

S.Mathew vs V.Dhanalakshmi on 9 December, 2019

IN THE COURT OF THE JUDGE COURT OF SMALL
CAUSES AND XXVI A.C.M.M, AT BENGALURU

Present: Abdul Khadar, B.A., LL.B.,
JUDGE, Court Of Small Causes,
Bengaluru

Dated this the 9th day of December 2019

C.C. No: 50099/2017

Complainant: S.Mathew
S/o Sebastin
Aged about 53years
R/at No.160, 5th Cross,
Nethajinagar, Bengaluru-23.

(By Sri. Kumara.L- Advocate)
-Vs-
Accused : V.Dhanalakshmi
W/o Velladurai
Door No.173, 5th Cross,
Nethaji Nagar, K.P.Agrahara,
Magadi Road, Bengaluru-23.

(By S.N.Fameen-Advocate)

JUDGMENT

The complainant filed the private complaint under Sec. 200 of Cr.P.C., against the accused for having committed an offence punishable under Sec.138 of Negotiable Instruments Act.

2. The brief facts of the complainant case is that, the complainant and accused are known to each other SCCH9 since several years. The accused and her husband have approached the complainant and requested hand loan of Rs.2,30,000/- during second week of March 2016 to fulfill her financial difficulties. The complainant has paid Rs.2,30,000/- in 3 installments i.e., on 19.03.2016 a sum of Rs.50,000/- to the husband of accused by name P.Velladurai by way of self cheque bearing No.821172 dated 18.03.2016, Rs.1,50,000/- to accused on 21.03.2016 by way of self cheque bearing No.821173 and Rs.30,000/- to the husband of accused on 27.05.2016 by way of self cheque bearing No.821175 drawn on Karntaka State Co-Operative Apex Bank Ltd.,. Thereafter the accused and her husband have executed loan agreement in favour of complainant by acknowledging the receipt of loan amount of Rs.2,00,000/- dated 19-03-2016 agreeing to pay 2% interest per month and pay Rs.10,000/- per month. Towards repayment of principle amount of 3 cheques are credited to the account of accused husband and accused. The complainant had approached the accused and her husband on 11.10.2017 demanded to repay the loan amount of Rs.2,30,000/- for which the accused had issued two cheques bearing No.217313 dated:11.10.2017 for Rs.1,00,000/- and 217314 dated

28.10.2017 for Rs.2,00,000/- both cheques were drawn on SBI, Magadi main road Branch, Bengaluru-79. The SCCH9 complainant presented the said cheques for encashment through his banker i.e., The Karnataka State Apex Co- Operative Bank Ltd., Chamarajpet Branch, Bengaluru-

18. The said cheques were not honoured and same were returned as "Funds Insufficient" and the said facts brought to the knowledge of the accused. Thereafter the complainant issued legal notice to the accused on 07.11.2017 through RPAD calling upon the accused to pay Rs.3,00,000/-within 15 days from the date of receipt of notice and the said notice was returned with an endorsement dated:08.11.2017 as "addressee left". The accused not repaid the dishonoured cheques amount and hence, she committed an offence punishable under Sec.138 of N.I. Act. Accordingly, the compliant has filed the present complaint to take action against the accused in accordance with law.

3. Being satisfied with the complaint averments, this Court has taken cognizance and after recording sworn statement being satisfied with the prima-facie case, issued summons to the accused compelling her appearance. Accused appeared through her counsel before this Court and got enlarged on bail. Substance of accusation was read over to the accused. Accused pleaded not guilty for the offence punishable u/s.138 of SCCH9 NI Act. Hence, this Court called upon the complainant to prove his case.

4. In support of the case, the complainant himself examined as P.W.1 and got marked 9 documents as per Ex.P1 to P.9. After closure of evidence of Complainant, the accused was examined as contemplated u/s.313 Cr.P.C and her statement was recorded. The accused has denied all the incriminating circumstances appearing in the evidence. Herself examined as DW-1 got marked 4 documents at Ex.D.1 to D.4 on her behalf. After closure of evidence of complainant and accused, the case was posted for arguments on merits.

5. Heard arguments and perused the materials available on record.

6. The points that only would arise for my determinations are:

1. Whether the complainant proves that the accused had issued two cheques bearing No.217313dated:11.10.2017 for Rs.1,00,000/- and 217314 dated 28.10.2017 for Rs.2,00,000/- both cheques were drawn on SBI, Magadi main road Branch, Bengaluru-79.

towards discharge of her legal liability and when the said cheques were presented for encashment, which were dishonoured with an endorsement " Funds Insufficient", after issuance of legal notice, she SCCH9 fails to repay Rs.3,00,000/- covered under the cheque and thereby she has committed an offence punishable under Sec.138 of N.I. Act?

2. What order?

7. My findings on the above points are as under:

Point No.1 : In the Negative Point No.2 : As per the final order below for the following:

REASONS Point No.1:-

8. It is pertinent to note that, whenever a private complainant is filed seeking prosecution of the accused for an offence punishable under section 138 of Negotiable Instrument Act, if the issuance of cheques and the signatures on the cheques are accepted and admitted by the accused, an initial presumption has to be raised by the Court in favour of the complainant, that the cheques in question were issued towards legally recoverable debt or liability. Of course, this presumption is rebuttable presumption. Such rebuttable evidence has to be placed before the Court by the accused. It is well known that, the accused can rebut the said legal presumption either by cross-examination of complainant or by leading evidence. The complainant SCCH9 himself examined as PW.1 filed affidavit by way of chief examination has reiterated the versions of complaint. I would not like to reproduce the same to avoid repetition of facts since the complainant has explained the details of complaint averments in chief examination. The complainant has got marked 9 documents at Ex.P1 to P.9.

9. So far as the document is concerned Ex.P.1 & 3 are the cheques, bearing No. 217313, dated 11-10-2017 for Rs.1,00,000/- and No.217314 dated:

28.10.2017 for Rs.2,00,000/- both cheques were drawn on State Bank of India, Magadi Road Branch, Bengaluru-79. The signature of accused marked Ex.P1(a) and 3(a). Bank endorsement marked at Ex.P.2 and 4, wherein, Ex.P1 and P3 cheques were dishonoured for the reason "Funds Insufficient"

dated:12.10.2017 and 31.10.2017. The office copy of legal notice marked at Ex.P5 wherein the complainant demanded the accused to pay the amount of Rs.3,00,000/- covered under two cheques within 15 days from the date of receipt of notice. Ex.P6 is the Postal receipt, Ex.P7 is the unserved postal cover wherein, the notice issued to the accused was returned with shara as left. Ex.P7(a) is the contents of Ex.P7. Ex.P8 is the bank statement of complainant wherein, it reveals that on 19.03.2016 Rs.50,000/- had been SCCH9 debited from the account of complainant to P.Velladurai through self cheque No.821172. On 21.03.2016 Rs.1,50,000/- had been debited from the account of complainant to Dhanalaxmi.V through self cheque No.821173 and on 27.05.2016 Rs.30,000/- had been debited from the account of complainant to P.Velladurai through self cheque No.821175. Ex.P.9 is the loan agreement executed by Velladurai infavour complainant on 19-3-2016 for Rs.2,00,000/- agreeing to repay the same with interest at 2% p.m. Ex.P.9(a) is the signature of accused husband and Ex.P.9(b) is the signature of accused. According to the learned counsel for the complainant, when the issuance of cheques and her signature are admitted, then the presumption as required under Section 139 of N.I. Act comes to the aid of the complainant and it is the turn of the accused to explain or rebut the said presumption by raising a probable defence.

10. According to the evidence of P.W.1, the accused and her husband approached him and borrowed hand loan of Rs.2,30,000/- on different dates through self cheques and to discharge the said liability the accused issued Ex.P1 and P3 cheques in his favour and the same were made use of in the present case. Therefore there shall be initial burden on the complainant to prove that, the accused had due of SCCH9 Rs.3,00,000/- as on the date of issuance of alleged cheques in question. Further he drew attention of the Court to Sec.139 of N.I. Act, which reads thus:-

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

11. So when the cross examination of P.W.1 indicates that accused has not issued the alleged cheques in question to the complainant and the same were issued by the husband of the accused which was given by her towards repayment of EMI of Motor cycle loan. On perusal of Ex.P9 loan agreement itself quite clear that, the husband of the accused himself executed the same, agreeing to repay of loan amount of Rs.2,00,000/- with interest in favour of complainant in the presence of accused, wherein accused was the witness to the said Ex.P9 document. Further reveals the fact that accused husband himself given Ex.P1 and P3 cheques to the complainant. Moreover, accused admits Ex.P1 and P3 cheques were belongs to her account and she denied the signatures at Ex.P1(a) and 3(a) is of her. The complainant has misused the aforesaid blank cheques to file this case, which was given by her husband to the complainant in order to SCCH9 harass her. It is for the complainant to prove that, he had legally recoverable debt under Ex.P1 and P3 cheques as on the date of issuance of cheques. According to the learned counsel for the accused that, in Para No.3 of the complaint, the complainant has paid Rs.50,000/- on 19.03.2016 to the accused husband and Rs.30,000/- was paid on 27.05.2016 to the husband of accused and Rs.1,50,000/- on 21.03.2016 paid to the accused. The complaint averments discloses that the accused is due of Rs.1,50,000/- to the complainant and not Rs.3,00,000/- as claimed by the complainant. It is the case of the complainant that the accused issued two cheques for a sum Rs.3,00,000/- including the interest which accused bound to pay to the complainant as per the terms of loan agreement dated 19.03.2016.

12. In this regard, the court has to see whether the accused has been successful in rebutting the presumption through cross-examination of PW-1. In the cross-examination of PW.1, he deposed that, he knows the husband of accused Velladurai and he is the only earning member of his family. He admits that, he paid Rs.50,000/- amount to the accused on 19.03.2016 through self cheque. He admits that particulars of money transaction has been entered in bank statement i.e., when and to whom amount has been transferred. He admits that on 18.03.2016 he paid Rs.1,50,000/- to SCCH9 the accused husband through self cheque and the same has been entered in the account extract. Again he paid Rs.30,000/- through self cheque to the husband of the accused except the aforesaid amounts he has not paid any amounts to them. The said admission itself quite clear that the complainant paid Rs.50,000/- to the accused not Rs.1,50,000/- as pleaded in the complaint. Further PW-1 admits that the aforesaid transactions were shown in account statement at Ex.P8, wherein he admits that there is no mention of self cheque in the bank statement, witness voluntaries that, one time he paid through self cheque. He admits he has no documents to show that, he paid Rs.2,30,000/- to the accused. He denied that there was no loan agreement held between the

accused and himself and he entered into loan agreement with the husband of accused on 19.03.2016 wherein, it clearly reveals that the husband of accused executed loan agreement in favour of complainant by receiving Rs.2,00,000/- agreeing to pay the said amount along with 2% interest per month and also interest + principle amount i.e., Rs.10,000/- per month on or before 25th of every month and also acknowledged the receipt of Rs.2,00,000/- in the presence of witnesses. Further admits that his house situated at Nethaji nagara, 5th cross, K.P.Agrahara and the house of accused situated in front of his house. The SCCH9 accused vacated the said house and now she is residing at 2nd cross of K.P.Agrahara. He admits that Ex.P1 and P3 cheques were given to him by the husband of accused by name Velladurai. He paid aforesaid amount of Rs.2,30,000/- to Velladurai and there is no connection to the accused with regard to transaction held in between complainant and to the husband of accused and he entered into loan agreement with Velladurai only not with the accused. The admitted evidence of PW-1 is reproduced as it is.

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13. The PW-1 in his further cross-examination on 16-11-2019 deposed that, he is residing in his own house situated at Nethaji nagar. He has let out to the said house to Babu for rent. PW-1 admits that in Ex.P9 stamp paper there is a recital of lease agreement. He admits that the accused husband Velladurai was residing opposite to his house on rented premises and SCCH9 now he is residing in other house. He denied that, the accused husband asked him to give his house on rent, for that purpose he brought Ex.P9 stamp paper. He admits that there was no any problem for him to purchase the stamp paper for advancement of loan. He denied that, he misused the stamp paper for execution of loan agreement which was brought for rental agreement to file this case. PW-1 voluntaries that the paper was purchased for loan agreement due to typographical error the bank has typed as lease agreement. He admits that Ex.P.9 was executed by Velladorai and he only responsible to repay the loan as agreed in Ex.P9. The witnesses to Ex.P.9 are well known to him. One of the witnesses to Ex.P.9 is no more and another witness is residing in Raichur, aged about 72years. He denied that, Ex.P9 is not connected to this case.

14. This admission of PW-1 clearly reveals that, there was no money transaction held in between accused and the complainant. The evidence itself discloses that the complainant has paid Rs.2,30,000/- to the husband of accused and to that effect they have entered into loan agreement on 19.03.2016 for a sum of Rs.2,00,000/-. The evidence also discloses that the demand notice issued to the accused not served on

her. Since PW-1 categorically admits that at the time of SCCH9 issuance of demand notice the accused was resided in 2nd cross, K.P.Agrahara and not in 5th cross. On perusal of Ex.P8, it clearly reveals that Rs.1,50,000/- has been debited from the account of complainant in favour of accused and Rs.80,000/- was credited to the account of Velladurai, but the complainant is claiming Rs.3,00,000/- from the accused instead of Rs.1,50,000/-. The evidence of PW.1 itself clear that complainant paid loan amount to the husband of accused and not to the accused and Rs.3,00,000/- is not due as claimed by the complainant under Ex.P1 and P3 from the accused.

15. The statutory presumption under Sec.139 of N.I. Act explains initial presumption infavour of the producer of an instrument. It says court shall presume that one instrument is handed over infavour of another person only for the purpose of recovery of existed debt. Therefore, the statutory presumption explained under Sec.139 of N.I. Act always provides presumption infavour of the complainant. But, it does not mean that the statutory presumption cannot be rebutted. The said presumption can be rebutted at the strength of strong oral and documentary evidence. Let us see the attempt of the accused to rebut the evidence of complainant.

16. To defeat the case of the complainant, accused herself examined as DW-1. She denied the SCCH9 relationship and transaction as stated in the complaint. She deposed that she has not received Rs.2,30,000/- from the complainant. She deposed that she has given two cheques to her husband towards repayment of installment of two wheeler loan. There is no cordial relationship with her husband and she is not residing with him. She is not liable to pay the amount claimed by the complainant and her husband himself is liable for the alleged loan transaction.

17. The counsel for the complainant cross examined in length, but nothing has been elicited from her mouth to show that, she is due of Rs.3,00,000/- to the complainant under Ex.P.1 and P3. She denied the signature at Ex.P1(a) and P3(a) belonging to her. She is residing with her children, her husband separated from her since 8-9 years back. She has not filed divorce petition against her husband. She pleaded ignorance that the Ex.P1 and P3 cheques were dishonoured for "Funds Insufficient". She purchased Motor Cycle from Hindustan showroom at Rajajinagara in the year 2015 to that effect she produced Ex.D.1 to D4 insurance policy, purchase invoice, Road tax receipt and statement of account. Towards payment of EMI she gave two cheques to her son, the aforesaid fact has not stated by her in her chief examination. She has no knowledge to give stop payment instructions to her SCCH9 banker in respect of cheques. She denied that the signature found in Ex.P1(a) Ex.P3(a) and 313 statement are one and the same. She has no problem to send the Ex.P1 and P3 documents to the FSL and examine the Manager, SBI, Magadi Road Branch, Bengaluru. She denied that by colluding with the post man she written a shara as addressee left in postal cover. She admits that she has not stated that Ex.P1 and P3 and signatures are not of herself in her chief examination. She denied that during the year 2016 she was in

financial necessity as herself and her husband requested complainant and borrowed Rs.2,30,000/- and they have executed loan agreement in favour of complainant towards discharge of said liability she issued Ex.P1 and P3 cheques in favour of complainant. She admits that she has not given complaint against her husband for misuse of cheques. She denied that the Ex.D1 to 4 documents are nowhere connected to this case. As per Ex.D1 for the purpose ECS repayment the bank official have obtained the cheque. She admits the address shown in Ex.D2 and the address mentioned in complaint are one and the same.

18. It is well settled law that the N.I. Act raises two presumptions. Firstly, with regard to the passing of consideration as contained in Sec.118(a) of the Act, therein and secondly a presumption that the holder of SCCH9 the cheque receiving the same nature referred to the Sec.139 discharged in whole or in part any debt or other liability. Both presumptions are rebuttal in nature. Having regard to the definition of terms proved and disproved as contained in Sec.3 of the Evidence Act, the burden upon the prosecution visa-versa an accused was only expected to rebut the presumption of law on the scale of preponderance of probabilities and was not required to prove her defence beyond reasonable doubt. The chief affidavit as well as cross-examination of PW-1, there are number of discrepancies. Hence, the case of complainant creates doubt with regard to the existence of liability of the accused to the complainant. When once such evidence is placed by way of cross- examination of PW-1, then, complainant must be in a position to show the existence of legally recoverable debt as on the date issuance of cheques. Therefore, I am of the view that the complainant has utterly failed to prove that Ex.P1 and P3 cheques have been issued towards legally recoverable debt. On the other hand, the accused has been in successful in raising probable defence in the mind of court that Ex.P1 and P3 cheques were not given by her to the complainant and the same was given by her husband to the complainant. Even there is convincing evidence to accept the defence of the accused and case of defence elicited through the SCCH9 mouth of PW.1. Therefore, the suggestion suggest by the accused counsel during course of cross examination brought on record is sufficient to rebut the presumption available to the cheques. Accordingly, this Court has accepted the defence of the accused.

19. The learned counsel for the complainant has relied the following citations reported in:

1. AIR 2019 SC 1876, in the case of Rohith Bhai Jivanlal Patel V/s State of Gujarat and another wherein it is held that, Rule of presumption of innocence of accused - cannot be applied with same rigour to offence under section 138, particularly where presumption is drawn that holder reveled the cheque for discharge the debt or liability.

2. AIR 2019 SC 3897, in the case of Hiten P. Dalal V/s Bratindranath Banerjee, Presumption that cheque was drawn for discharge of liability of drawer -

Is presumption of law - Ought to be raised by Court in every case - Rebuttal evidence - Nature - Mere plausible explanation is not sufficient - Proof of explanation is necessary. Evidence - Act (1 of 1872) , S. 101, S 102, S. 103, S. 104.

3. CRL.A. No. 856/2002, In the case of Shailendra Alva V/s Nagesh, This appeal - Whether, Trial Court was justified in passing impugned order - Held, though opportunity was given to Accused to give SCCH9 reply to legal notice he did not choose to give reply or adduce rebuttal evidence - Mere variation in evidence of Complainant - Appellant court not came in way of case of Appellant to show that cheques issued by Accused was for legally recoverable debt - Even in cheque issued by Accused to claimant, he had admitted signature and amount mentioned in it - Therefore, burden lies on Accused person to rebut evidence - However, he failed to prove either by giving reply or adducing evidence - thus, Trial court was not justified in dismissing complaint and by acquitting accused as cheques issued by accused would be presumed that those cheques were issued in discharge of legally recoverable debt - Appeal allowed. Ration Decidendi Burden is upon Accused to prove by cogent evidence that there was no debt or liability on him.

4. CRL.R.P. No. 263/2002, In the case of Mohan V/s Mohan Naidu, Presumption as to - When once the issue of cheque and the signature of it is admitted, Court has to presume that the cheque has been issued for discharging the debt or liability. The burden of proof shifts on the accused to prove that there was no liability/ debt or that the cheque was issued to a different person. Where the accused did not choose to step into the witness box to prove the SCCH9 defence taken by him, he cannot make any grievance of it.

5. Judgment by the Hon'ble Supreme Court of India in Cri. Appeal No.230-231/2019 between V.Birsingh Vs Mukesh Kumar, wherein his lordship held that the owners to rebut the presumption under Sec.139 that the cheque has been issued in discharge of debt or liability is on the accused and the fact that the cheque might be post dated does not absolve the drawer of a cheque of the penal consequences of Sec.138 of the N.I. Act. Secs.20, 87 and 139 of N.I. Act makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of liability. It is immaterial that the cheque have been filled in by any person other than the drawer if the cheque is duly signed by he drawer. If the cheque is otherwise valid, the penal provisions of Sec.138 would be attracted.

On bare reading of the above rulings cited by the complainant, the principles laid down by the Hon'ble Apex Court with due respect are not applicable to the facts and circumstances of the present case on hand and which were laid on different context.

SCCH9

20. The presumption mandated by Section 138 of Negotiable Instruments Act includes that there exists legally enforceable debt or liability, which is rebuttable presumption and it is open to the accused to raise defence wherein the existence of legally enforceable debt or liability can be contested. In the instant case, the defence of the accused is that there is no due of Rs.3,00,000/- as

claimed by the complainant under Ex.P1 and P3 cheques. Moreover, PW.1 categorically admits that, he paid Rs.1,50,000/- to the accused and Rs.80,000/- paid to the husband of accused and to that effect accused husband executed loan agreement for a sum of Rs.2,00,000/-. The complainant has got every right to recover the amount from the accused husband Velladurai by filing recovery suit on loan agreement and the complainant is not entitled to punish the accused by filing case u/s 138 cases for the amount received by the accused husband. Further, the complainant has not complied, the mandatory requirement of Sec.138 (b) of N.I.Act. It is also elicited from the mouth of PW.1 during the course of cross examination that, he knew that the accused was left the address shown in demand notice at Ex.P5 at the time of issuance of demand notice and the same was intimated to his counsel, knowingly the new address of the accused, the complainant not issued demand notice to the new address of the accused and hence the same was not served on SCCH9 accused and returned as addressee left. Hence, there is no question of convicting the accused or order for compensation in favour of complainant. The complainant has not rebutted the burden which cast upon him and he has not produced any corroborative evidence to establish his case. The accused has given rebuttal evidence to the case of the complainant. The complainant failed to establish that he advanced loan of Rs.2,30,000/- to the accused and the cheques were issued by the accused including interest for repayment of such loan. Which were subsequently dishonored such evidence is not sufficient to punish the accused for the offence under section 138 of N.I. Act. Hence, the case of the complainant creates doubtful. In view of the above fact, I am of the view that the complainant has failed to prove that the cheques have been issued by the accused for legally recoverable debt. Hence, I answer Point No.1 in the Negative.

Point No.2:

21. In view of the above findings on point No1, I proceed to pass the following:

ORDER Acting under Section 255(1) Cr.P.C. the accused is hereby acquitted for the offence punishable under Section 138 of Negotiable Instruments Act.

SCCH9 The bail bond and surety bond of the accused is hereby stand cancelled.

(Dictated to the stenographer on computer, corrected and then pronounced by me in the open court on this the 9th day of December 2019) (Abdul Khadar) Judge, Court of Small Causes &XXVI ACMM Bengaluru ANNEXURE List of Witnesses examined on behalf of complainant:-

PW -1 : S.Mathew

List of Documents marked on behalf of complainant:

Ex.P1&3 : Cheques,
Ex.P.1(a)&3(a) :Sig.of accused
Ex.P2&4 : Bank Endorsement,
Ex.P5 : Legal Notice,
Ex.P6 : postal receipt
Ex.P7 : Unserved RPAD Cover

Ex.P7(a) : Contents of 7
Ex.P.8 : Bank statement
Ex.P9 : Agreement
Ex.P.9(a) : signature of Velladurai
Ex.P.9(b) : signature of accused

SCCH9

List of Witnesses examined on behalf of accused:

DW.1 Dhanalakshmi List of documents marked on behalf of accused:

Ex.D.1 Insurance policy
Ex.D.2 Purchase invoice
Ex.D.3 Road tax document
Ex.D.4 Bank Statement

(Abdul Khadar)
Judge , Court of Small
Causes, &XXVI ACMM
Bengaluru.

SCCH9

Order pronounced in the open court vide separate judgment.

ORDER Acting under Section 255(1) Cr.P.C. the accused is hereby acquitted for the offence punishable under Section 138 of Negotiable Instruments Act.

The bail bond and surety bond of the accused is hereby stand cancelled.

(Abdul Khadar) Judge , Court of Small Causes, &XXVI ACMM Bengaluru.

SCCH9 Learned counsel for the accused in support of his defence has relied the following citations reported in:-

1. ILR 2019 KAR 906, in the case of R.Lakshminarasimha V/s Gouthamchand where in it is held that it is the case of the accused that the has retained the Xerox copies of the documents which are already marked as Exhibits P-1, P-2 and P-4. It is quite pertinent to note here that, the documents which are sought to be produced by the

accused. It is the clear case of the accused that the cheques and on demand promissory note though are similar to Exhibits P-1, P-2 and P-4, but exhibits P-1, P-2 and P-4 are duly filled up and later sought to be produced which were blank when executed by accused. Therefore, one document cannot be said to be the Xerox copy of another.

The proof of rebuttal need not be beyond reasonable doubt but may be by preponderance of probabilities. In this background, the court has to visualize what opportunity should be given to the accused and in what manner, the material produced by the accused have to be treated.