

## Smt. Rukmani Devi vs . on 20 March, 2023

IN THE COURT OF METROPOLITAN MAGISTRATE-06,  
SHAHDARA, KARKARDOOMA COURTS,  
DELHI

Presided over by- Sh. Ankur Panghal, DJS

Ct. Case No. -: 2188/2018  
CNR No. -: DLSH020036752018  
Police Station -: Harsh Vihar

In the matter of -  
Smt. RUKMANI DEVI  
W/o Sh. Mangal Sain  
R/o H.No. B-38/1, Kuan Chowk,  
Opp. Laxmi Ice Cream Factory,  
Gokalpur Chowk, Delhi - 94

... Complainant

VS.

1. Sh.INDERJEET  
S/o Sh. Daya Ram,

2. Smt. URMILA  
W/o Sh. Inderjeet,  
Both R/o Flat no. 21E, Block - 3,  
Udyog Nagar (LIG Flat), Sector-82, Noida,  
Distt. Gautum Budh Nagar,  
UP.

... Accused Persons

1.	Name of Complainant	:-	Smt. Rukmani Devi
2.	Name of Accused Persons	:-	1. Sh. Inderjeet 2. Smt. Urmila
3.	Offence complained of or proved	:-	138 of The Negotiable Instruments Act, 1881
4.	Plea of Accused Persons	:-	Not Guilty
5.	Date of Filing of case	:-	23.04.2009
6.	Date of Reserving Order	:-	20.03.2023
7.	Date of Pronouncement	:-	20.03.2023
8.	Final Order	:-	1. Sh. Inderjeet: 2. Smt.Urmila: Complaint Quashed by order dt. 09.01.2013 of

Hon'ble High R

Court of Delhi.

CC No. 2188/18

Smt. Rukmani Devi vs. Sh. Indejeet & Anr.

Page 1 of 24

Argued by -: Sh. Anupam Sharma, Ld. Counsel  
for complainant.

Sh. Deepak Tyagi, Ld. Counsel for both accused  
persons.

## JUDGMENT

1. The present complaint has been filed by the complainant against accused persons under section 138 of Negotiable Instruments Act, 1881 (hereinafter referred as NI Act).

## FACTUAL MATRIX

2. The brief facts as alleged by the complainant in her complaint are that the accused persons agreed to purchase flat, bearing flat number D-1/1/5, front side, D.L.F, Dilshad Extension, village BrahamPuri @ Bhopura, Shahibabad, Distt. Ghaziabad, Uttar Pradesh, of complainant from her husband, on 02.08.2000, through M/s Pasha Propperties C.S. 27-28, Block-B-1, D.L.F., Dilshad Extension-II, Near Bhopura, Distt. Ghaziabad, UP, for a sum of 14,61,000/-, at the flat of complainant in presence of her husband namely Sh. Mangal Sain Sharma. Accused number 1 namely Inderjeet gave 20,000/-, on account of earnest money, to the husband of complainant, at the office of M/s Pasha Properties, in the presence of Mr. Javed Pasa. Mr. Javed Pasa and husband of complainant signed on the Bayana receipt dated 02.08.2008. Thereafter, accused no. 1 told complainant and her husband that he does not have 1,461,000/- and stated that he will take loan from HDFC Bank, for the purpose of which he would require signature of complainant on agreement to sell. Accused no. 1 took signatures of complainant on pretext of taking loan on Stamp paper. Accused persons made payment in instalments and made endorsement of payment on bayana receipt. ANKUR PANGHAL They gave 115,000/- to the husband of complainant and Digitally signed by ANKUR PANGHAL Date: 2023.03.21 CC No. 2188/18 Smt. Rukmani Devi vs. Sh. Indejeet & Anr. Page 2 of 24 11:02:09 +05'30' 250,000/- to the sun of complainant, namely Sh. Yogender Kumar Sharma @ Sanju. Accused persons gave 385,000/- in cash out of 1,461,000/- and a sum of 1,076,000/- remained outstanding.

2.1. On 02.12.2008, at about 10:30 AM, complainant reached along with her husband at office of M/s Pasha properties, then accused number 1 told complainant and her husband that bank officials are giving draft of loan for a sum of 864,000/- in place of 1,076,000/- and accused number 1 told complainant that he will issue cheque for balance amount of 212,000/- and further asked complainant to deposit said cheque in last week of December 2008 after asking from Mr. Javed Pasa on telephone, because committee of accused number 1, of 2 lakh, would be released on 26 th December. Thereafter, accused number 1 issued cheque of 212,000/- dated 01.12.2008 to the complainant and handed over the same to complainant. Mr. Javed Pasa told the complainant to get documents of flat executed and complainant went to registrar office, district Ghaziabad, U.P. along with her husband and got documents of flat executed. On 03.12.2008 husband of complainant gave 29,000/- as commission to Mr. Javed Pasa and Mr. Javed Pasa handed over the draft of 864,000/- to husband of complainant. In month of December 2008, when husband of complainant

asked Mr. Javed Pasa to deposit cheque in bank, then Mr. Javed Pasa told that committee of accused number 1 could not be released in month of December 2008 and the same will release after 26th of January 2009 and accused number 1 is ready to give interest @ 2% P.M. Thereafter, on 26 th of January 2009, husband of complainant made a telephone call to Mr. Javed Pasa and asked for payment of 212,000/-, then he told that accused number 1 would arrange the payment up to 10th of February ANKUR th 2009. Thereafter, on 10 of February 2009, husband of complainant PANGHAL made telephone call to Mr. Javed Pasa, then he told that accused number 1 will deposit money in his bank before 15.02.2009.

2.2. When the Complainant presented the said cheque (hereinafter referred to as the cheque in question) through her banker Bank of Baroda, Mandoli, Delhi, the same was returned unpaid vide returning memo dated 19.02.2009 with the remarks "INSUFFICIENT FUNDS".

2.3. Complainant thereafter issued a legal demand notice on 09.03.2009 through counsel calling upon the accused number 1 & 2 to pay the said cheque amount within a period of 15 days from receipt thereof. The said notice was duly served upon the accused persons and the accused persons failed to pay the aforesaid cheque amount within the statutory period.

2.4. Hence, the present Complaint u/s 138 Negotiable Instrument Act 1881 (hereinafter the NI Act) was filed on 23.04.2009 by the complainant, praying for the accused persons to be summoned, tried, and punished for commission of the offence u/s 138 of the Negotiable Instruments Act, 1881. The Complainant has averred that the present Complaint is within the period of limitation and falls within the territorial limits of this Court's jurisdiction; thus, being tenable at law.

#### PROCEEDINGS BEFORE COURT Pre-summoning Evidence

3. To prove a prima-facie case, the complainant led pre- summoning evidence by way of affidavit wherein the Complainant has affirmed the facts stated in the instant Complaint. ANKUR PANGHAL  
Documentary Evidence

4. To prove the case, the Complainant has relied upon the following documents:

DOCUMENTARY EVIDENCE Ex. CW-1/A :- Carbon copy of Bayana Reciept of M/s Pasa Properties dt. 02.08.2008 Ex. CW-1/B :- Original Cheque no. 610769 of Rs. 2,12,000/-

of ICICI Bank, Plot No. 13, Community Centre, New Friends Colony, dated 01.12.2008 Ex. CW-1/C :- Original cheque deposit slip dated 16.02.2009 of Bank of Baroda, Mandoli, Delhi Ex. CW-1/D :- Original cheque returning memo of Bank of Baroda dt. 19.02.2009 Ex. CW-1/E :- Copy of legal demand notice dt. 09.03.2009 Ex. CW-1/F- :- Original four speed post postal receipts dt. 1 to Ex. CW- 09.03.2009 1/F4 Ex. CW-1/G :- Original U.P.C receipt of four addresses Ex. CW-1/H- :- Original speed post return letter of second 1 address of accused no. 2 Ex. CW-1/H- :- Original speed post return letter of second 2 address of accused no. 1 Ex. CW-1/I :- Original

complaint to SHO and other higher officials dated 17.04.2009 Ex. CW1/2 :- Affidavit of complainant Cognizance & summoning of accused

5. On finding of a prima-facie case against the accused persons, Ld. Predecessor took cognizance of offence and the accused persons were summoned on 24.04.2009. The accused persons appeared before the court on 10.07.2009.

#### Framing of Notice and Plea of Defence

6. Notice u/s 251 Cr.P.C. was framed against the accused persons on 24.09.2009 to which they pleaded not guilty and claimed ANKUR PANGHAL trial. The accused persons had not made any defence in their favour. Digitally signed by ANKUR PANGHAL CC No. 2188/18 Smt. Rukmani Devi vs. Sh. Indejeet & Anr. Page 5 of 24 Date: 2023.03.21 11:04:17 +05'30' Evidence of Complainant

7. After the framing of notice, the accused persons were granted permission to cross-examine the complainant. Thereafter, the complainant was examined as CW-1, wherein she had tendered her evidence by way of affidavit Ex. CW1/2. The accused persons have objected to the mode of proving Ex. CW1/A i.e., bayana receipt dt. 02.08.2008. CW-1 was cross examined and discharged on 20.11.2010.

7.1. CW-1 in her cross-examination deposed that she is uneducated and cannot understand/write English-language. She, thereafter, deposed that signature at point A and point B, in affidavit dated 24.11.09, were signed by her in office of Pasha Properties. She further deposed that she does not remember if she had signed any other register of any other person. She deposed that she was explained contents of affidavit in Hindi and thereafter stated that, she cannot state where the fact of explanation of contents of affidavit is mentioned. She further deposed that she does not remember as to when she had purchased flat number D-1/01/05 and for how much. She deposed that she is homemaker and she has no source of income. Thereafter, she deposed that she does not know whether she is income tax payee or not. She further deposed that she sat during course of negotiation for property and she was there along with her husband, Mr. Pasha of Pasha properties and Inderjeet. She further deposed that apart from the persons mentioned above, no one else was present during course of negotiation. She further deposed that Ex. CW-1/A does not bear either her signature or signature of accused Inderjeet Singh. She also accepted suggestion that above stated exhibit does not bear signature of accused Urmila. CW1 recognised her signature at point C, D and E on photocopy of agreement to sell dated 28.09.08 ANKUR PANGHAL Ex. CW-1/DA. She accepted the suggestion that cost of above stated Digitally signed by ANKUR PANGHAL Date: 2023.03.21 11:09:00 +05'30' flat is mentioned as 960,000/-. She admitted her signature at point F on photocopy of sale deed dated 02.12.08 Ex.CW-1/DB. She denied the suggestion that she had signed the exhibits after receiving entire sale consideration, in respect of the flat in question. CW-1 was confronted with the contents of Ex. CW1-DB, at page number 9, where it is mentioned that complainant has received entire sale consideration. At that time, CW1 deposed that price is wrongly mentioned in sale deed. The complainant has failed to recognise the signature on Ex. CW-1/B. She further deposed that she does not know anything about what she did with the cheque Ex. CW- 1/B but she stated that her husband is aware of the same. Ld. counsel for accused had put a question to

the complainant regarding issuance of notice dated 09.03.09 at her instructions, to which the complainant deposed that she does not know anything, however her husband knows the entire transaction. CW1 further accepted suggestion that no cheque Ex. CW-1/B was ever given to her at any point of time. She again deposed that flat in question was in her name but all dealings were done by her husband only. She further deposed that she might have purchased flat in question four - five years ago but certainly prior to marriage of her son Yogender. She further deposed that she does not remember if she had paid any short-term/long-term capital gain tax on sale of the flat in question and further stated that these affairs are being looked after by her husband only. She denied suggestion that there are legally enforceable dues against the accused in respect of cheque in question. She also denied the suggestion that cheque in question has been wrongly deposited after fetching the same.

7.2. The complainant also examined her husband namely, Mangal Singh as CW-2 who in his examination in chief deposed that he and his wife both dealt with flat in question bearing ANKU Digitally R signed by ANKUR PANGHAL CC No. 2188/18 Smt. Rukmani Devi vs. Sh. Indejeet & Anr. Page 7 of 24 PANG Date:

2023.03.21 11:09:12 HAL +05'30' number D-1/1/5, DLF, Bhopura, District Ghaziabad, U.P. collectively on 02.08.08 and deal was done for sum of 1,461,000/- and Inderjeet gave a sum of 20,000/-to him in office of Pasha properties which is already Ex. CW-1/A (objected to mode of proof) which bears his signature at point A and signature of Inderjeet at point B. He thereafter stated that signatures were done in office of Pasha properties and could be of either Inderjeet or Pasha. He thereafter deposed that on further demand, Inderjeet gave him a sum of 115,000/-and thereafter gave a sum of 250,000/-to his son Yogender Kumar. He further deposed that out of 1,461,000/-a sum of 10 lakh something remained balance. Thereafter, Inderjeet and Urmila Devi put a demand before them that they are taking loan from the bank to purchase flat and they require a fresh agreement with them. On this, he and his wife raised objection but Inderjeet and Urmila told to them that they would save stamp duty. Thereafter, they applied for a loan and a loan of 864,000/-was sanctioned to them by the bank. Inderjeet and Urmila issued a cheque for balance amount of rupees 2,12,000/- in name of his wife Rukmani Devi. The deal was executed on 02.12.08 and they remained in occupation of flat in question till January 2009, for receiving the balance cheque amount. He deposited the cheque on 16.02.2009 and same was returned on 19.02.2009 due to insufficient fund. Thereafter, a notice was sent to both the accused persons but accused persons sent a false reply stating that deal was of 960,000/-and he had paid entire amount. He further deposed that accused persons have not paid balance cheque amount of 212,000/- and complaint case of his wife is correct.

7.2. CW-2 was cross-examined on behalf of accused persons and discharged thereafter on 18.08.2011. In his cross- ANKUR PANGHAL examination, he deposed that he was not working at time of sale of Digitally signed by ANKUR PANGHAL Date: 2023.03.21 CC No. 2188/18 Smt. Rukmani Devi vs. Sh. Indejeet & Anr. Page 8

of 24 11:09:22 +05'30' flat in question and he agreed with the suggestion that flat in question was not in his name. He also accepted the suggestion that when he sat for deal of flat in question in office of Pasha Properties, he was not having any authority letter/registered power of attorney in his favour for entering any agreement to sell. He also accepted the suggestion that prior to lodging of present complaint, notice U/s 138 NI Act was issued by his wife to accused persons. He denied suggestion that he has mentioned in Bayana receipt dated 02.08.2008 that, "I am the rightful owner of this property". He voluntarily stated that he had only signed the bayana receipt. He further deposed that he does not remember whether the bayana receipt bears signature of Inderjeet or not. He accepted suggestion that Ex. CW1/I only mentions that bayana receipt bears signature of Javed Pasha and himself only. He accepted suggestion that no agreement to sell was ever executed on 02.08.2008 between his wife and accused persons.

He also accepted the suggestion that first agreement to sell in respect of flat in question was executed between his wife and the accused persons. He identified signature of his wife at point C. He also accepted that there is no other agreement to sell apart from Ex. CW- 1/DA. He also accepted that he and his wife had not objected for execution of agreement to sell dated 28.09.2008. He accepted that Ex. CW1/DB bears signature of his wife at point F. He accepted that consideration of flat in question is mentioned as 960,000/- only. He accepted that he was accompanying his wife at time of execution of sale deed Ex. CW-1/DB. He accepted that he had signed sale deed in question as a witness. He accepted the suggestion that his wife had sold and transferred flat in question to accused persons ANKU Digitally signed by R ANKUR with her consent and without any force. He also accepted the PANGHAL PANG Date:

2023.03.21 11:09:33 suggestion that in sale deed it is mentioned that flat was sold for HAL +05'30' 960,000/-and his wife had received entire agreed sale consideration. He accepted suggestion that he and his wife along with accused persons appeared before sub-registrar concerned and they have not disclosed before sub- registrar concerned that sum of 212,000/- is outstanding against the accused persons towards consideration of flat. He also accepted the suggestion that they have not disclosed before concerned some registrar that consideration of flat was 1,461,000/- and not 960,000/-. He denied suggestion that sale consideration of flat was 960,000/-and not 1,461,000/. He voluntarily deposed that cheque of 212,000/- was received by his wife as the accused persons are in government service. He thereafter deposed that he cannot recollect whether cheque was handed over to him to his wife, however they both were present. He thereafter deposed that cheque was given by accused Inderjeet and then said that cheque was signed by both accused persons in his presence. He thereafter deposed that he had not shown sum of 385,000/-anywhere in ITR. He also deposed that he or his wife have not shown alleged outstanding balance in ITR. He accepted suggestion that one original possession letter was short in documents at the time of registry. He denied suggestion that he have laid his hands on cheque in question at the time of registry while helping Inderjeet to look for aforesaid short possession letter from his papers.

He denied suggestion that they have misused cheque or the suggestion that nothing is due and outstanding. He further deposed that he had vacated flat in January after insurance of Pasha.

7.3. During the course of trial, proceedings with respect to accused number 2 namely Smt. Urmila were quashed by the Hon'ble High Court of Delhi vide order dated 09.01.2013.

7.4. No other witnesses were examined by the ANKUR PANGHAL Complainant. Thereafter, Complainant evidence was closed vide Digitally signed by ANKUR PANGHAL Date: 2023.03.21 11:10:24 +05'30' order dated 26.04.2018, and the matter was listed for statement of the Accused u/s 313 Cr.P.C. r/w Section 281 Cr.P.C.

#### Statement of Accused

8. In order to give an opportunity to the accused number 1 to personally explain all the incriminating circumstances appearing in evidence against him, statement of the accused number 1, namely Inderjeet, under Section 313 Cr.P.C was recorded without oath on 17.02.2022 wherein all the incriminating circumstances appearing in evidence against the accused were put to him. The accused denied all the allegations against him and stated as under:

1. I had received the legal demand notice and I had duly replied to the same.
2. Bayana agreement Ex. CW-1/A does not bear my signature. Other documents are matter of record.
3. This case has been falsely implicated against me for my harassment by the complainant.
4. I am innocent and have been falsely implicated.
5. I want to lead defence evidence.

#### Defence Evidence

9. NIL as the accused vide his statement dated 07.04.2022 closed his defence evidence without leading any evidence in his defence.

#### Final Arguments

10. Final arguments were advanced by Ld. Counsels of both the parties. Written arguments were also filed by both the parties. I have heard the submissions of the Ld. Counsel for the Complainant as well as the Accused at length.

Digitally ANKUR signed ANKUR by PANG PANGHAL Date:

HAL 11:10:37 2023.03.21 +05'30' 10.1. Ld. counsel for complainant has argued that the writing and signature in respect of name of the complainant, date, amount in words and figure as well as signature are not denied by accused Inderjeet on Ex. CW-1/B. It is further argued that the accused has accepted that he received legal demand notice Ex. CW-1/E. It is further submitted on behalf of complainant that accused has nowhere stated that sale was not done through Pasha Properties. Furthermore, it is submitted that accused failed to rebut presumption U/s 139 and 118 of the Negotiable Instruments Act. Ld. counsel for complainant also submitted that accused has not produced any defence evidence, neither he gave any intimation to bank in respect of cheque in question and no demand notice of cheque was sent to complainant prior to the demand notice of complainant. It is also submitted on behalf of complainant that no complaint to police was lodged with respect to cheque in question. Ld. counsel for complainant also submitted that accused has filed reply to legal demand notice and has further submitted that complainant has proved her case beyond a shadow of reasonable doubt and accused has failed to rebut presumption that cheque has not been issued by him in discharge of liability.

10.2. Ld. counsel for accused has submitted that the bayana receipt Ex. CW-1/A has not been proved as CW-1 was not the maker of said document. It is further argued that Ex. CW-1/A is required to be de-exhibited. Accused has further submitted that in light of Ex. CW-1/DA and CW-1/DB it is evident that sale consideration was 960,000/- and question arises as to whether some of 212,000/- is for discharge of legally enforceable that or not. It is ANKUR PANGHAL further argued on behalf of accused that the presumption U/s 118 r/w s. 139 NI Act is a rebuttable presumption and said presumption can be PANGHAL CC No. 2188/18 Smt. Rukmani Devi vs. Sh. Indejeet & Anr. Page 12 of 24 11:10:57 +05'30' rebutted by accused by adducing evidence in his defence or by rebutting the said presumption otherwise during cross examination, as the accused has a constitutional right to remain silent. It is further submitted that accused had caused serious doubts about story of complainant and has rebutted the presumption U/s 118 r/w s. 139 NI Act about legal enforceability of the cheque in question. Ld. Counsel for the Accused relied upon certain authorities mentioned below during the final arguments to support his contentions:-

i. M.S. Narayana Menon vs. State of Kerala<sup>1</sup> ii. Krishna Janardhan Bhat vs. Dattatraya G. Hegde<sup>2</sup> 10.3. I have perused the written submissions filed by the respective counsels and have gone through the entire record and authorities relied upon by the Ld. Counsel for the Accused.

## LEGAL POSITION

11. Before proceeding to decide the case on merits, it is imperative that position of law with respect to an offence under Section 138 of the NI Act is discussed.



12. Section 138 of the NI Act reads as under:

"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 ANKUR PANGHAL 1 (2006) 6 SCC 39. Digitally signed by ANKUR PANGHAL Date: 2023.03.21 2 (2008) 4 SCC 54. 11:11:14 +05'30' 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."

13. In order to constitute an offence u/s.138 of the Negotiable Instruments Act, 1881, the following legal requirements must be satisfied from the averments in the Complaint as well as the evidence of the Complainant3: -

(a) a person must have drawn a cheque, on an account maintained by him in a bank, for payment of a certain amount of money to another person from out of that account, for the discharge, in whole or in part, of any legally enforceable debt or other liability;

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

(c) that the cheque has been returned by the drawee bank unpaid, either for the reason that the amount of money standing to the credit of that account is insufficient to honour the cheque or that it Digitally ANKUR signed by exceeds the amount arranged to be paid from that account by an ANKUR PANG Date:

PANGHAL agreement made with that bank; 2023.03.21 HAL 11:12:10 +05'30' 3  
\*Kusum Ingots & Alloys Ltd. vs. Pennar Peterson Securities Ltd. AIR 2000 SC 954,  
\*Modified in consonance with the amendments brought subsequent to the judgement dated 23.02.2000 in the NI Act.

(d) that the payee or the holder in due course of the cheque has made a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 30 days of the receipt of information from the bank regarding the return of the cheque as unpaid;

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

13.1. The legal requirements mentioned hereinabove are cumulative in nature, i.e., only upon fulfilment of all the aforementioned ingredients, the drawer of the cheque is deemed to have committed an offence under s. 138 of the Negotiable Instruments Act.

13.2. The provision of Sec.138 of NI Act is further supported by Sec.139 and Sec.118 of the Act. Sec. 139 of the Act provides presumption in favour of the Complainant and mandates that the court shall presume, that the holder of a cheque received the cheque of the nature referred to in Sec.138 for the discharge, wholly or in part of any debt or other liability. Section 139 reads as under:

"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."

13.3. Sec.118 of the Act provides presumptions as to negotiable instruments; that the court shall presume, until the contrary is proved, 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. Section 118 reads as under:

"...118. Presumption as to negotiable instruments.

-- Until the contrary is proved, the following presumptions shall be made:--

ANKU Digitally signed by R ANKUR

(a) of consideration --that every negotiable PANGHAL PANG Date:

2023.03.21 instrument was made or drawn for 11:12:22 HAL +05'30' consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;..."

13.4. Nature and scope of presumption under Section 139 of the NI Act has been dealt in a catena of judgments. In Hiten P. Dalal v. Bratindranath Banerjee<sup>4</sup>, the Hon'ble Supreme Court of India held as under:

"22. Because both Sections 138 and 139 require that the court "shall presume" the liability of the drawer of the cheques for the amounts for which the cheques are drawn, as noted in *State of Madras v. A. Vaidyanatha Iyer* [AIR 1958 SC 61 : 1958 Cri LJ 232] it is obligatory on the court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. "It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused." (Ibid. at p. 65, para 14.) Such a presumption is a presumption of law, as distinguished from a presumption of fact which describes provisions by which the court "may presume" a certain state of affairs. Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter, all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.

23. In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when, "after considering the matters before it, the court either believes it to exist, or considers its ANKUR Digitally by ANKUR signed PANGHA Date: 2023.03.21 PANGHAL L 11:12:53 +05'30' 4 (2001) 6 SCC 16 existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists" [ Section 3, Evidence Act].

Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the "prudent man."

13.5. In case *Rangappa v. Sri Mohan*<sup>5</sup>, Hon'ble Supreme Court has further held as under:

"27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal

remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof.

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

Therefore, if the accused is able to raise a probable defence which creates doubts about the ANKUR Digitally signed by ANKUR existence of a legally enforceable debt or liability, PANGH PANGHAL Date: 2023.03.21 the prosecution can fail. As clarified in the AL 11:13:09 +05'30' 5 (2010) 11 SCC 441 citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."

13.6. Section 139 thus creates a rebuttable presumption in favour of complainant which casts an onus on accused to rebut the same on basis of preponderance of probabilities. It is not necessary that accused enters the witness box himself for this purpose, however, making of bare averments is not enough and some proof has to be adduced by accused either from the material which is already available on record or by leading cogent evidence in support of his defence. (Reliance has been placed on Basalingappa vs Mudibasappa<sup>6</sup>).

13.7. What emerges from the abovesaid discussion is that the offence u/s 138 of the Negotiable Instruments Act operates on reverse onus of proof theory; once a given set of facts are shown to exist, the presumptions u/s 139 and Sec.118 of the Act mandate the court to draw them. The same is evident by the language used, i.e., "Shall Presume". However, the said presumptions are in the nature of rebuttable presumptions, i.e., it is open for the defence to shift the onus on the Complainant by raising a probable/ plausible defence.

13.8. With regard to the factors taken into account for rebutting the presumption u/s 139 read with s.118 of the Act, the judgement of Hon'ble Delhi High Court in V.S. Yadav v. Reena<sup>7</sup> assumes importance, wherein it was held that:

"Mere pleading not guilty and stating that the cheques were issued as security, would not amount to rebutting the presumption raised under Section 139 of N.I. Act. (...) The Accused, by cogent evidence, has to ANKU Digitally signed by R ANKUR PANGHAL PANG Date:

2023.03.21 6 (2019) 5 SCC 418 11:14:02 HAL +05'30' prove the circumstance under which cheques were issued". (emphasis supplied)"

## APPRECIATION OF EVIDENCE

14. Position of law being as above, it becomes imperative to examine as to whether complainant has been able to establish the basic ingredients for commission of offence under Section 138 of the NI Act and if the complainant succeeds in same, whether accused has been able to rebut the presumption drawn under Section 139 of the NI Act or not.

15. Now, I shall proceed to deal with the legal ingredients one by one and give my finding on whether the evidence both oral as well as documentary on record satisfy the legal ingredients in question or not.

i. First Ingredient: a person must have drawn a cheque, on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge, in whole or in part, of any legally enforceable debt or other liability;

15.1. The cheque has been drawn on the account of the Accused. This leads to drawing of an inference u/s 139 read with s.118 of the Act, that the cheque was issued in discharge of a legally recoverable debt or other liability. 15.2. In the case of *Bharat Barrel & Drum Mfg. Co. v. Amin Chand Pyarelal*<sup>8</sup> it was held:

"12. (...) the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with an ANKUR doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which PANGHAL 8 (1999) 3 SCC 35 Date: 2023.03.21 is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. (emphasis supplied)"

15.3. Also, in the case of *Kumar Exports Vs. Sharma Carpets*<sup>9</sup>, it was held:

"When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over. The Accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to

suppose that no consideration and debt existed. (...) To disprove the presumptions, the Accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the Accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the Complainant. The Accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumption arising under Sections 118 and 139 of the Act. The Accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the Complainant, that is, the averments in the Complaint, the case set out in the statutory notice and evidence adduced by the Complainant during the trial. Once such rebuttal evidence is adduced and accepted by the court,,having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the Complainant and, thereafter, the presumptions under Sections 118 and 139 of the Act will not again come to the Complainant's rescue. (emphasis supplied)"

15.4. The presumption, now having been raised against the Accused, it falls upon the Accused to rebut it. The Accused ANKUR has tried to rebut the presumption and establish his defence by PANGHAL cross-examination of CW- 1 and CW - 2. Date: 2023.03.21 9 2009 (2) SCC 513 15.5. In sum, it is the case of accused that he has rebutted the presumption U/s 118 r/w s. 139 NI Act qua the legal enforceability of cheque in question. Accused has relied upon cross-examination of CW - 1, who had admitted her signatures on CW-1/DA and CW-1/DB, which states that the total sale consideration amount was Rs. 9,60,000/-. Further, complainant has admitted that Ex. CW - 1/DB mentions that she has sold the property for Rs. 9,60,000/- with her consent and has received entire sale consideration. Accused further submitted that CW - 1 further admitted in her cross-examination that no cheque Ex. CW-1/B was ever given to her at any point of time.

15.6. Accused submitted that CW - 2 also admitted signatures of complainant on Ex. CW - 1/DB. CW - 2 also admitted that there is no other agreement to sell apart from CW - 1/DA. Accused further submitted that handing over the cheque to CW-1 is highly doubtful and improbable and has submitted that the cheque has nothing to do with sale consideration of flat in question. It is further submitted that if by any stretch of imagination, it is recoverable, same is not enforceable in lieu of S. 138 of NI Act.

15.7. Perusal of Ex. CW-1/A as well as testimony of CW-1 and CW-2 reveals that signatures of complainant are not there on bayana receipt rather there are signatures of CW-2 and CW-2 in his cross-examination has categorically admitted that flat in question was not in his name nor was he having any authority from his wife to deal in respect of said flat. Furthermore, perusal of testimony of CW-1 and CW-2 as well as CW-1/DA & CW-1/DB reveals that the total sale ANKUR consideration

amount is Rs. 9,60,000/- and complaint sold flat PANGHAL in question with her consent and after receiving entire sale consideration.

15.8. The fact of handing over of cheque in question to complainant is also doubtful as CW-1 has denied handing over of any cheque whereas CW-2 stated that cheque was given by Inderjeet and both accused signed in his presence. But later on, during cross-examination CW-2 admitted that Urmilla Kumari appeared on last day in entire deed and signatures of Urmila are not there on Ex. CW-1/B. Complaint has also not examined Javed Pasa, who was present during negotiation of sale of flat in question and who would have been a material witness to present case.

15.9. That the above-mentioned circumstances cast serious doubts on the veracity of the version of the Complainant regarding liability of the Accused towards the Complainant. Hence, the evidence on record is a probable defence on behalf of the Accused and the Accused has successfully shifted the onus on the Complainant to prove the liability of the Accused beyond reasonable doubt. The said onus to prove the liability has not been discharged by the Complainant.

15.10. That in a criminal prosecution u/s 138 of the Negotiable Instruments Act, 1881, the burden of proof always rests upon the Complainant, though he is aided by the presumptions existing in his favour. The Accused is not required to establish his defence beyond reasonable doubt. The Accused can establish his defence on a preponderance of probabilities and his burden may be discharged. It is sufficient if he establishes his defence on preponderance of probabilities. The Accused has done, so in this case by casting aspersions on ANKU Digitally signed by the case of the Complainant itself. R ANKUR PANGHAL PANG Date:

2023.03.21 11:16:11 CC No. 2188/18 Smt. Rukmani Devi vs. Sh. Indejeet & Anr. Page 22 of 24 HAL +05'30' 15.11. The conclusion of the above discussion is that the Accused has been able to rebut the presumption raised against him, by showing that the case of the Complainant itself is improbable. That once the onus of showing legally enforceable liability was shifted to the Complainant, the Complainant ought to have brought evidence on record in this regard. Hence, the said ingredient remains unfulfilled as against the Accused.

ii. Second Ingredient: that the cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier;

15.12. This ingredient stands satisfied on a bare perusal of the cheque in question Ex. CW1/B which bears date of 01.12.2008 and the return memo Ex. CW1/D which bears the date of 19.02.2009. The defence has led no evidence to controvert the same and hence, this ingredient stands fulfilled as against the Accused.

iii. Third Ingredient: that the cheque has been returned by the drawee bank unpaid, either for the reason that 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;

15.13. The bank return memo Ex. CW1/D dated 19.02.2009 on record states that the cheque in question has been returned dishonoured for the reason "Funds Insufficient". The defence has led no evidence to controvert the same and hence, this ingredient also stands satisfied as against the Accused.

iv. Fourth Ingredient: that the payee or the holder in due course of the cheque has made a demand for the payment of the said amount of money by giving a notice in writing, to the drawer ANKUR of the cheque, within 30 days of the receipt of information PANGHAL from the bank regarding the return of the cheque as unpaid; Digitally signed by ANKUR PANGHAL Date: 2023.03.21 11:16:42 +05'30' 15.14. The accused in his statement recorded U/s 313 CrPC has accepted the fact that he had received the legal demand notice dt. 09.03.2009 and he had duly replied to the same.

v. Fifth Ingredient: that the drawer of such cheque fails to make the payment of the said amount of money to the payee or holder in due course within 15 days of receipt of the said notice.

15.15. It is an admitted position that the Accused has failed to pay the amount due under the cheque in question, on the ground that he does not owe any liability towards the Complainant. Hence, this ingredient stands fulfilled as against the Accused.

16. Therefore, in light of the evidence adduced, documents put forth and arguments advanced by the parties and further, in view of the above discussion, this court is of the considered opinion that all the ingredients of the offence have not been cumulatively satisfied against the Accused.

17. Resultantly, the accusedINDERJEET S/o DAYA RAM is hereby found not guilty of offence under Section 138 of Negotiable Instruments Act, 1881 and accordingly, is hereby ACQUITTED under Section 138 of Negotiable Instruments Act, 1881.

18. File be consigned to record room after due compliance.

Announced in open court on 20.03.2023 in the presence of the accused. The judgment contains 24 pages and each page have been signed by the undersigned.

(ANKUR PANGHAL) ANKUR ANKUR PANGHAL MM-06, Shahdara District, PANGHAL Date: 2023.03.21 Karkardooma Courts, Delhi 11:16:58 +05'30' 20/03/2023