court, in exercise of powers under Article 142 of the Constitution of India and in the peculiar facts and circumstances of the case and the amount to be deposited is a huge amount, we grant further four weeks' time from today to the appellants to deposit the amount as directed by the first appellate court, confirmed by the High Court and further confirmed by this Court.

12. In view of the above and for the reasons stated above, we see no reason to interfere with the impugned common judgment and order passed by the High Court dismissing the revision application/s, confirming the order passed by the first appellate court directing the appellants to deposit 25% of the amount of fine/compensation pending appeals.

The instant appeals are accordingly dismissed with the aforesaid observations and appellants are now directed to deposit the amount directed by the first appellate court within extended period of four weeks from today.

***Result*:-** Appeals dismissed with the aforesaid observations.

ABC 2019 (II) 191 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Ashok Bhushan & K.M. Joseph, JJ.)
Criminal Appeal No. 636 of 2019
(Arising Out of SLP(Criminal) No. 8641 of 2018)
(From Karnataka High Court)
Decided on 09 April, 2019

BASALINGAPPA ***- Appellant(s).***

Versus

MUDIBASAPPA ***- Respondent(s).***

Law Covered*:-** ***(A) Negotiable Instruments Act, 1881 — Sections 118(a) & 139 — Principles enumerated under — (i) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability— (ii) The presumption u/s 139 is a rebuttable presumption & the onus is on the accused to raise the probable defence— The standard of proof for rebutting the presumption is that of preponderance of probabilities— (iii) To rebut the presumption, it

is open for the accused to rely on evidence led by him — or accused can also rely on the materials submitted by the complainant in order to raise a probable defence— Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely— (iv) It is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden— (v) It is not necessary for the accused to come in the witness box to support his defence. (Para 23)

(B) Negotiable Instruments Act, 1881 — Section 139 — Admission of the signature by the accused — a presumption shall be raised u/s 139 that cheque was issued in discharge of debt or liability — The question to be looked into is as to whether any probable defence was raised by the accused. (Para 24)

(C) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Financial capacity — there is burden on the complainant to prove his financial capacity—Negotiable Instruments Act, 1881— Section 138. (Para 24)

(D) Negotiable Instruments Act, 1881 — Section 139 — Presumption under — Burden of proof — Shifting of — Financial capacity — of the complainant questioned — no satisfactory reply — a probable defence on behalf of the accused shifted the burden on the complainant to prove his financial capacity & other facts — Indian Evidence Act, 1872 — Section 3 — Relevant fact. (Para 24)

(E) Negotiable Instruments Act, 1881 — Section 138 — Loan advanced by complainant — allegation of — Date of loan — Contradiction between complaint & examination-in-chief — No satisfactorily explanation — The High Court was unduly influenced by the fact that the accused did not reply the notice denying the execution of cheque or legal liability. Even before the trial court, appellant-accused has not denied his signature on the cheque. (Para 27)

(F) Negotiable Instruments Act, 1881 — Section 139 — Financial capacity of the complainant — Held, it was incumbent on the complainant to have explained his financial capacity — Court cannot insist on a person to lead negative evidence. (Para 28)

Facts:- *The complainant gave a notice to the accused, stating dishonour of cheque for want of sufficient funds. Thereafter, on non-payment of the amount, a complaint was filed by the complainant u/s 138 of the NI Act.*

The trial court held that the accused was able to raise a probable defense and the accused was acquitted. The High Court set aside the judgment of the trial court and convicted the accused. Accused aggrieved by judgment of the High Court filed the present appeal. The appeal was allowed and the judgment of the High Court was set aside and that of the trial court was restored.

Law of relief:- ***There is burden on the complainant to prove his financial capacity.***

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

(i) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

(ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden,

(v) It is not necessary for the accused to come in the witness box to support his defence. (Para-23)

Applying the preposition of law as noted above, in facts of the present case, it is clear that signature on cheque having been admitted, a presumption shall be raised under Section 139 that cheque was issued in discharge of debt or liability. The question to be looked into is as to whether any probable defence was raised by the accused. There was burden on the complainant to prove his financial capacity. In the year 2010-2011, as per own case of the complainant,

he made payment of Rs.18 lakhs. During his cross-examination, when financial capacity to pay Rs. 6 lakhs to the accused was questioned, there was no satisfactory reply given by the complainant. The evidence on record, thus, is a probable defence on behalf of the accused, which shifted the burden on the complainant to prove his financial capacity and other facts. (Para-24)

Thus, there is a contradiction in what was initially stated by the complainant in the complaint and in his examination-in-chief regarding date on which loan was given on one side and what was said in cross-examination in other side, which has not been satisfactorily explained. The High Court was unduly influenced by the fact that the accused did not reply the notice denying the execution of cheque or legal liability. Even before the trial court, appellant-accused has not denied his signature on the cheque. (Para-27)

We are of the view that when evidence was led before the Court to indicate that apart from loan of Rs. 6 lakhs given to the accused, within 02 years, amount of Rs. 18 lakhs have been given out by the complainant and his financial capacity being questioned, it was incumbent on the complainant to have explained his financial capacity. Court cannot insist on a person to lead negative evidence. The observation of the High Court that trial court's finding that the complainant failed to prove his financial capacity of lending money is perverse cannot be supported. We fail to see that how the trial court's findings can be termed as perverse by the High Court when it was based on consideration of the evidence, which was led on behalf of the defence. (Para-28)

Counsel:- ***For Appellant(s):*** *Mr. S. N. Bhat, Adv.*

For Respondent(s): *Mr. Naresh Kumar, Adv.*

Cases Referred:-

1. *Kishan Rao Vs. Shankargouda, (2018) 8 SCC 165, (Para-4)*
2. *Kali Ram Vs. State of Himachal Pradesh, (1973) 2 SCC 808, (Para-10)*
3. *Bharat Barrel & Drum Manufacturing Company Vs. Amin Chand Pyarelal, (1999) 3 SCC 35, (Para-11)*
4. *M.S. Narayana Menon Alias Mani Vs. State of Kerala and Another, (2006) 6 SCC 39, (Para-12)*
5. *Union of India v. Pramod Gupta, (2005) 12 SCC 1, (Para-12)*
6. *Krishna Janardhan Bhat Vs. Dattatraya G. Hegde, (2008) 4 SCC 54, (Para-15)*
7. *Kumar Exports Vs. Sharma Carpets, (2009) 2 SCC 513, (Para-17)*

8. Rangappa Vs. Sri Mohan, (2010) 11 SCC 441, (Para-18)

9. Krishna Janardhan Bhat, (2008) 4 SCC 54, (Para-19)

10. Gamini Bala Koteswara Rao and others Vs. State of Andhra Pradesh through Secretary, (2009) 10 SCC 636, (Para-28)

JUDGMENT

ASHOK BHUSHAN, J.: - This is an appeal by accused challenging the judgment of the High Court of Karnataka dated 04.07.2018 by which judgment the Criminal Appeal filed by the complainant against the acquittal of the accused has been allowed and the accused has been convicted under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to fine of Rs. 8,00,000/-, in default of which to undergo simple imprisonment for three months.

2. The brief facts of the case for deciding the appeal are:-

2.1 The complainant gave a notice dated 12.03.2012 to the accused, the appellant stating dishonour of cheque dated 27.02.2012 for an amount of Rs. 6,00,000/-for want of sufficient funds. Thereafter, on non-payment of the amount, a complaint dated 25.04.2012 was filed by the complainant under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "Act, 1881).

2.2 Allegation in the complaint was that the accused requested the complainant to lend a hand loan to meet out urgent and family necessary for a sum of Rs. 6,00,000/-. Complainant lent hand loan of Rs. 6,00,000/-dated 27.02.2012 in favour of the accused. A cheque dated 27.02.2012 for Rs. 6,00,000/-was given by the accused, but the same was returned by the bank with the endorsement "Funds Insufficient" on 01.03.2012.

2.3 After notice dated 12.03.2012, which was served on the accused on 13.03.2012, a complaint was filed. PW1 filed his examination-in-chief and was also cross-examined on behalf of the accused. The complainant in support of the complaint filed original cheque dated 27.02.2012, original cheque return memo dated 01.03.2012, office copy of the notice dated 12.03.2012, postal receipt dated 12.03.2012, acknowledgment letter issued by the Department of Post dated 16.04.2012 and letter to Head Post Office dated 11.04.2012. The accused in support of his defence filed Ex.D1 - certified copy of plaint in

O.S. No. 148 of 2011, Ex.D2-Certified copy of the private complaint No. 119/2012 in CC No. 2298 of 2012 and in Ext.D3, certified copy of registered sale agreement.

2.4 The trial court framed following two questions:-

1. Whether the complainant proves beyond all reasonable doubts that, the accused had issued a cheque bearing No. 839374 dated 27-02-2012 for Rs.6,00,000/- of Pragathi Gramin Bank, Nijalingappa Colony Branch, Raichur in favour of complainant, towards discharge of legally enforceable debt or liability and the same was dishonored for ' Funds Insufficient' and even after deemed legal notice the accused has not paid the debt covered under the above said cheque and thereby committed an offence punishable Under Section 138 of Negotiable Instruments Act?

2. What Order?

2.5 The trial court after considering the evidence and material on record held that if the accused is able to raise a probable defense which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. By judgment dated 20.02.2015, the accused was acquitted for the offence under Section 138. Complainant aggrieved by said judgment filed a Criminal Appeal under Section 378(4) of Code of Criminal Procedure. The High Court set aside the judgment of the trial court and convicted the accused for the offence under Section 138. Accused aggrieved by judgment of the High Court has come up in this appeal.

3. Shri S.N. Bhat, learned counsel for the appellant submits that accused has successfully rebutted the presumption under Section 139 and has raised probable defence, which was accepted by the trial court after considering the material on record. The High Court erred in setting aside the acquittal order. The accused has questioned the financial capacity of the complainant and without there being any proof of financial capacity, the High Court erred in observing that judgment of the trial court is perverse. It is submitted that burden of proof on accused under Section 138 is not a heavy burden as is on a prosecution to prove the offence beyond reasonable doubt. It is submitted that the complainant being a retired employee of Karnataka State Road Transport Corporation, who having retired in 1977 and encashed his retirement benefits of Rs. 8,00,000/-, there was no

financial capacity. It is submitted that complainant has filed cases under Section 138 against other persons also. Complainant had also made a payment of Rs. 4,50,000/- for the agreement of sale. The complainant was also a witness of a sale agreement executed by accused, where he received an amount of Rs. 15 lakhs as consideration. There was sufficient material on record to discharge the burden and the High Court erred in setting aside the acquittal order.

4. Learned counsel for the complainant refuting the submissions of the learned counsel for the appellant contends that signature on the cheque having been admitted by the accused, a presumption has rightly been raised that cheque was given in discharge of a debt or liability. The accused has not been able to prove any probable defence and the High Court has rightly convicted the accused. No case was taken by the accused that complainant has no other source of income. Learned counsel for the complainant has relied on judgment of this Court in ***Kishan Rao Vs. Shankargouda, (2018) 8 SCC 165.***

5. We have considered the submissions of the counsel for the parties and have perused the records.

6. To recapitulate facts again, the cheque dated 27.02.2012 was presented for encashment by the complainant, which was returned on 01.03.2012. Signature on the cheque is not denied by the accused, due to which presumption shall be raised that cheque was issued in discharge of any debt or liability. The complainant gave his evidence to prove his case. In the examination-in-chief, he stated that a loan of Rs. 6,00,000/- was a hand loan and in discharge of the same, the accused had given a cheque dated 27.02.2012. Neither in the complaint nor in examination-in-chief, complainant stated the date of giving the loan to the accused, however, in his cross-examination, he stated that in the month of November, 2011, accused availed loan of Rs. 6,00,000/-. In cross-examination, he further stated that except accused, he has not lent loan to any other person. He denied having filed a suit for recovery of money against one Balana Gouda. However, he admitted that suit was filed on the basis of promissory note with interest at the rate of @18% per month. He further admitted that he has filed a criminal case under Section 138 of Negotiable Instruments Act, 1881 against one Siddesh bearing CC No.2298 of 2012. When a suggestion was given that the complainant had lent Rs.25,000/- to the accused, he said that he does not remember the

accused has borrowed Rs.25,000/- from him. In his cross-examination, he has admitted that he has signed as a witness to the agreement to transfer the lease hold rights of accused in favour of one M/s. Sri Lakshmi Narasimha Industries. Further on question, whether the accused received Rs.15 lakhs from the said transaction, he showed his ignorance. Suggestion was also put that a blank cheque was issued at the time of loan availing of Rs. 25,000/-. Suggestion was also put in his cross-examination that he was not having Rs. 6,00,000/- on hand on the date of loan.

7. Now, we look into the facts alleged by the defence. In the cross-examination, although complainant denied that he has filed any case under Section 138 against any person but Ex.D2 is certified copy of the complaint filed by the complainant against Shri Siddesh under Section 138 of Act, 1881 for punishing the accused. Further the date of cheque, which was alleged to be issued by Shri Siddesh was also 27.02.2012. Ex.D3 was an agreement of sale dated 07.01.2010, by which the complainant paid Rs. 4,50,000/- to Balana Gouda towards sale consideration. In document transferring the leasehold rights by the accused to one M/s. Sri Lakshmi Narasimha Industries, the complainant was a witness, who admitted his signature on the deed. In his cross-examination, accused case was that by virtue of such transfer of leasehold rights, he received Rs. 15 lakhs. The trial court after marshalling the evidence made following observations in Paragraph No.17:-

> "17. In the instant case the cheque amount involved is Rs. 6,00,000/- and the complainant is an retired bus conductor and he had retired from service in the year 1997 and has received the entire retirement monetary benefits of Rs. 8,00,000/- and the same was deposited in the account of the complainant and it was encashed by the complainant. It is observed that the complainant is silent as to his source of income at present. He has nowhere specified as to what is he working and his earning, to show his position to lend the amount as specified in the cheque. There is no single document to show his earning nor has the complainant executed any document for having lent such heavy amount of Rs. 6,00,000/- to the accused. Further, it is the suggestion of the accused to PW-1 that, the accused by transferring his interest to lease hold to one M/s. Sri. Lakshmi Narasimha industries has received a sum of Rs. 15,00,000/- and it is also

admitted by PW-1 that he was the witness to the said transaction. From the above, it raises doubt on the very cheque Ex.P-1 held by the complainant and the non-production of any document by the complainant to 18 C.C.NO.2675-2012 show his earning, and the complainant has not executed any document before lending such huge amount to the accused. Such circumstance raises serious doubt on the transaction as claimed by the complainant. Hon'ble High Court of Karnataka has clearly established that, the accused need not enter the witness box and rebut the presumptions. I am of the opinion that the whole transaction is at a doubt and the circumstance does not give rise to the lending of loan amount of Rs. 6,00,000/- as claimed by the complainant. Accordingly, Points No.1 in the Negative."

8. We having noticed the facts of the case and the evidence on the record, we need to note the legal principles regarding nature of presumptions to be drawn under Section 139 of the Act and the manner in which it can be rebutted by an accused. We need to look into the relevant judgments of this Court, where these aspects have been considered and elaborated. Chapter XIII of the Act, 1881 contains a heading "Special Rules of Evidence". Section 118 provides for presumptions as to negotiable instruments. Section 118 is as follows:-

"118. Presumptions as to negotiable instruments. - Until the contrary is proved, the following presumptions shall be made:-

(a) **of consideration** -that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) **as to date** -that every negotiable instrument bearing a date was made or drawn on such date;

xxxxxxxxxxxxxxxxxxxxxxx"

9. Next provision, which needs to be noticed is Section 139, which provides for presumption in favour of holder. Section 139 lays down:-

"139. Presumption in favour of holder.-It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in

section 138 for the discharge, in whole or in part, of any debt or other liability."

10. The complainant being holder of cheque and the signature on the cheque having not been denied by the accused, presumption shall be drawn that cheque was issued for the discharge of any debt or other liability. The presumption under Section 139 is a rebuttable presumption. Before we refer to judgments of this Court considering Sections 118 and 139, it is relevant to notice the general principles pertaining to burden of proof on an accused especially in a case where some statutory presumption regarding guilt of the accused has to be drawn. A Three-Judge Bench of this Court in ***Kali Ram Vs. State of Himachal Pradesh, (1973) 2 SCC 808*** laid down following:-

> "23.....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."

11. This Court in ***Bharat Barrel & Drum Manufacturing Company Vs. Amin Chand Pyarelal, (1999) 3 SCC 35*** had occasion to consider Section 118(a) of the Act. This Court held 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 and defendant can prove the non-existence

of a consideration by raising a probable defence. In paragraph No.12 following has been laid down:-

> **"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 ll8(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. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist....."

12. Justice S.B. Sinha in ***M.S. Narayana Menon Alias Mani Vs. State of Kerala and Another, (2006) 6 SCC 39*** had considered Sections

118(a), 138 and 139 of the Act, 1881. It was held that presumptions both under Sections 118(a) and 139 are rebuttable in nature. Explaining the expressions "may presume" and "shall presume" referring to an earlier judgment, following was held in paragraph No.28:-

> "28. What would be the effect of the expressions "may presume", 'shall presume"and "conclusive proof" has been considered by this Court in ***Union of India v. Pramod Gupta, (2005) 12 SCC 1,*** in the following terms: (SCC pp. 30-31, para 52)
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> "It is true that the legislature used two different phraseologies 'shall be presumed' and 'may be presumed' in Section 42 of the Punjab Land Revenue Act and furthermore although provided for the mode and manner of rebuttal of such presumption as regards the right to mines and minerals said to be vested in the Government vis-a-vis the absence thereof in relation to the lands presumed to be retained by the landowners but the same would not mean that the words 'shall presume' would be conclusive. The meaning of the expressions 'may presume' and 'shall presume' have been explained in Section 4 of the Evidence Act, 1872, from a perusal whereof it would be evident that whenever it is directed that the court shall presume a fact it shall regard such fact as proved unless disproved. In terms of the said provision, thus, the expression 'shall presume' cannot be held to be synonymous with 'conclusive proof."

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

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

purpose, the evidence adduced on behalf of the complainant could be relied upon."

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

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

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

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

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

> **"34.** Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is "preponderance of probabilities". Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which he relies."

17. In ***Kumar Exports Vs. Sharma Carpets, (2009) 2 SCC 513,*** this Court again examined as to when complainant discharges the burden to prove that instrument was executed and when the

burden shall be shifted. In paragraph Nos. 18 to 20, following has been laid down:-

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> **"18.** Applying the definition of the word "proved" in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn for b 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 c 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 d itself evidence, but only makes a prima facie case for a party for whose benefit it exists.
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> **19.** The use of the phrase "until the contrary is proved" in Section 118 of the Act and use of the words "unless the contrary is proved" in Section 139 of the Act read with definitions of "may presume" and "shall presume" as given in e 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 f produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over.
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> **20**.....The accused may adduce direct evidence to prove that the note in question was not supported g 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 h 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....."

18. A Three-Judge Bench of this Court in ***Rangappa Vs. Sri Mohan, (2010) 11 SCC 441*** had occasion to elaborately consider provisions of Sections 138 and 139. In the above case, trial court had acquitted the accused in a case relating to dishonour of cheque under Section 138. The High Court had reversed the judgment of the trial court convicting the accused. In the above case, the accused had admitted signatures on the cheque. This Court held that where the fact of signature on the cheque is acknowledged, a presumption has to be raised that the cheque pertained to a legally enforceable debt or liability, however, this presumption is of a rebuttal nature and the onus is then on the accused to raise a probable defence. In Paragraph No.13, following has been laid down:-

"**13.** The High Court in its order noted that in the course of the trial proceedings, the accused had admitted that the signature on the impugned cheque (No. 0886322 dated 8-2-2001) was indeed his own. Once this fact has been acknowledged, Section 139 of the Act mandates a presumption that the cheque pertained to a legally enforceable debt or liability. This presumption is of a rebuttal nature and the onus is then on the accused to raise a probable defence. With regard to the present facts, the High Court found that the defence raised by the accused was not probable."

19. After referring to various other judgments of this Court, this Court in that case held that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability, which, of course, is in the nature of a rebuttable presumption. In paragraph No.26, following was laid down:-

"**26.** In light of these extracts, we are in agreement with the respondent claimant that the presumption mandated by

Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in ***Krishna Janardhan Bhat, (2008) 4 SCC 54*** 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."

20. Elaborating further, this Court held that Section 139 of the Act is an example of a reverse onus and the test of proportionality should guide the construction and interpretation of reverse onus clauses on the defendant-accused and the defendant-accused cannot be expected to discharge an unduly high standard of proof. In paragraph Nos. 27 and 28, following was laid down:-

"27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard of proof.

28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is

able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."

21. We may now notice judgment relied by the learned counsel for the complainant, i.e., judgment of this Court in ***Kishan Rao Vs. Shankargouda, (2018) 8 SCC 165.*** This Court in the above case has examined Section 139 of the Act. In the above case, the only defence which was taken by the accused was that cheque was stolen by the appellant. The said defence was rejected by the trial court. In paragraph Nos. 21 to 23, following was laid down:-

> **"21.** In the present case, the trial court as well as the appellate court having found that cheque contained the signatures of the accused and it was given to the appellant to present in the Bank, the presumption under Section 139 was rightly raised which was not rebutted by the accused. The accused had not led any evidence to rebut the aforesaid presumption. The accused even did not come in the witness box to support his case. In the reply to the notice which was given by the appellant, the accused took the defence that the cheque was stolen by the appellant. The said defence was rejected by the trial court after considering the evidence on record with regard to which no contrary view has also been expressed by the High Court.
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> **22.** Another judgment which needs to be looked into is ***Rangappa v. Sri Mohan (2010) 11 SCC 441.*** A three-Judge Bench of this Court had occasion to examine the presumption under Section 139 of the 1881 Act. This Court in the aforesaid case has held that in the event the accused is able to raise a probable defence which creates doubt with regard to the existence of a debt or liability, the presumption may fail. Following was laid down in paras 26 and 27: (SCC pp. 453-54)
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> "26. In light of these extracts, we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in *Krishna Janardhan Bhat,* 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.

27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard of proof."

23. No evidence was led by the accused. The defence taken in the reply to the notice that cheque was stolen having been rejected by the two courts below, we do not see any basis for the High Court coming to the conclusion that the accused has been successful in creating doubt in the mind of the Court with regard to the existence of the debt or liability. How the presumption under Section 139 can be rebutted on the evidence of PW 1, himself has not been explained by the High Court.

22. The above case was a case where this Court did not find the defence raised by the accused probable. The only defence raised was that cheque was stolen having been rejected by the trial court and no contrary opinion having been expressed by the High Court, this Court reversed the judgment of the High Court restoring the conviction. The respondent cannot take any benefit of the said judgment, which was on its own facts.

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

(i) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

(ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden,

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

24. Applying the preposition of law as noted above, in facts of the present case, it is clear that signature on cheque having been admitted, a presumption shall be raised under Section 139 that cheque was issued in discharge of debt or liability. The question to be looked into is as to whether any probable defence was raised by the accused. In cross-examination of the PW1, when the specific question was put that cheque was issued in relation to loan of Rs. 25,000/- taken by the accused, the PW1 said that he does not remember. PW1 in his evidence admitted that he retired in 1997 on which date he received monetary benefit of Rs. 8 lakhs, which was encashed by the complainant. It was also brought in the evidence that in the year 2010, the complainant entered into a sale agreement for which he paid an amount of Rs. 4,50,000/- to Balana Gouda towards sale consideration. Payment of Rs. 4,50,000/- being admitted in the year 2010 and further payment of loan of Rs. 50,000/- with regard to which complaint No.119 of 2012 was filed by the complainant, copy of which complaint

was also filed as Ex.D2, there was burden on the complainant to prove his financial capacity. In the year 2010-2011, as per own case of the complainant, he made payment of Rs.18 lakhs. During his cross-examination, when financial capacity to pay Rs. 6 lakhs to the accused was questioned, there was no satisfactory reply given by the complainant. The evidence on record, thus, is a probable defence on behalf of the accused, which shifted the burden on the complainant to prove his financial capacity and other facts.

25. There was another evidence on the record, i.e., copy of plaint in O.S. No. 148 of 2011 filed by the complainant for recovery of loan of Rs. 7 lakhs given to one Balana Gouda in December, 2009. Thus, there was evidence on record to indicate that in December, 2009, he gave Rs.7 lakhs in sale agreement, in 2010, he made payment of Rs. 4,50,000/- towards sale consideration and further he gave a loan of Rs. 50,000/- for which complaint was filed in 2012 and further loan of Rs. 6 lakhs in November, 2011. Thus, during the period from 2009 to November, 2011, amount of Rs. 18 lakhs was given by the complainant to different persons including the accused, which put a heavy burden to prove the financial capacity when it was questioned on behalf of the accused, the accused being a retired employee of State Transport Corporation, who retired in 1997 and total retirement benefits, which were encashed were Rs. 8 lakhs only. The High Court observed that though the complainant is retired employee, the accused did not even suggest that pension is the only means for survival of the complainant. Following observations were made in Paragraph 16 of the judgment of the High Court:-

> **"16.** Though the complainant is retired employee, the accused did not even suggest that pension is the only means for survival of the complainant. Under these circumstances, the Trial Court's finding that the complainant failed to discharge his initial burden of proof of lending capacity is perverse."

26. There is one more aspect of the matter which also needs to be noticed. In the complaint filed by the complainant as well as in examination-in-chief the complainant has not mentioned as to on which date, the loan of Rs. 6 lakhs was given to the accused. It was during cross-examination, he gave the date as November, 2011. Under Section 118(b), a presumption shall be made as to date that every negotiable instrument was made or drawn on such date. Admittedly, the cheque is dated 27.02.2012, there is not even a

suggestion by the complainant that a post dated cheque was given to him in November, 2011 bearing dated 27.02.2012. Giving of a cheque on 27.02.2012, which was deposited on 01.03.2012 is not compatible with the case of the complainant when we read the complaint submitted by the complainant especially Para 1 of the complaint, which is extracted as below:-

> "1. The accused is a very good friend of the complainant. The accused requested the Complainant a hand loan to meet out urgent and family necessary a sum of Rs. 6,00,000/-(Rupees Six Lakh) and on account of long standing friendship and knowing the difficulties, which is being faced by the accused the complainant agreed to lend hand loan to meet out the financial difficulties of the accused and accordingly the Complainant lend hand loan Rs. 6,00,000/- (Rupees Six Lakh) dated 27.02.2012 in favour of the Complainant stating that on its presentation it will be honored. But to the surprise of the Complainant on presentation of the same for collection through his Bank the Cheque was returned by the Bank with an endorsement "Funds Insufficient" on 01-03-2012."

27. Thus, there is a contradiction in what was initially stated by the complainant in the complaint and in his examination-in-chief regarding date on which loan was given on one side and what was said in cross-examination in other side, which has not been satisfactorily explained. The High Court was unduly influenced by the fact that the accused did not reply the notice denying the execution of cheque or legal liability. Even before the trial court, appellant-accused has not denied his signature on the cheque.

28. We are of the view that when evidence was led before the Court to indicate that apart from loan of Rs. 6 lakhs given to the accused, within 02 years, amount of Rs. 18 lakhs have been given out by the complainant and his financial capacity being questioned, it was incumbent on the complainant to have explained his financial capacity. Court cannot insist on a person to lead negative evidence. The observation of the High Court that trial court's finding that the complainant failed to prove his financial capacity of lending money is perverse cannot be supported. We fail to see that how the trial court's findings can be termed as perverse by the High Court when it was based on consideration of the evidence, which was led on behalf of

the defence. This Court had occasion to consider the expression "perverse" in ***Gamini Bala Koteswara Rao and others Vs. State of Andhra Pradesh through Secretary, (2009) 10 SCC 636,*** this Court held that although High Court can reappraise the evidence and conclusions drawn by the trial court but judgment of acquittal can be interfered with only judgment is against the weight of evidence. In Paragraph No.14 following has been held:-

> **"14.** We have considered the arguments advanced and heard the matter at great length. It is true, as contended by Mr Rao, that interference in an appeal against an acquittal recorded by the trial court should be rare and in exceptional circumstances. It is, however, well settled by now that it is open to the High Court to reappraise the evidence and conclusions drawn by the trial court but only in a case when the judgment of the trial court is stated to be perverse. The word "perverse" in terms as understood in law has been defined to mean "against the weight of evidence". We have to see accordingly as to whether the judgment of the trial court which has been found perverse by the High Court was in fact so."

29. High Court without discarding the evidence, which was led by defence could not have held that finding of trial court regarding financial capacity of the complainant is perverse. We are, thus, satisfied that accused has raised a probable defence and the findings of the trial court that complainant failed to prove his financial capacity are based on evidence led by the defence. The observations of the High Court that findings of the trial court are perverse are unsustainable. We, thus, are of the view that judgment of the High Court is unsustainable.

30. In result, the appeal is allowed and the judgment of the High Court is set aside and that of the trial court is restored.

***Result*:-** Appeal allowed