory note, or the case set up in suit notice or in the plaint is not true and rebut the presumption under S. 118 by showing a preponderance of probabilities in his favour and against the plaintiff. He need not lead evidence on all conceivable modes of consideration for establishing that the promissory note is not supported by any consideration whatsoever. The words 'until the contrary is proved' in S. 118 do not mean that the defendant must necessarily show that the document is not supported by any form of consideration but the defendant has the option to ask the Court to consider the non-existence of consideration so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that consideration did not exist. Though the evidential burden is initially placed on the defendant by virtue of S. 118 it can be rebutted by the defendant by showing a preponderance of

probabilities that such consideration as stated in the pronote, or in the suit notice or in the plaint does not exist and once the presumption is so rebutted, the said presumption 'disappears'. For the purpose of rebutting the initial evidential burden, the defendant can rely on direct evidence or circumstantial evidence or on presumptions of law or fact. Once such convincing 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 plaintiff who has also the legal burden. Thereafter, the presumption under S. 118 does not again come to the plaintiff's rescue. Once both parties have adduced evidence, the Court has to consider the same and the burden of proof loses all its importance."

34. If for the purpose of a civil litigation, the defendant may not adduce any evidence to discharge the initial burden placed on him, a 'fortiori' even an accused need not enter into the witness box and examine other witnesses in support of his defence. He, it will bear repetition to state, need not disprove the prosecution case in its entirety as has been held by the High Court.

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

35. 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.

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

37. 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. and Ald, 161)

38. 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)

39. 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."

40. 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.

41. In Hiten P. Dalal v. Bratindranath Banerjee [(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.

42. 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"."

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.

43. 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.

44. 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 unfavourable 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."

Two adverse inferences in the instant case are liable to be drawn against the Second Respondent:

(i) He deliberately has not produced his books of accounts. (ii) He had not been maintaining the statutory books of accounts and other registers in terms of the bye-laws of Cochin Stock Exchange.

Moreover, the onus on an accused is not as heavy as that of the prosecution. It may be compared with a defendant in a civil proceeding.

In Harbhajan Singh v. State of Punjab and another [AIR 1966 SC 97], this Court while considering the nature and scope of onus of proof which the accused was required to discharge in seeking the protection of exception 9 to Section 499 of the Indian Penal Code stated the law as under:

".....In other words, the onus on an accused person may well be compared to the onus on a party in civil proceedings, and just as in civil proceedings the court trying an issue makes its decision by adopting the test of probabilities, so must a Criminal Court hold that the plea made by

the accused is proved if a preponderance of probability is established by the evidence led by him..."

45. In V. D. Jhingan v. State of Uttar Pradesh, [AIR 1966 SC 1762], it was stated :

".....It is well-established that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt....."

[See also State of Maharashtra v. Wasudeo Ramchandra Kaidalwar, AIR 1981 SC 1186]

46. In Kali Ram v. State of Himachal Pradesh [(1973) 2 SCC 808], Khanna, J., speaking for the 3-Judge Bench, held :

".....One of the cardinal principles which has always to be kept in view in our system of administration of justice for criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of

proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused. There are certain cases in which statutory presumptions arise regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to prove the existence of facts which have to be present before the presumption can be drawn. Once those facts are shown by the prosecution to exist, the Court can raise the statutory presumption and it would, in such an event, be for the accused to rebut the presumption. The onus even in such cases upon the accused is not as heavy as is normally upon the prosecution to prove the guilt of the accused. If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal."

47. In The State through the Delhi Administration v. Sanjay Gandhi [AIR 1978 SC 961], it was stated:

".....Indeed, proof of facts by preponderance of probabilities as in a civil case is not foreign to criminal

jurisprudence because, in cases where the statute raises a presumption of guilt as, for example, the Prevention of Corruption Act, the accused is entitled to rebut that presumption by proving his defence by a balance of probabilities. He does not have to establish his case beyond a reasonable doubt. The same standard of proof as in a civil case applies to proof of incidental issues involved in a criminal trial like the cancellation of bail of an accused....."

The evidences adduced by the parties before the trial court lead to one conclusion that the Appellant had been able to discharge his initial burden. The burden thereafter shifted to the Second Respondent to prove his case. He failed to do so.

The submission of the Second Respondent that the Appellant had not denied his entire responsibility and the dispute relating only to the quantum of debt cannot be accepted."

:: *APPRECIATION OF EVIDENCE i.e.ORAL & DOCUMENTARY* ::

15. The ratio laid down by the Apex Court in the aforementioned decisions needs to be appreciated in light of the evidence on record, and therefore, on reverting to the facts, it

transpires that after the evidence of the appellant-original complainant, the respondent-accused refused to know the complainant. He has also refused to have any transaction with the appellant and denied of giving any cheque for the legal debt. It was his case that many years ago, he had transacted with his friend Jagdishbhai and the said Jagdishbhai used to give money from a scheme which he used to run. He also had no idea as to whom money belongs. The said Jagdishbhai had made a note in the stamp paper and the cheque had been given to him under a threat.

16. This Court was considering the question of issuance of seven cheques, each for Rs.3,00,000/- i.e. total Rs.21 lakh. All the cheques when presented to the Bank, the same were dishonoured with an endorsement as "*account closed*". Hence, the appellant served the demand notice upon the respondent No.2, after which also no payment was made within a period of 15 days from the date of receipt of such intimation. Thereafter, therefore, within time

limit of 30 days, the complaint came to be filed under section 138 of the Negotiable Instruments Act.

16.1 If one looks at the evidence of the complainant, who was examined *vide* Exhibit 13, he has stated on oath that he is having his office at Windsor Plaza, Vadodara, and the shop of his friend Jagdishbhai is situated at National Plaza, Alkapuri. He has stated that the shop of the accused of edible spices is situated at National Plaza, which is nearer to the shop of the friend of the complainant i.e. Jagdishbhai. Therefore, since Jagdishbhai used to come to the shop of the complainant, he had introduced the accused with him. Thereafter, he had developed friendly relations with the accused. He has further stated that since the accused was in financial difficulty, he had asked for a loan of Rs.22.50 lakh and had promised to return the same as and when the complainant would demand.

16.2 This witness also stated that the document at Exhibit 24 is the writing on a stamp paper, wherein the respondent No.2 had admitted of having received a sum of Rs.22.50 lakh from the complainant.

16.3 Further, the entire thrust in the cross-examination of the complainant is that a huge amount of Rs.22.50 lakh could not have been lent in cash. He also is an income-tax payee since the year 1971. His partnership firm is in the name and style of Ashirwad Enterprise which also pays income-tax and his Returns of income-tax are being filed on regular basis.

16.4 Another line of cross-examination is that the families did not know each other and, hence, it was impossible that such a huge amount would be lent without any proximity.

16.5 This witness has also stated that in the endorsement of some of the cheques, the reason shown is 'account closed' and in some endorsements, it is shown as '*insufficiency of funds*'.

17. This Court notices that the document at Exhibit 24 which has been executed on a stamp paper of Rs.100/- bears the signature of the respondent No.2-original accused, wherein he has stated that on that day, he had given total seven cheques bearing Nos.763346 to 763352, each for Rs.3 lakh, drawn on Corporation Bank, Alkapuri Branch, Vadodara, to the appellant-original complainant from his Account No.40007. It has further been enumerated therein that on the earlier occasion, such cheques had been issued, however, due to rainy water, the same had been washed away and, therefore, the aforesaid fresh cheques had been reissued.

17.1 On these aspects also, the detailed cross-examination has been made and even elaborate submissions have been made by the learned counsel appearing for the respondent No.2. The appellant had no knowledge as to whether there was any transaction in the year 1990 between Jagdishbhai and the respondent No.2. He also was unaware that the amount of Rs.10 lakh lent

to the respondent No.2 by Jagdishbhai, he had obtained his signature on a blank stamp paper towards security.

18. It is vital to note at this stage that the complainant had agreed that after the demand notices were issued, some of the notices were replied to by the respondent No.2, wherein he had denied any transaction with the present appellant and had alleged that only with a view to extract money, cheques have been misused.

18.1 Apt it would be to refer to the further statement given lastly after the *de novo* trial, wherein he has simply denied all the aspects; and at the end of the statement, he has stated that he refused to know the present appellant and it emerges that he had no monetary transaction or any transaction with him. He has not given any cheque or writing for any amount lent to him. He further has stated that he knew Jagdishbhai and he had many transactions with him many years ago. By executing the writing and also by creating a

forged document, the complaint had been made by the present complainant against the respondent No.2.

19. It is to be noted that *vide* Exhibit 60, the friend of the complainant i.e. Jagdishbhai Hundraj Pahlajni, has been examined, who has stated along the line of the complainant. He has stated that the amount of Rs.22.50 lakh was lent by the appellant-original complainant to the respondent No.2. As against the same, the respondent No.2 had issued seven cheques and thereafter, since such cheques had been washed away in rain, the respondent No.2 had issued other seven cheques in favour of the respondent No.2.

19.1 This witness has also been cross-examined extensively and he had maintained consistently qua the lending of such amount to the respondent No.2. He, of course, had agreed that his shop is situated in National Plaza. He also denied of his having lent any money to the respondent No.2 and towards the same, the

blank cheques and the stamp papers were issued by the respondent No.2. The suggestion in the cross-examination that the cheques which were given towards security are denied to have been misused by him because of the dispute with the respondent No.2.

20. The complainant, thus, examined two of them i.e. he himself and his friend Jagdishbhai in whose presence the entire transaction had taken place and at whose instance, the amount had been lent to the respondent No.2. This Court notices that the emphasis on the part of the respondent No.2 is the aspect of source of income declared in the income-tax return of the complainant. It is true that all those who are transacting in the business, ordinarily would lend money through the cheque. It is also expected that the business community transacts by way of cheque and not in cash. Statutorily also, a penal provision has been introduced under sections 269 and 271 of the Income-tax Act, if any transaction is done in cash beyond the statutory

limit of Rs.20,000/- (Rupees Twenty Thousand only).

21. Section 269SS of the Income-tax Act provides that no person shall take or accept from any other person (hereafter in this section referred to as the depositor) any loan or deposit otherwise than by an account payee cheque or account payee bank draft if :

(a) the amount of such loan or deposit or the aggregate amount of such loan and deposit;

(b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount, remaining unpaid; or

(c) the amount of the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is twenty thousand rupees or more;

The proviso to the said section provides that the provisions of the said section shall not apply to any loan or deposit taken or accepted from, or any loan or deposit taken or accepted by, -

(a) Government;

(b) any banking company; post office; savings bank or co-operative bank;

(c) any corporation established by a Central, State or Provincial Act;

(d) any Government company as defined in section 617 of the Companies Act, 1956;

(e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

The second proviso to the said section provides further that the provisions of the said section shall not apply to any loan or deposit

where the person from whom the loan or deposit is taken or accepted and the person by whom the loan or deposit is taken or accepted are both having agricultural income and neither of them has any income chargeable to tax.

22. Section 271 of Income-tax Act imposes penalty for failure to furnish returns, comply with notices, concealment of income, etc., whereby section 271D provides for penalty for failure to comply with the provisions of section 269SS, wherein it is provided that if a person takes or accepts any loan or deposit in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so taken or accepted. It further provides that any penalty imposable under the said sub-section (1) of section 271D shall be imposed by the Deputy Commissioner.

23. This provision has been made so as to ensure that the people do not conceal their income and all the business transactions are

made by way of cheques. If not observed, as provided under section 269SS, any acceptance or lending of money in the sum of Rs.20,000/- or above, without issuance of a cheque, that itself would not make any transaction *per se* void. At the best, it would make the person who lends and accepts thereby, liable for penalty.

24. It is necessary at this stage also to refer to the emphasis laid by the learned counsel appearing for the respondent No.2 on the source of the fund which has been lent by the appellant. It has emerged from the detailed examination of the record, as also detailed examination-in-chief as well as cross-examination, that the complainant runs the business. He also maintains the books of account and he has his own factory in the name and style of 'Ashirwad Enterprise' and manufactures plastic. The said factory is situated at Jambusar. Ordinarily, any prudent business person would prefer to transact by cheque while lending money, but it is quite often noticed that the cash transactions in the business would

allow huge sum of money as cash, which sometimes are shown in the books of account as cash on hands or otherwise as amount available on books. Assuming that cheque transaction of lending of amount is absent and income-tax returns also do not reflect such amount, that at the best would hold the assessee or lender liable for action under the Income-tax laws. However, otherwise, if he succeeds in showing lending of such amount, both by oral evidence of himself and his friend, on whom even respondent No.2 relies upon and from the writing of the respondent No.2 given separately along with seven cheques signed by him, what possible reasons could weigh with the Court to deny the existence of legally enforceable debt in such glaring circumstances.

25. Considering the fact that the complainant maintains his books of account, coupled with the fact that the respondent No.2 had merely refuted on flimsy ground of his having transacted with witness Jagdishbhai and not with the complainant, has failed to discharge the burden which had shifted upon him. It is to be noted

that the respondent No.2 has admitted his signature on the impugned cheque. At no point of time, the cheque has been disputed and even if disputed for the sake of it, no attempt is made to get it checked through the Forensic Science Laboratory ('the FSL' hereinafter) nor has any application been given to the trial Court for referring the cheque to the FSL for being examined by the hand-writing expert. Once this fact is acknowledged that the signature on the cheque is that of the respondent No.2-accused, section 139 of the Negotiable Instruments Act would mandate the presumption that the cheque concerns a legally enforceable debt or liability. Of course, this presumption is in the nature of rebuttal and onus is on the accused thereafter to raise a probable defence.

25.1 As can be noticed from the chronology of events and the material that has been placed before this Court that the defence raised by the accused is not at all probable. The respondent No.2-accused states that the money was given as a hand loan by his friend

Jagdishbhai and not the appellant, also gets falsified completely by the version of Jagdishbhai. It appears that in case of all the seven cheques when notices were given prior to the filing of the complaint, he has chosen not to reply to four of the notices. Either on account of insufficiency of the funds or because he has closed account that the cheques could not be realized. All these circumstances cumulatively lead this Court to conclude that the appellant succeeded in proving the legally enforceable debt and no probable defence for rebutting the statutory presumption is raised by the respondent No.2.

25.2 Initial presumption as contemplated under section 139 of the Negotiable Instruments Act, when the proof of lending of the money and acceptance of the signatures on the cheques, shall need to be raised by the Court in favour of the appellant.

26. This Court cannot be oblivious of the fact that it is a mandatory presumption and the

defence raised by way of rebuttal evidence must be capable of being accepted by the Court. The Apex Court in case of ***Rangappa v. Mohan***[22], held thus:

> *"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) 3 SCC 232 : (AIR 2003 SC 2035), wherein it was held :*
>
> *"Chapter XVII containing Sections 138 to 142 was introduced in the Act by Act 66 of 1988 with the object of inculcating faith*

22 ***AIR 2010 SC 1898***

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 postdated 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 S. 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) 4 SCC 54 : (AIR 2008 SC

1325), 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."

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."

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) 6 SCC 16 : (AIR 2001 SC 3897), 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."

12. The respondent-claimant has also referred to the decision reported as Mallavarapu Kasivisweswara Rao v. Thadikonda Ramulu Firm and Ors., 2008 (8) SCALE 680 : (AIR 2008 SC 2898), 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 and Drum Manufacturing Company v. Amin Chand Pyarelal, (1999) 3 SCC 35 : (AIR 1999 SC 1008) (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. MedchI Chemicals and Pharma (P) Ltd., (2002) 1 SCC 234 : (AIR 2002 SC 182) (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 .

15. Coming back to the facts in the present case, we are in agreement with the High Court's view that the accused did not raise a probable defence. As noted earlier, the defence of the loss of a blank cheque was taken up belatedly and the accused had mentioned a different date in the 'stop payment' instructions to his bank. Furthermore, the instructions to 'stop payment' had not even mentioned that the cheque had been lost. A perusal of the trial record also shows that the accused appeared to be aware of the fact that the cheque was with the complainant. Furthermore, the very fact that the accused had failed to reply to the statutory notice under Section 138 of the Act leads to the inference that there was merit in the complainant's version. Apart from not raising a probable defence, the appellant-accused was not able to contest the existence of a legally enforceable debt or liability. The fact that the accused had made regular payments to the complainant in relation to the construction of his house

does not preclude the possibility of the complainant having spent his own money for the same purpose. As per the record of the case, there was a slight discrepancy in the complainant's version, in so far as it was not clear whether the accused had asked for a hand loan to meet the construction-related expenses or whether the complainant had incurred the said expenditure over a period of time . Either way, the complaint discloses the prima facie existence of a legally enforceable debt or liability since the complainant has maintained that his money was used for the construction-expenses. Since the accused did admit that the signature on the cheque was his, the statutory presumption comes into play and the same has not been rebutted even with regard to the materials submitted by the complainant."

27. The Apex Court also in case of ***T. Vasanthakumar (supra)*** referring to the said decision in the case of ***Rangappa (supra)*** has reiterated the said ratio.

"8. We have heard the learned counsel appearing for the appellant as also the learned counsel appearing for the

respondent. The complainant has alleged that the money (loan) was advanced to the defendant on 20-05-2006 in relation to which the cheque was issued to him by the defendant on 16-01-2007. The cheque was for Rs.5 lakhs only, bearing No.822408. It is of great significance that the cheque has not been disputed nor the signature of the defendant on it. There has been some controversy before us with respect to Section 139 of Negotiable Instruments Act as to whether complainant has to prove existence of a legally enforceable debt before the presumption under Section 139 of the Negotiable Instruments Act starts operating and burden shifts to the accused. Section 139 reads as follows:

"139. Presumption in favour of the 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."

9. This Court has held in its three Judge bench judgment in Rangappa v. Sri Mohan (2010) 11 SCC 441:

"The presumption mandated by Section 139

includes a presumption that there exists a legally enforceable debt or liability. 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 respondent complainant."

10. Therefore, in the present case since the cheque as well as the signature has been accepted by the accused respondent, the presumption under Section 139 would operate. Thus, the burden was on the accused to disprove the cheque or the existence of any legally recoverable debt or liability. To this effect, the accused has come up with a story that the cheque was given to the complainant long back in 1999 as a security to a loan; the loan was repaid but the complainant did not return the security cheque. According to the accused, it was that very cheque used by the complainant to implicate the accused. However, it may be noted that the cheque was dishonoured because the payment was stopped and not for any other reason. This implies that the accused had knowledge of the cheque being presented to the bank, or else how would the accused have instructed

her banker to stop the payment. Thus, the story brought out by the accused is unworthy of credit, apart from being unsupported by any evidence.

11. Further, the High Court relied heavily on the printed date on the cheque. However, we are of the view that by itself, in absence of any other evidence, cannot be conclusive of the fact that the cheque was issued in 1999. The date of the cheque was as such 20/05/2006. The accused in her evidence brought out nothing to prove the debt of 1999 nor disprove the loan taken in 2006.

12. In light of the above reasoning, we find that the learned High Court was misplaced in putting the burden of proof on the complainant. As per Section 139, the burden of proof had shifted on the accused which the accused failed to discharge. Thus, we find merit in this appeal.

13. The appeal is allowed. The judgment and order passed by the High Court is accordingly set aside and the judgment dated 22.01.2011, delivered by the Presiding Officer, Fast Track Court-I, Bengaluru, confirming the order passed by the XIIth Addl. Chief Metropolitan

Magistrate, Bengaluru, convicting the respondent for an offence under Section 138 of the Negotiable Instruments Act and sentencing her to pay a fine of Rs.5,55,000/-, in default to suffer simple Imprisonment for five months, is hereby restored."

26. The presumption under sections 118 and 139 of the Negotiable Instruments Act speaks of the presumption with regard to consideration that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration. It is also to be presumed as to date that every negotiable instrument bearing a date was made or drawn on such date; and as to time of acceptance that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity. It also provides as to time of transfer that every transfer of a negotiable instrument was made before its maturity. Further, it provides as to

order of endorsements that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon; and as to stamp, it provides that a lost promissory note, bill of exchange or cheque was duly stamped. It also provides qua holder in due course that the holder of a negotiable instrument is a holder in due course. If anyone alleges that the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

27. This is a special rule of evidence applicable to the Negotiable Instruments Act. The presumption is a statutory presumption under the law and, therefore, the Court is required to presume that the instrument was endorsed for consideration and also with regard to other presumptions specified in the said section. By

virtue of this provision, the Court is obliged to presume that the promissory note made is for consideration until contrary is proved. As held by the Apex Court in the case of ***Mallavarapu Kasivisweswara Rao v. Thadikonda Ramulu Firm and others***[23], that the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who would be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. It is also discernible from the above decision that if the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour.

28. None of the sorts could be seen from the record. Reasonably, when the appellant had proved the legally enforceable debt, not only

23 ***(2008) 7 SCC 655***

through his own evidence, but also through the evidence of his friend Jagdishbhai and also other contemporaneous record, more particularly, the document at Exhibit 24, which is a writing by which the respondent No.2 clearly indicates and accepts his liability to the tune of Rs.22.50 lakh. Thus, the burden had shifted upon the respondent No.2. The presumption which was needed to be drawn by the Court under section 118 of the Negotiable Instruments Act would oblige the Court to presume that the cheque had been issued for consideration and until contrary is proved, such presumption would hold the ground. Except the bare denial, nothing has been found to come on record to dislodge the positive proof that has been adduced by the appellant.

29. In the opinion of this Court, the entire argument that the rainy water could not have washed away the cheques, pales into insignificance and is not argument worth consideration, more particularly, when the respondent-accused in no unclear terms had accepted his liability of his having accepted

the amount of Rs.22.50 lakh from the complainant and it also declared the issuance of seven cheques of particular dates towards such legally enforceable debt. If it was an understanding between the parties qua issuance of fresh cheques, with an ostensible reason of old cheques having washed away, those are the non-issues. This Court cannot be oblivious of the fact that section 138 of the Negotiable Instruments Act has been made a penal provision not only for the cheques to give acceptability in the transaction, but it is the economic blood-line of the country and, therefore, the law makers have made the special rules of evidence by introducing sections 118 and 139 of the Negotiable Instruments Act.

30. The trial Court has committed a serious error by not discharging its obligation of recognising the evidentiary value and not appreciating the positive evidence which led to the reasonable proof of legally enforceable debt

existing on the side of the original complainant.

31. Resultantly, all the appeals are allowed. The judgment and order dated June 09, 2017 passed by the learned 8th Additional Senior Civil Judge & Additional Chief Judicial Magistrate, Vadodara in New Criminal Case Nos.44345/2009, 46499/2008, 46254/2008, 48420/2008, 40321/ 2008, 48631/2008 and 46503/2008, are quashed and set aside and the respondent-accused Rohitbhai J.Patel, is hereby convicted for the offence punishable under section 138 of the N.I.Act in each case.

(B) Individually, in every appeal, arising from a separate criminal case, the amount of fine and payment of compensation so also the punishment in default of payment shall be as under:-

Sr. No.	Criminal Appeal No.	New Criminal Case No.	Award of sentence	Amount of fine	Compen-sation awarded from fine to the accused	Punishment in default
1	Criminal Appeal No.1187/ 2017	44345/ 2009	1 year of simple imprison-ment	Rs.6,00,000/- (Double the Amount of cheque)	5.5 lakhs	1 year of simple imprisonment
2	Criminal Appeal No.1191/ 2017	46499/ 2008	1 year of simple imprison-ment	Rs.6,00,000/- (Double the Amount of cheque)	5.5 lakhs	1 year of simple imprisonment
3	Criminal Appeal No.1192/ 2017	46254/ 2008	1 year of simple imprison-ment	Rs.6,00,000/- (Double the Amount of cheque)	5.5 lakhs	1 year of simple imprisonment
4	Criminal Appeal No.1193/ 2017	48420/ 2008	1 year of simple imprison-ment	Rs.6,00,000/- (Double the Amount of cheque)	5.5 lakhs	1 year of simple imprisonment
5	Criminal Appeal No.1194/ 2017	40321/ 2008	1 year of simple imprisonm ent	Rs.6,00,000/- (Double the Amount of cheque)	5.5 lakhs	1 year of simple imprisonment
6	Criminal Appeal No.1195/ 2017	48631/ 2008	1 year of simple imprison-ment	Rs.6,00,000/- (Double the Amount of cheque)	5.5 lakhs	1 year of simple imprisonment
7	Criminal Appeal No.1196/ 2017	46503/ 2008	1 year of simple imprisonm ent	Rs.6,00,000/- (Double the Amount of cheque)	5.5 lakhs	1 year of simple imprisonment

(C) Thus, in each case, he shall undergo simple imprisonment for the period of one year and shall pay, in each Criminal Appeal, by way of fine the amount, which shall be double the amount of the cheque as detailed hereinabove. Out of the said amount of fine, in every Criminal Appeal, amount specified in column No.6 shall be paid to the appellant by way of an Account Payee Cheque. If not paid, he shall further undergo one year of rigorous imprisonment in default.

(D) Respondent No.2 shall surrender himself on expiry of the period of 6 weeks' period i.e. on or before 22.2.2018. If he does not surrender within the stipulated time period, the trial Court concerned shall issue non-bailable warrant to ensure that he undergoes the imprisonment awarded in each case.

Direct service is permitted.

(MS SONIA GOKANI, J)

Aakar