

REPORTABLE

IN THE COURT OF MANIPUR

AT IMPHAL

Cril. Appeal No. 24 of 2023

Shri Manoj Kumar Jain, aged about 56 years, S/o late Sobhag Chand Jain, R/o Assembly Road, Thangal Bazar, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.

.....Appellant

-versus-

Shri Mahendra Kumar Jain, Proprietor of M.R. Roller Flour Mill Ltd. S/o Late Chandan Mal, R/o Sharma Building Opposite CRPF Camp, 2nd floor, Mantripukri, Imphal East District, Manipur.

.....Respondent

BEFORE

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Appellant : Mr. M. Tapan Sharma, Advocate
For the Respondent : Mr. Leo Rommel S, Advocate
Date of Hearing : 25.08.2025
Date of Order : **17.10.2025**

JUDGMENT & ORDER [CAV]

1. This appeal is filed against the Judgment and Order dated 04.03.2023 passed by the Ld. Chief Judicial Magistrate, Imphal West, Manipur in Cril. (N.I) Case No. 18 of 2018 thereby acquitting the accused/ respondent namely Mahendra Kumar Jain. Application under Section 378 CrPC being MC(Crl.Appeal) No. 9 of 2023 seeking leave to appeal against the impugned judgment & order dated 04.03.2023 of acquittal was granted by this Court on 17.10.2023.

The brief facts :

2. The appellant namely Manoj Kumar Jain is the complainant and the present respondent, the accused herein, is the cousin of the father of Appellant.

3. In the beginning of December, 2015, the respondent approached the appellant and expressed his desire of selling out his land situated at Khabam under the Heingang Circle for his financial needs. The appellant had given a sum of Rs. 24,00,000/- (Rupees Twenty- four Lakhs) only in cash by collecting from his family members and a sum of Rs. 1,80,00,000/- (Rupees One crore eighty lakhs) only by way of cheques to the Respondent as an advance in regard to the selling land. Thereafter in the month of June 2016, the respondent returned the said sum of Rs. 1,80,00,00 (Rupees One crore eighty lakhs) only which was taken from the appellant through cheques saying that the respondent is not willing to sell the said land.

4. In respect of the money that the respondent received on cash, the respondent issued a Cheque bearing No. 302992 (A/c 31734560718) dated 11.12.2017 of State Bank of India, M.G. Avenue, Imphal West, Manipur – 795001, for a sum of Rs. 24,00,000/- (Rupees Twenty-four lakhs) only in favour of the Appellant. The respondent assured that the said cheque would be honoured on its presentation.

5. The appellant presented the said cheque for realization on 18.01.2018; however, the said cheque was dishonoured with the remark "Insufficient Funds" and the same was intimated to the Appellant on 18.01.2018 i.e. the same day of presentation for realization.

6. On 24.01.2018, the appellant issued/sent demand/legal notice to the Respondent as per Section 138 of Negotiable Instrument Act demanding the

cheque amount. The legal notice was sent through Regd. Post vide consignment No. EE476470067IN and the said demand/legal notice was duly received by the respondent on 25.01.2018 at 2.50 p.m. However, the respondent failed and neglected to pay the Cheque amount within a period of 15 days, from the receipt of said notice.

7. Having no alternative, the appellant filed a complaint under Section 138 of Negotiable Instrument Act, against the Respondent before the Ld. Chief Judicial Magistrate, Imphal West, Manipur.

8. The Ld. Chief Judicial Magistrate, Imphal West, Manipur, dismissed the Complaint and acquitted the respondent by the impugned Judgment and Order dated 04.03.2023 passed in Cril. (N.I) Case No. 18 of 2018. Relevant para read as follows:

"14. In considering the foregoing discussion as above and arguments advanced and evidence adduced, I am of the considered view that the complainant could not establish that there was existence of any legally enforceable debt or other liabilities and blatantly failed to discharge the initial burden cast upon the complainant.

ORDER

*Considering the observations and finding as aforementioned and considering the submission or the rival counsels and the contentions and arguments advanced and more particularly considering the evidence presented, I hold that the Cheque bearing **No. 302992** of Account No. being **31734560718** dated 11-12-2017 for an amount of **Rs. 24,00,000/-** (Rupees twenty four lakhs) only was not issued by the accused person in discharge of his debt or liabilities towards the complainant and thereby the accused stands Acquitted for offence punishable under Section 138 of the Negotiable Instrument Act, 1881."*

9. Hence, this appeal filed by the Appellant against the Judgment and Order dated 04.03.2023 in Cril. (N.I) Case No. 18 of 2018 passed by the Ld. Chief Judicial Magistrate, Imphal West, Manipur.

10. The learned counsel of the appellant has submitted that the respondent failed to rebut the issue of missing cheques by: (i) not filing an FIR and informing the bank about the missing cheques; (ii) closing the bank account after the case was filed against the respondent: (ii) failing to prove that 14-15 cheques were misplaced from his custody.

11. The learned counsel has further submitted that the respondent's claim that the cheques were misplaced is unsubstantiated and he should have filed a police complaint to prevent misuse. The respondent failed to mention that the missing cheques were signed, and should have lodged a complaint immediately after the cheque bounced, instead of waiting until the appellant served a demand notice under Section 138 N.I. Act.

12. The counsel has also submitted that the Ld. Trial Judge failed to consider crucial evidence, including: (ii) the cheque return memo stating "Insufficient Funds"; (i) the statutory legal notice demanding payment; (iii) proof of receipt of the said legal notice by the respondent himself on 25.01.2018; (iv) the respondent's failure to dispute or challenge the said notice; (v) the mention of the dishonoured cheque in the said demand notice.

13. It is submitted that the Ld. Trial Judge erred in: (i) assuming the appellant did not prove the debt or liabilities; (ii) ignoring the appellant's recorded evidence before the predecessor Ld. CJM, Imphal West and cross-examination testimony; (iii) overlooking the recorded evidence statement dated 21.02.2018; (iv) misinterpreting the witnesses' testimony; (v) failing to acknowledge the lack of evidence for the respondent's borrowing.

14. The counsel has further submitted that the Ld. Judge erred by:(i) overlooking the respondent's contradictory statements during cross-examination: (ii) failing to recognize the respondent's intentional false testimony to evade liability: (iii) ignoring the fact that the appellant received the cheque in December, 2017 with all details filled in; (iv) not appreciating the respondent's admission that the cheque was his and the signature was genuine: (v) failing to note that the respondent denied allegations without producing witnesses or documents to support his defense.

15. It is also submitted that the Ld. Judge erred by: (i) failing to apply the presumption under Section 139 of NJ. Act, which assumes the cheque was received for debt or liability discharge: (ii) not placing the burden of proof on the respondent to disprove this presumption, which he failed to do; (iii) overlooking the settled law under Section 145 of N.I Act which allows initial depositions on affidavit to be treated as evidence: (iv) ignoring the Hon'ble Supreme Court's established precedent on this matter.

16. It is further submitted that the appellant is a tax-compliant businessman who: (i) regularly pays income tax return and GST without any dues; (ii) has reflected the alleged Rs. 24 lakhs due from the respondent in income tax return payment documents; (iii) has consistently followed up on this amount till date in his income tax return documents.

17. During the course of hearing this Hon'ble Court raised concerned regarding the appellant's financial capacity and directed the Appellant to produced his income tax returns pertaining to the instant appeal.

18. On 04.09.2024, the appellant filed an additional Affidavit of his income tax returns for assessment years i.e. 2017-2018 to 2023-2024.

19. The appellant has cited the following judgment to support his submission:

i. Georgekutty Chacko vs. M.N Saji

(Civil Appeal No. 11309 of 2025 arising out of SLP (Civil) No. 10362 of 2024)

"6. Accordingly, having considered the matter and going through the material on record, we find that a case for interference has been made out. There being specific stand by the appellant that he has paid Rs.30,80,000/- (Rupees thirty lakhs eighty thousand) to the respondent pursuant to a promissory note, which incidentally has been upheld and not disbelieved, the onus would be on the respondent to dispel such fact. Further, it is not uncommon that in money transactions, there is a component of cash also involved and just because a person is not able to prove the transfer through official modes i.e., through any negotiable instrument or bank transaction, would not lead to the conclusion that such amount was not paid through cash, especially when there was a categorical statement to this effect by the appellant before the Court concerned. Moreover, the initial presumption of legally enforceable debt comes from the Negotiable Instruments Act, 1881 also and thus the onus is on the respondent to prove that no such amount was given. Only because documentary proof was not available, we find such view taken to be erroneous. A person who gives cash obviously would not be having any documentary proof per se. Sometimes there may be an occasion where even for a cash transaction, a receipt is taken, but absence of the same would not negate and disprove the stand that the cash transaction also took place between the parties. In the present case, the bifurcation made by the High Court is clearly erroneous and therefore, unsustainable.

ii. Indian Bank Association and others v. Union of India and others (2014) 5 SCC 590

"16. Considerable time is usually spent on recording the statement of the complainant. The question is whether the court

can dispense with the appearance of the complainant instead, to take steps to accept the affidavit of the complainant and treat the same as examination-in-chief. Section 145(1) gives complete freedom to the complainant either to give his evidence by way of affidavit or by way of oral evidence. The court has to accept the same even if it is given by way of an affidavit. The second part of Section 145(1) provides that the complainant's statement on affidavit may, subject to all just exceptions, be read in evidence in any inquiry, trial or other proceedings. Section 145 is a rule of procedure which lays down the manner in which the evidence of the complainant may be recorded and once the court issues summons and the presence of the accused is secured, an option be given to the accused whether, at that stage, he would be willing to pay the amount due along with reasonable interest and if the accused is not willing to pay, the court may fix up the case at an early date and ensure day-to-day trial.

18. We have indicated that under Section 145 of the Act, the complainant can give his evidence by way of an affidavit and such affidavit shall be read in evidence in any inquiry, trial or other proceedings in the court, which makes it clear that a complainant is not required to examine himself twice i.e. one after filing the complaint and one after summoning of the accused. The affidavit and the documents filed by the complainant along with complaint for taking cognizance of the offence are good enough to be read in evidence at both the stages i.e. pre-summoning stage and the post-summoning stage. In other words, there is no necessity to recall and re-examine the complainant after summoning of the accused, unless the Magistrate passes a specific order as to why the complainant is to be recalled. Such an order is to be passed on an application made by the accused or under Section 145(2) of the Act suo motu by the court. In summary trial, after the accused is summoned, his plea is to be recorded under Section 263(g) CrPC and his examination, if any, can be done by a Magistrate and a finding can be given by the court under Section 263(h) CrPC and the same procedure can be followed by a

Magistrate for offence of dishonour of cheque since offence under Section 138 of the Act is a document based offence. We make it clear that if provisos (a), (b) and (c) to Section 138 of the Act are shown to have been complied with, technically the commission of the offence stands completed and it is for the accused to show that no offence could have been committed by him for specific reasons and defences."

iii. Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148

"54. As rightly contended by the appellant, there is a fundamental flaw in the way both the courts below have proceeded to appreciate the evidence on record. Once the presumption under Section 139 was given effect to, the courts ought to have proceeded on the premise that the cheque was, indeed, issued in discharge of a debt/liability. The entire focus would then necessarily have to shift on the case set up by the accused, since the activation of the presumption has the effect of shifting the evidential burden on the accused. The nature of inquiry would then be to see whether the accused has discharged his onus of rebutting the presumption. If he fails to do so, the court can straightaway proceed to convict him, subject to satisfaction of the other ingredients of Section 138. If the court finds that the evidential burden placed on the accused has been discharged, the complainant would be expected to prove the said fact independently, without taking aid of the presumption. The court would then take an overall view based on the evidence on record and decide accordingly.

55. At the stage when the courts concluded that the signature had been admitted, the court ought to have inquired into either of the two questions (depending on the method in which the accused has chosen to rebut the presumption) : Has the accused led any defence evidence to prove and conclusively establish that there existed no debt/liability at the time of issuance of cheque? In the absence of rebuttal evidence being led the inquiry would entail : Has the accused proved the non-existence of

debt/liability by a preponderance of probabilities by referring to the "particular circumstances of the case"?"

iv. Tedhi Singh v. Narayan Dass Mahant, (2022) 6 SCC 735

"10. The trial court and the first appellate court have noted that in the case under Section 138 of the NI Act the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.

20. The learned counsel for the respondent has submitted that the respondent never received as sum of Rs.24 lakhs by cash from the appellant nor issued the said cheque to the appellant at any point in time. It is also submitted that the said cheque book was found missing from his office and the respondent immediately reported the same to the Assistant General

Manager, SBI MG Avenue, Imphal and thereafter the same bank issued a new cheque book containing 50 slips after 15 days.

21. The Respondent has cited the following judgment :

Basalingappa v. Mudibasappa: (2019) 5 SCC 418

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

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

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

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

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

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

31. This Court had occasion to consider the expression "perverse" in Gamini Bala Koteswara Rao v. State of A.P. [Gamini Bala Koteswara Rao v. State of A.P., (2009) 10 SCC 636 : (2010)

1 SCC (Cri) 372], 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 (sic when the) judgment is against the weight of evidence. In para 14 following has been held: (SCC p. 639)

"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."

22. This Court has perused the materials on record, specially the impugned judgment of acquittal, the depositions of the parties, the memo of appeal and has minutely considered the relevant law and decisions cited at bar by the parties.

23. The case of the appellant/complainant in a nutshell is that he gave a sum of Rs. 1,80,00,000/- (Rupees one crore and eighty lakh) by various cheques and a sum of Rs.24,00,000/- (Rupees twenty-four lakh) by cash to the respondent/accused in connection with the proposed sale of land by the accused. However, the sum of one crore and eighty lakh was returned by cheques to the complainant by the accused and another cheque of rupees twenty-four lakh was returned by cheque. The cheque of rupees twenty-four lakh was returned by the bank due to insufficiency of fund and hence the

complaint under Section 138 NI Act was initiated as the accused failed to pay the amount even after receipt of statutory notice. It may be noted that the complainant did not maintain any record for the payment of Rs.24,00,000/- in cash to the accused.

24. On the other hand, it is the case of the accused that he did not receive the sum of Rs.24 lakh in cash from the complainant in connection with the proposed sale of land and he never gave the cheque of Rs. 24 lakh to the complainant as alleged by him in the complaint. However, in his deposition he admitted the signature on the cheque and also stated that some cheques including the cheque-in-question were misplaced and he lodged oral complaint to his bank and new cheque book was issued to him. He admitted that he has returned the sum of Rs.1,80,00,000/- to the complainant by cheque.

25. During the trial the complainant examined three PWs including himself as PW-1 and his two brothers as PW-2 & PW-3. In his deposition, the complainant as PW-1 admitted that the sum of Rs.1,80,00,000/- given by cheque was returned by the accused as he was not willing to sell the land. But the cheque of Rs.24,00,000/- returned in lieu of the cash payment was dishonoured by bank due to insufficiency of fund. In the cross-examination, the complainant admitted that he did not have any document to show that the accused borrowed money from him and his family members. In cross-examination, PW-2 admitted that he received a sum of Rs.7,50,000/- from the accused and the same was not related to the cheque of Rs.24,00,000/-. Further, he stated that he did not have any idea about the said cheque given by the accused to the complainant. PW-3 also admitted in his cross-examination that he received a sum of Rs.30,00,000/- from the accused with regard to sale of land, but the said amount did not relate to the bounced

cheque of Rs.24,00,000/-. He further stated that he did not have any idea as to when and where the accused gave the cheque of Rs.24,00,000/- to the complainant.

26. In his deposition, the accused admitted that a sum of Rs.1,80,00,000/- was deposited in his account by the complainant and his family members in connection with sale of land. He returned the amount of Rs.1,80,00,000/- to the complainant and his family members by different cheques as he did not sell the land. The accused refused receipt of any amount by cash from the complainant. Even though he admitted his signature on the cheque, the complainant stated that he did not hand over any cheque to the complainant. He misplaced 14-15 cheques from the same account.

27. The trial Court, after analysing the evidence on record and after applying the law in this regard, held that the complainant failed to establish the existence of legally recoverable existing debt or liability as mandated by Section 138 of NI Act and as such the presumption under Section 139 of the Act of issuance of the bounced cheque in discharge of existing debt or liability in part or full, would not be available to the complainant. It was also held that admission of the signature is not sufficient for discharging the initial burden on the complainant of establishing the existing liability. It was held that the presumption under Section 139 will be attracted on admission of the issuance of cheque by the accused and in the present case the accused did not admit issuance of cheque.

28. On perusal of the case record, it is seen that the accused has denied the receipt of a sum of Rs.24,00,000/- by cash from the complainant and further denied the issuance of the cheque of Rs.24,00,000/- to the complainant. However, he admitted his signature on the cheque. In the case of **Basalingapa (supra)**, it was held in para 25.1 & 25.2 that the

presumption under Section 139 will be attracted on the admission of the execution of the cheque and such presumption is rebuttable by the accused by preponderance of probabilities. In the present case, the accused never admitted the issuance of the cheque-in-question except for admission of his signature. It was rightly held by the trial Court that the complainant failed to establish existing legally recoverable debt or liability in absence of any proof of payment to the accused. The PWs did not support the case of the complainant. Even if the existence of the debt and liability is presumed to be established, the accused has able to dislodge the statutory presumption as none of the PWs supported the case of the complainant and in absence of any document to prove the payment of Rs.24,00,000/- in cash to the accused.

29. It will be relevant to discuss some case laws in this regard. In the case of **Ranjit Sarkar v. Ravi Ganesh Bhardwaj: (2025) 7 SCC 234**, Hon'ble Supreme Court held that the existence of legally recoverable debt or liability under Section 138 of the Negotiable Instruments Act has to be established by the complainant at first instance and is not a matter of presumption under Section 139. When the debt or liability is established, the presumption under Section 139 will operate to the extent that the issuance of the bounced cheque was in discharge of such debt or liability in part or full. The relevant para are reproduced below.

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 an accused and that of the prosecution in a criminal case is different.

30. In a recent case of **Vijay Kumar vs. Vishwanath Rao N. (22.04.2025 - SC) : MANU/SC/0541/2025: 2025 INSC 537**, Hon'ble Supreme Court observed that the complainant did not maintain any record for the payment to accused and did not examine any of the well-wishers in whose presence the payment was made to the accused and hence miserably failed to establish the existence of legally recoverable debt and liability. The acquittal by the trial court was upheld as the existence of debt or liability could not be proved by the complainant. Relevant para read as follows:

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

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

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

13. Keeping in view the above factors, it cannot be said that the complainant was able to discharge the burden once it had shifted back upon him, with the Accused having discharged the burden of Sections 118 and 139 of the N.I. Act.

31. In the case of **Dattatraya v. Sharanappa: (2024) 8 SCC 573**, Hon'ble Supreme Court held that when the complainant could not establish the existence of legally recoverable debt or liability in view of the contradictions in the complaint and depositions, the admission of signature on the cheque will not avail the presumption under Section 139 of the Negotiable Instruments Act and held as follows.

29. Applying the aforementioned legal position to the present factual matrix, it is apparent that there existed a contradiction in the complaint moved by the appellant as against his cross-examination relatable to the time of presentation of the cheque by the respondent

as per the statements of the appellant. This is to the effect that while the appellant claimed the cheque to have been issued at the time of advancing of the loan as a security, however, as per his statement during the cross-examination it was revealed that the same was presented when an alleged demand for repayment of alleged loan amount was raised before the respondent, after a period of six months of advancement. Furthermore, there was no financial capacity or acknowledgment in his income tax returns by the appellant to the effect of having advanced a loan to the respondent. Even further the appellant has not been able to showcase as to when the said loan was advanced in favour of the respondent nor has he been able to explain as to how a cheque issued by the respondent allegedly in favour of Mr Mallikarjun landed in the hands of the instant holder, that is, the appellant.

30. Admittedly, the appellant was able to establish that the signature on the cheque in question was of the respondent and in regard to the decision of this Court in Bir Singh¹⁰, a presumption is to ideally arise. However, in the above referred context of the factual matrix, the inability of the appellant to put forth the details of the loan advanced, and his contradictory statements, the ratio therein would not impact the present case to the effect of giving rise to the statutory presumption under Section 139 of the NI Act, 1881. The respondent has been able to shift the weight of the scales of justice in his favour through the preponderance of probabilities.

31. The trial court had rightly observed that the appellant was not able to plead even a valid existence of a legally recoverable debt as the very issuance of cheque is dubious based on the fallacies and contradictions in the evidence adduced by the parties. Furthermore, the fact that the respondent had inscribed his signature on the agreement drawn on a white paper and not on a stamp paper as presented by the appellant, creates another set of doubt in the case. Since the accused has been able to cast a shadow of doubt on the case presented by the appellant, he has therefore successfully rebutted the presumption stipulated by Section 139 of the NI Act, 1881.

32. In the cash in hand, the complaint could not establish the existence of legally recoverable debt, i.e., payment of a sum of

Rs.24,00,000/- lakh to the accused by cash as he could not produce any document as proof of such payment. Mere admission of signature of the accused on the cheque will not attract the presumption under Section 139 of NI Act. It is for the complainant who is, at first, to establish the existence of debt or liability and the statutory presumption will operate only after such establishment. Further, when the accused denied receipt of money and delivery of cheque, the presumption will not be attracted. It is the settled proposition of law that the existence of debt and liability cannot be presumed and it has to be first established under Section 138 NI Act and only after that the statutory presumption under Section 139 of the Act will come into play.

33. In the present case, the complainant has failed to established the existence of legally recoverable debt or liability within the meaning of Section 138 of NI Act and hence trial Court has rightly held that the presumption under Section 139 will not be attracted. Since the complainant has failed to discharge the initial burden on him under Section 138 and in view of denial of execution of cheque by the accused, the acquittal order rendered by learned CJM, Imphal West does not suffer from any illegality. Accordingly, appeal is dismissed. However, cost is made easy.

JUDGE

FR/NFR

Suchitra