HIGH COURT OF TRIPURA
AGARTALA

Crl.A.20 of 2022

Nabarun Datta,
Son of Late Amalendu Datta,
Resident of Village- West Amlapara,
PO & PS – Belonia, District- South Tripura,
PIN – 799155

---Petitioner(s)

Versus

Goutam Roy Barman,
Son of Late Birendra Roy Barman
Resident of village- Amlapara,
Opposite of BKI School, PO & PS- Belonia,
District – South Tripura, PIN- 799155.

----Accused-Respondent

The State of Tripura
Represented by Ld. Public Prosecutor,
Hon'ble High Court of Tripura, Agartala,
West Tripura.

---Official Respondent(s)

For Appellant(s)	: Mr. P. Roy Barman, Sr. Adv. Mr. K. Chakraborty, Adv.
For Respondent(s)	: Mr. P.K. Biswas, Sr. Adv. Mr. R. Nath, Adv.
Date of hearing	: 20.07.2023
Date of pronouncement	: 25.07.2023
Whether fit for reporting	: Yes

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. K. Chakaraborty, learned counsel appearing for the appellant as well as Mr. P.K. Biswas, learned senior counsel assisted by Mr. R. Nath, learned counsel appearing for the respondents.

[2] This is an appeal under Section 378(4) of the Code of Criminal Procedure, 1973, read with Section 372 thereof, against the impugned Judgment dated 17.08.2022 passed by the Learned Chief Judicial Magistrate, South Tripura, Belonia in Case No.NI-17 of 2021 between Nabarun Datta (the appellant herein) and Sri Goutam Roy Barman (respondent No.1 herein) whereby the Learned Trial Judge has dismissed the Complaint, as lodged by the Complainant-Appellant, thereby acquitting the Accused-Respondent.

[3] The genesis of the case can be rooted from the fact that a trial was initiated on the complaint filed by the complainant alleging that he and the accused in course of personal transaction since long back become acquainted with each other. Gradually, they built up a good and cordial relation with each other. In the month of March, 2020 accused person approached to the complainant and requested him to pay an amount of Rs.9,75,000/- to meet up the necessity for running the family business assuring the complainant that the accused person will repay the said money within one year from the date of receiving the money. Therefore, on the basis of said assurance the complainant had given Rs.9,75,000/- to the accused person in the month of March, 2020. Thereafter, as per the assurance of the accused person, and in order to discharge of his liability the accused person issued a cheque to the complainant vide cheque no. 776515 dated 22.03.2021 of Rs.9,75,000/- drawn on his bank account lying in the United Bank of India (now PNB), Belonia Branch. At the time of issue the cheque two witnesses were present and thereafter the complainant presented the said cheque to the UCO Bank, Belonia Branch through his bank account for collection of the cheque amount, but defendant banker i.e. the UBI Bank, Belonia Branch returned the said cheque for the reason of Funds insufficient in defendant bank account and on 26.03.2021 the UCO Bank, Belonia Branch returned the said cheque to the complainant along with a return memo informing him dishonour of said cheque for the reason of funds insufficient in defendant bank account. The accused person has mischievously and intentionally issued the aforesaid cheque with ulterior motive and further instructed to the complainant to present for encashment knowing fully well that the said cheque would not be honoured on presentation on account of insufficient of funds in his account. The said cheque all over clearly proves the intention of the accused and perpetuate fraud to the complainant indulging in cheating and criminal misappropriation with the complainant and due to dishonour of the said cheque, the complainant through his engaged Counsel sent a legal notice dated 24.04.2021 upon

the accused person to repay the said cheque amount within 15 days from the delivery of the said notice to the accused person. In default the complainant, the complainant would be compelled to seek redress in the course of law and from the acknowledgement it is evident that on behalf of the accused his wife Runu Roy Barman received the said notice on 03.05.2021 inspite of receiving such notice, accused person did not take any step to liquidate his liabilities and has failed to make payment within the stipulated period. Hence, the complainant lodged the complaint in the court of the Chief Judicial Magistrate, Belonia, South Tripura on 17.06.2021 within statutory time limit upon which cognizance was taken US 138 of the Negotiable Instruments Act, 1881 by the Learned Chief Judicial Magistrate, South Tripura, Belonia.

[4] The accused on the other hand, in his plead of defence recorded on 11.05.2022 pleaded no guilty and claim trial and stated as follows:

> *"The cheque in question is completely false and fabricated and she did not issue any cheque in favour of the complainant. "*

[5] The learned trial court framed charged under Section 138 of NI Act and to bring home the guilt of the accused the complainant had to prove the elements of section 138 of NI Act by crossing following legal formalities:

> a. *The cheque was drawn by the drawer on an account maintained by him with the banker for payment of any amount of money out of that account to the complainant.*
>
> *b. The said payment was made for discharge of a legally enforceable debt or other liability, in whole or in part.*
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> *c. The said cheque were returned unpaid by the bank.*
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> *d. The cheque was presented to the bank within a period of three months from the date on which it was drawn or within the period of its validity whichever is earlier.*
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> *e. The payee or the Holder in due course of t cheque as the case may be made a demand for the payment of the said amount of money by giving the notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.*
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> *f. The drawer of the cheque fails to make the payment of the said amount of money to the payee or as the case may be the Holder in due course of the cheque within 15 days of the receipt of the said notice.*

[6] The learned court below has dealt with the Sections 118 and 139, being the special rules of evidence applicable to the case as follows:

> *"118. Presumption 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---*
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> *that every negotiable instrument bearing a date was made or drawn on such date; (c) as to time of acceptance-----that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity; (d) as to time of transfer---- that every transfer of a negotiable instrument was made before its maturity; (e) as to order of indorsements----that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon; (f) as to stamps--- that a lost promissory note, bill of exchange or cheque was duly stamped; (g) that holder is a holder in due course----that the holder of a negotiable instrument is a holder in due course; Provided that, where 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 of fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due*
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> *course lies upon him."*
>
> *"139. Presumption in favour of holder ---- It shall be presumed, unless the contrary is proved, that the holder is a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, if any debt or other liability."*

[7] So far the question of existence of basic ingredients for drawing of presumption under Sections 118 and 139 the NI Act is concerned, the accused could not deny his signature on the cheques in question that had been drawn in favour of the complainant on a bank account maintained by the accused for a sum of Rs.13,00,000/-. The said cheques was presented to the Bank concerned within the period of their validity and were returned unpaid for the reason of either the balance being insufficient. All the basic ingredients of Section 138 as also of Sections 118 and 139 are apparent on the face of the record. Therefore, it is required to be presumed that the cheques in question were drawn for consideration and the holder of the cheques i.e., the complainant received the same in discharge of an existing debt. The onus, therefore, shifts on the accused-appellant to establish a probable defence so as to rebut such a presumption.

[8] The learned court below while churning out the source of the income has observed in the following manner:

> *Admittedly, complainant did not submit any document to show that he has property in Agartala and received rent from the same and further did not place any document to prove that his wife contributed Rs.5,00,000/- to him. No ITR return is submitted before the court. I am of the view that if the loan transaction involved smaller amount of money in cash and the source of the same can reasonably be proved/explained by the complainant,*

> *then, such transactions in the absence of any other reasons, ought not to be automatically considered as unaccounted money. But here it is not explained why loan for such a huge amount was advanced in cash. It is also not explained whether his personal savings were kept in cash at home or deposited in bank. If his personal savings were lying in cash with him, then it is not explained why he was having his savings in cash at home. It is not shown by the complainant that he had any particular reason to keep his savings cash in hand at his home. It would be against the normal course of human conduct, for a person to keep substantial amount in cash with him idle instead of earning some return by keeping it in bank or investing in some instrument. If loan was advanced by withdrawing money from the bank, then the bank statement showing withdrawal of the amounts advanced on different dates could have been filed by the complainant to substantiate his claim, which was not done in the present case. Thus, both the scenarios give rise to doubts regarding actual advancement of loan. Another relevant factor in the case is failure of complainant to disclose the loan amount in his ITR for the relevant year. The fact that the complainant admittedly failed to disclose the loan of Rs.9,75,000/- in his ITR also raises doubt regarding truthfulness of complainant version.*

[9] Complainant in his complaint petition, legal notice as well as in examination-in-chief stated that he presented the alleged cheque to his banker, i.e. UCO Bank, Belonia through his bank account for collection of cheque amount but complainant banker, i.e., UBI Bank, Belonia Branch returned the said cheque for the reason of "Fund Insufficient". Ld. Counsel further submitted that in the instant case complainant did not submitted any document to show that complainant presented the alleged cheque to UCO Bank, Belonia Branch and said Branch returned to the alleged cheque to complainant or his banker. Apart from that complainant as PW-1 in cross-examination admitted that he did not submit any document to show that he has presented the cheque before UCO Bank for collection of the same. As per section 58 of Evidence Act facts admitted need not be proved.

[10] The learned court below while citing the judgment passed by this High Court has observed in the following manner:

> *Recently, Hon'ble High Court of Tripura in Kamal Kr. Deb Vs. Bharamar Singh (Crl.A. 51 2019) considering the Judgment of Hon'ble Supreme Court of M D Thomas Vs. T.S Jalil and another (2009) 14 SCC 398 held that notice of demand being served upon the wife of the respondent and hence the respondent was not properly served. Thus, service of notice was not duly complied in terms of clause (b) of section 138 of N.I.Act.*

[11] Finally, the learned court below after examining the PWs, DWs and all having considered the facts and circumstances of the case has observed in the following manner:

> *15. In the background of the above facts and circumstances the presumption u/s 139 stands rebutted. Once presumption u/s 139 N.I. Act is rebutted, burden of proof shifts upon the complainant to prove as a matter of fact that cheque was actually issued in discharge of liability. As discussed above, the complainant has failed to prove the actual liability of the accused to the extent of cheque amount. Therefore, complainant has not been able to prove that the cheque was issued by the accused in discharge of legal debt or liability towards the loan.*
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> *16. As such, I hold that accused has remain successful in rebutting the mandatory presumption of law in favour of the complainant.*
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> *I accordingly return a finding of not guilt against the accused person namely Shri Goutam Roy Barman.*
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> *17. The accused person namely Shri Goutam Roy Barman is hereby acquitted for the offence as punishable under section 138 of N.I Act, 1881.*

[12] Aggrieved by the impugned judgment dated 17.08.2022 passed by the Learned Chief Judicial Magistrate, South Tripura, the appellant has approached this court seeking following relief:

> *(i) Admit the instant appeal*
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> *(ii) Call for the relevant records, pertaining to the impugned judgment dated 17.08.2022, passed by the Learned Chief Judicial Magistrate, South Tripura, Belonia in case No.NI-17 of 2021.*
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> *(iii) Issue Notice, calling upon the respondents and each one of them, to show cause as to why the impugned judgment dated 17.08.2022 passed by the learned Chief Judicial Magistrate, South Tripura, Belonia in case No. NI-17 of 2021 shall not be quashed/set aside.*
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> *(iv) After hearing the parties, in terms of the grounds set for the above, be pleased to quash/set aside the impugned judgment dated 17.08.2022, passed by the Learned Chief Judicial Magistrate, South Tripura, Belonia in Case No.NI-17 of 2021, and thereafter, allow the instant Appeal;*
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> *(v) And pass any other Order(s) as may be deemed fit and proper for ends of justice.*

[13] Mr. P Roy Barman, learned senior counsel assisted by Mr. K. Chakraborty has submitted before this court that the learned trial court while passing the impugned judgment dated 17.08.2022 has committed manifest error of law in failing to appreciate that as it was clearly proved that the Cheque bearing No.776515 dated 22.03.2021 for an amount of Rs.9,75,000/- drawn at UBI, Belonia Branch, was issued by the respondent and the cheque was dishonoured by the bank for insufficiency of funds, hence, presumption under Section 138(b) of the Negotiable Instruments Act, 1881 is easily established, to the effect that the said cheque was issued by the respondent to discharge a legally enforceable debt.

[14] Further, it was contended by the counsel for the appellant that the learned trial court has committed manifest error while passing

the impugned judgment dated 17.08.2022 in failing to appreciate that as the signature in the cheque was not denied by the respondent as his own. Hence, the same is deemed to be admitted by him, consequent whereto the presumption, envisaged in Section 118 of the Negotiable Instruments Act, 1881 can legally be inferred to the effect that the cheque was made or drawn for consideration on the date which the cheque bears. Furthermore, it is submitted that Section 139 of the Negotiable Instruments Act, 1881 enjoins the Court to presume that the holder of the cheque received it for the discharge of any debt or liability and hence before the Ld. Trial Court the burden was upon the respondent to rebut the aforesaid presumption which he miserable failed.

[15] It is further contended by the learned counsel for the appellant that the learned court below has miserably failed to take into account the context of ***M.D Thomas vs P.S Jaleel and Another*** reported in ***(2009) 14 SCC 398*** and acquitted the respondent.

[16] Mr. P Roy Barman, learned senior counsel has placed his reliance on a judgment of the apex court in ***K. Bhaskaran vs. Sankaran Vaidhyan Balan and Another*** reported in ***(1999) 7 SCC 510*** with regard to receipt of service of notice. Where the apex court has observed as follows:

> *18. On the part of the payee he has to make a demand by "giving a notice" in writing. If that was the only requirement to complete the offence on the failure of the drawer to pay the cheque amount within 15 days from the date of such "giving" the travails of the prosecution would have been very much lessened. But the legislature says that failure on the part of the drawer to pay the amount should be within 15 days "of the receipt" of the said notice. It is, therefore, clear that "giving notice" in the context is not the same as receipt of notice. Giving is a process of which receipt is the accomplishment. It is for the payee to perform the former process by sending the notice to the drawer in the correct address.*
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> *20. If a strict interpretation is given that the drawer should have actually received the notice for the period of 15 days to start running no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies and he could escape-from the legal consequences of Section 138 of the Act. It must be borne in mind that Court should not adopt in interpretation which helps a dishonest evader and clips an honest payee as that would defeat the very legislative measure.*

[17] Reliance has also been placed on another judgment of the apex court in ***C.C. Alavi Haji vs Palapetty Muhammed and Another***

reported in ***(2007) 6 SCC 555*** where the apex court has dealt with regard to the service of notice and also Section 138 of the NI Act:

> *6. As noted hereinbefore, Section 138 of the Act was enacted to punish unscrupulous drawers of cheques who, though purport to discharge their liability by issuing cheque, have no intention of really doing so. Apart from civil liability, criminal liability is sought to be imposed by the said provision on such unscrupulous drawers of cheques. However, with a view to avert unnecessary prosecution of an honest drawer of the cheque and with a view to give an opportunity to him to make amends, the prosecution under Section 138 of the Act has been made subject to certain conditions. These conditions are stipulated in the proviso to Section 138 of the Act, extracted above. Under Clause (b) of the proviso, the payee or the holder of the cheque in due course is required to give a written notice to the drawer of the cheque within a period of thirty days from the date of receipt of information from the bank regarding the return of the cheque as unpaid. Under Clause (c), the drawer is given fifteen days time from the date of receipt of the notice to make the payment and only if he fails to make the payment, a complaint may be filed against him. As noted above, the object of the proviso is to avoid unnecessary hardship to an honest drawer. Therefore, the observance of stipulations in quoted Clause (b) and its aftermath in Clause (c) being a pre-condition for invoking Section 138 of the Act, giving a notice to the drawer before filing complaint under Section 138 of the Act is a mandatory requirement.*
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> *7. The issue with regard to interpretation of the expression □giving of notice□ used in Clause (b) of the proviso is no more res integra. In K. Bhaskaran Vs. Sankaran Vaidhyan Balan & Anr. , the said expression came up for interpretation. Considering the question with particular reference to scheme of Section 138 of the Act, it was held that failure on the part of the drawer to pay the amount should be within fifteen days "of the receipt" of the said notice. "Giving notice" in the context is not the same as "receipt of notice". Giving is a process of which receipt is the accomplishment. It is for the payee to perform the former process by sending the notice to the drawer at the correct address and for the drawer to comply with Clause (c) of the proviso. Emphasizing that the provisions contained in Section 138 of the Act required to be construed liberally, it was observed thus:*
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> > *"20. If a strict interpretation is given that the drawer should have actually received the notice for the period of 15 days to start running no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies and he could escape from the legal consequences of Section 138 of the Act. It must be borne in mind that Court should not adopt an interpretation which helps a dishonest evader and clips an honest payee as that would defeat the very legislative measure.*
> >
> > *21. In Maxwell's Interpretation of Statues the learned author has emphasized that "provisions relating to giving of notice often receive liberal interpretation," (vide page 99 of the 12th Edn.) The context envisaged in Section 138 of the Act invites a liberal interpretation for the person who has the statutory obligation to give notice because he is presumed to be the loser in the transaction and it is for his interest the very provision is made by the legislature. The words in Clause (b) of the proviso to Section 138 of the Act show that payee has the statutory obligation to "make a demand" by giving notice. The thrust in the clause is on the need to "make a demand". It is only the mode for making such demand which the legislature has prescribed. A payee can send the notice for doing his part for giving the notice. Once it is dispatched his part is over and the next depends on what the sendee does."*

[18] Learned counsel for the appellant has finally placed his reliance on another judgment of the apex court in ***Kalamani Tex And***

Another vs. P. Balasubramanian reported in ***(2021) 5 SCC 283*** where by the apex court has observed in the following manner.

> *14. Once the 2nd Appellant had admitted his signatures on the cheque and the Deed, the trial Court ought to have presumed that the cheque was issued as consideration for a legally enforceable debt. The trial Court fell in error when it called upon the Complainant- Respondent to explain the circumstances under which the appellants were liable to pay. Such approach of the trial Court was directly in the teeth of the established legal position as discussed above, and amounts to a patent error of law.*
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> *16. The appellants have banked upon the evidence of DW-1 to dispute the existence of any recoverable debt. However, his deposition merely highlights that the respondent had an over-extended credit facility with the bank and his failure to update his account led to debt recovery proceedings. Such evidence does not disprove the appellants' liability and has a little bearing on the merits of the respondent's complaint. Similarly, the appellants' mere bald denial regarding genuineness of the Deed of Undertaking dated 07.11.2000, despite admitting the signatures of Appellant No. 2 thereupon, does not cast any doubt on the genuineness of the said document.*
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> *17. Even if we take the arguments raised by the appellants at face value that only a blank cheque and signed blank stamp papers were given to the respondent, yet the statutory presumption cannot be obliterated. It is useful to cite Bir Singh v. Mukesh Kumar : (2019) 4 SCC 197 , where this court held that:*
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> > *"36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."*
>
> *18. Considering the fact that there has been an admitted business relationship between the parties, we are of the opinion that the defence raised by the appellants does not inspire confidence or meet the standard of 'preponderance of probability'. In the absence of any other relevant material, it appears to us that the High Court did not err in discarding the appellants' defence and upholding the onus imposed upon them in terms of Section 118 and Section 139 of the NIA.*

[19] On the contrary in order to buttress the contention as made by Mr. PK Biswas, learned senior counsel assisted by Mr. R. Nath, learned counsel for the respondents, reliance has been made on a judgment passed by the apex court in ***Rajaram Sriramulu Naidu (Since Deceased) Through L.Rs vs. Maruthachalam (Since Deceased) Through L.Rs.*** reported in ***AIR 2023 SC 471*** whereby the apex court has observed in the following manner:

> *13. It can thus be seen that this Court has held that once the execution of cheque is admitted, Section 139 of the N.I. Act mandates a presumption that the cheque was for the discharge of any debt or other liability. It has however been held that 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. It has further been held that 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. It has been held that 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.*
>
> *14. In the said case, i.e. Baslingappa v. Mudibasappa (supra), the learned Trial Court, after considering the evidence and material on record, held that the accused had raised a probable defence regarding the financial capacity of the complainant. The accused was, therefore, acquitted. Aggrieved thereby, the complainant preferred an appeal before the High Court. The High Court reversed the same and convicted the accused. This Court found that unless the High Court came to a finding that the finding of the learned Trial Court regarding financial capacity of the complainant was perverse, it was not permissible for the High Court to interfere with the same.*
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> *20. After analyzing all these pieces of evidence, the learned Trial Court found that the Income Tax Returns of the complainant did not disclose that he lent amount to the accused, and that the declared income was not sufficient to give loan of Rs.3 lakh. Therefore, the case of the complainant that he had given a loan to the accused from his agricultural income was found to be unbelievable by the learned Trial Court. The learned Trial Court found that it was highly doubtful as to whether the complainant had lent an amount of Rs.3 lakh to the accused. The learned Trial Court also found that the complaint had failed to produce the promissory note alleged to have been executed by the accused on 25 th October 1998. After taking into consideration the defence witnesses and the attending circumstances, the learned Trial Court found that the defence was a possible defence and as such, the accused was entitled to benefit of doubt. The standard of proof for rebutting the presumption is that of preponderance of probabilities. Applying this principle, the learned Trial Court had found that the accused had rebutted the presumption on the basis of the evidence of the defence witnesses and attending circumstances.*
>
> *21. The scope of interference in an appeal against acquittal is limited. Unless the High Court found that the appreciation of the evidence is perverse, it could not have interfered with the finding of acquittal recorded by the learned Trial Court.*
>
> *25. In the present case, we are of the considered opinion that the defence raised by the appellant satisfies the standard of "preponderance of probability".*

[20] Learned counsel for the respondent has drawn the attention of this court to cross-examination of PW-1 Sri Nabarun Datta, the relevant portion of which is extracted herein below:

> *I received rent for an amount of Rs.45 to 50 thousand per month in cash from my household property situated at Agartala as well as Belonia. My wife also contributed of Rs.50,000/- in cash when I contributed Rs.4,75,000/- in cash.*
>
> *"I also filed another case against Prabir Bahadur under NI Act for an amount of Rs.200000/-.*
>
> *In my complaint petition as well as my examination-in-chief I did not mention on which date and time I advanced the loan amount of Rs.9,75,000/- to Goutam Roy Barman."*

[21] Simultaneously, attention has been drawn to the examination in chief of PW-2 Smt. Anupama Majumder Datta, the same is extracted herein below:

> *That I say in the month of March 2020 the accused person came our house and accordingly my husband paid the accused person Rs.9,75,000/- (Rupees nine lakh sevety five thousand) in my presence.*

[22] According to learned counsel for the respondents there is anomaly between such statements as in the cross-examination of the complainant and the examination of the complainant's wife does not corroborate each other. Thus, it can be ascertained from their narration that they are fabricating the story and plotting the respondent as his prey.

[23] It appears to this court that Sections 138 139 of the Negotiable Instruments Act and Section 27 of the General Clauses Act, 1987 need to be extracted herein below as they deal with the very essence of the present case in hand.

> *138. Dishonour of cheque for insufficiency, etc., of funds in the account. —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that 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 that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to [two] years, or with fine which may extend to twice the amount of the cheque, or with both:*
>
> *Provided that nothing contained in this section shall apply unless—*
>
> *(a) the 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;*
>
> *(b) the payee or the holder in due course of the cheque, as the case may be, 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 thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*
>
> *(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.*
>
> *Explanation.— For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.*
>
> *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.]*
>
> *Section 27 in The General Clauses Act, 1897*
>
> *27. Meaning of service by post. —Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve"" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly*

> *addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.*

[24] With regard to the "giving of notice" and "receipt of notice" this court is of the view that it is amply clear from a bare reading of the sub-clause of Section 138 of the NI Act that on the part of the payee, he has to make a demand by 'giving a notice' in writing. If that was the only requirement to complete the offence on the failure of the drawer to pat the cheque amount within 15 days from the date of such 'giving' the travails of the prosecution would have been very much lessened, but the legislature says that failure on the part of the drawer to pay the amount should be 15 days 'of the receipt' of the said notice. It is therefore clear that 'giving notice' in the context is not the same as receipt of Notice. Giving is a process of which receipt is the accomplishment. It is for the payee to perform the former process by sending the Notice to the drawer in the correct address. If a strict interpretation is given that the drawer should have actually received the notice, for the period of 15 days to start running, no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies, and he could escape from the legal consequences of Section 138 of the Negotiable Instruments Act, 1881. It is submitted that the Ld. Trial Court ought not to have adopt an interpretation which helps a dishonest evader and clips an honest payee, as that would defeat the very legislative measure.

[25] It is an admitted fact that the wife of the respondent had duly received the Notice, and it was nowhere pleaded by the respondent that he and his wife were living separately during the relevant point of time, hence burden was upon the respondent to substantiate that he did not receive the Notice. It is submitted that just to evade the liability of Section 138 of the Negotiable Instruments Act, 1881, the respondent has taken such umbrage of non-receipt of the Notice. Hence, a reasonable presumption has to be drawn that the husband did have the knowledge

regarding the receipt of notice as they were staying together. Thus, it cannot be said that notice served on the wife is not served on the husband under Section 138 of NI Act.

[26] It has also been established that the cheque in question got the signature of the accused. It can be ascertained from this act of the respondent that he, at some point of time, intended to repay the complainant. This court is of the view that the mere acceptance of the signature on the part of the accused on the check implies that it is legally enforceable debt and hence the debt is admitted. There is no sufficient evidence in favour of the accused person to deny version of the complainant.

[27] In view of the above discussion, this court is of the view that the impugned judgment order dated 17.08.2022 is liable to be set aside. Accordingly, it is set aside. This court further directs the respondent No.1 to pay the cheque amount towards fine in terms of Section 138 of the Negotiable Act within a period of two months from today in default he shall suffer a simple imprisonment for a term of one year.

[28] In view of the above, this criminal appeal stands allowed and disposed of setting aside the impugned Judgment dated 17.08.2022 passed by the Learned Chief Judicial Magistrate, South Tripura, Belonia.

JUDGE

Dipak