

## Judgment Of Hon'Ble Supreme Court In A. ... vs . on 9 July, 2018

IN THE COURT OF SHRI ARUN KUMAR GARG  
METROPOLITAN MAGISTRATE(NI Act)-03 (SOUTH)  
SAKET COURTS:NEW DELHI

CC NO: 1661/17

Bulland Leasing & Finance Pvt. Ltd.,  
A-2, Khanpur Devli Road, Khanpur,  
New Delhi  
through its Authorized Representative  
Shri Dinesh Kumar Basista

.....Complainant

Versus

Sh.Manoj Singh Nirman  
S/o Sh. Mangal Singh,  
R/o 616, G. Floor,  
Khasra No.614, Tigri Road,  
Devli Village,  
New Delhi

Also at:  
M/s Singh Nirman Store  
614, Holi Chowk, Devli Village,  
New Delhi - 110062

.....Accused

Offence Complained of or proved	:	Under section 138 of Negotiable Instruments Act, 1881
Plea of the Accused	:	Pleaded not guilty
Date of filing	:	01.10.2011
Date of Institution	:	17.10.2011
Date of reserving judgment/order	:	26.06.2018
Final Order/Judgment	:	Acquitted
Date of pronouncement	:	09.07.2018

Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman  
Judgment dated 09.07.2018  
Comp. Case No. 1661/2017  
JUDGMENT:

Page 1 of 2

BRIEF FACTS AND REASONS FOR THE DECISION OF THE CASE:-

1. By this Judgment, I will dispose of the present complaint under Section 138 of the Negotiable Instruments Act, 1881 filed by the complainant against accused on account of dishonor of cheque bearing number 577945 dated 29.07.2011 for a sum of Rs.9,44,361/- drawn on Punjab National Bank, Deoli, New Delhi - 110062, issued by accused in favour of complainant (hereinafter referred to as cheque in question).

2. Brief case of the complainant as per complaint is that the complainant had advanced a loan of Rs.15,00,000/- to the accused vide cheques bearing number 695367, 695368 and 695369 dated 17.08.2010 drawn on PNB, Khanpur, New Delhi on interest repayable by the accused to the complainant in 365 daily installments of Rs.6576/- each. At the time of receipt of the loan, accused executed receipt, promissory note and other documents in favour of the complainant. The accused failed to pay the aforesaid installments to the complainant and in discharge of his outstanding liability to the extent of Rs.9,44,361/-, issued the cheque in question in favour of the Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018 complainant which on presentation was returned unpaid with remarks "Funds Insufficient" vide return memo dated

02.08.2011. Since the accused has failed to make the payment of cheque amount in question despite service of legal notice of demand dated 20.08.2011 upon him, he has committed the offence u/s 138 of NI Act.

3. The complaint was first presented by the Complainant at Dwarka Courts where the accused was summoned after taking cognizance. Subsequently, on the basis of an out of court settlement, matter was adjourned sine die with liberty to the complainant to revive the same in case of six consecutive defaults by the accused in payment in terms of settlement. Since the accused did not make the payment in terms of settlement, on an application of complainant, the complaint was revived and the same was transferred to Saket court for want of territorial jurisdiction vide order dated 23.11.2016.

4. A separate notice explaining accusations to accused under Section 138 of the Negotiable Instruments Act, 1881 was thereafter served on 27.04.2017 and his plea was recorded. Accused did not plead guilty and claimed trial. The accused had taken a defence that he had given the blank signed cheque as Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018 security to the complainant at the time of taking the loan and that complainant has taken his signatures on blank loan agreement, blank stamp papers as well as on blank papers at the time of giving loan and he had already paid the entire amount to the complainant and only some amount of interest was remaining for which the complainant has misused the said cheque in question. He further stated that he had not received any legal notice and has already paid the remaining interest amount after filing of the present complaint by the complainant and hence, he has no legal liability to pay the cheque amount to the complainant. Thereafter, on an oral request of the accused, he was permitted to cross-examine the complainant's witness in terms of Section 145(2) of the NI Act and matter was adjourned for CE. It is further significant to note that at this stage AR of the complainant was substituted who, though filed his affidavit in post summoning evidence but

instead of tendering the same in post summoning evidence, had adopted the pre-summoning evidence by way of affidavit of previous AR of the complainant and relied upon the following documents:-

Ex.CW-1/1: Memorandum and Articles of Association of complainant company.

Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018 Ex.CW-1/2: Resolution of Board of Directors of complainant company in favour of AR Mr. Dinesh Basista. Ex.CW1/3: Demand Promissory note Ex.CW1/4: Receipt.

Ex.CW1/5: Statement of account of accused maintained by complainant.

Ex.CW-1/6: Original cheque in question. Ex.CW1/7: Original cheque return memo dated 02.08.2011 Ex.CW-1/8: Legal notice of demand dated 20.08.2011 Ex.CW-1/9 to Ex.CW-1/12: Postal receipts.

5. CW-1 was duly cross examined by counsel for accused and thereafter, on a separate statement of AR of complainant, CE was closed vide order dated 16.03.2018.

6. Accused was thereafter examined under section 313 Cr.PC on 11.05.2018 putting entire incriminating evidence against him. During examination of accused under Section 313 Cr.P.C., he has once again taken a stand similar to stand taken by him during his plea under Section 251 Cr.PC. Since accused chose to lead evidence in his defence, matter was adjourned for DE.

7. Accused has examined himself as DW-1 after his application under section 315 CrPC was allowed by this Court vide order dated 29.05.2018 and thereafter, on a separate statement of accused, DE was closed vide order dated 29.05.2018 and matter Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018 was adjourned for final arguments. Final arguments on behalf of the parties were thereafter heard on 26.06.2018.

8. It is submitted by counsel for complainant that the complainant has been able to prove all the ingredients of offence under Section 138 of the Negotiable Instruments Act, 1881 beyond reasonable doubts by way of testimony of CW-1 which stood corroborated by the documentary evidence in the form of documents Ex.CW-1/1 to Ex.CW-1/12. He submits that the accused had taken vague, false and baseless defence that the cheque in question was given by him as security and he had already made the entire payment against the loan in question and has failed to prove the same by leading evidence. It is further submitted by him that accused has failed to rebut the presumption arising in favour of complainant in terms of Section 118 and 139 of NI Act in as much as testimony of CW- 1, during his cross-examination, has remained uncontroverted in material particulars. He submits that accused had not denied having availed the loan in question nor has he denied his signatures on the documents Ex. CW-1/3, Ex. CW-1/4 and Ex. CW-1/6. Even the statement of account EX. CW-1/5, according to him, has not been disputed by the accused and his only Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018 defence is that agreed rate of interest

between the parties was 18% per annum instead of 60% per annum charged by the complainant and he had already repaid the entire loan amount before filing of the present complaint by the complainant though some interest amount was outstanding. Counsel for complainant submits that during his cross-examination, accused has admitted that he has no documentary proof of the alleged payments whereas a bare perusal of the document Ex. CW-1/3 clearly shows that agreed rate of interest between the parties was Rs. 60% per annum. Besides, according to him, complainant has been able to prove the liability of accused to the extent of cheque amount in question as on the date of presentation of the cheque Ex. CW-1/6 by way of statement of account EX. CW- 1/5. He submits that an adverse inference regarding admission of his liability by the accused needs to be raised against the accused since he has failed to respond to the legal notice of demand Ex. CW-1/8 sent by the complainant to the accused at his correct address, as admitted by accused during his cross-examination, through Registered AD and Speed Post after prepayment of postal charges, service of which upon the accused shall be presumed in view of provisions of Section 27 Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018 of General Clauses Act, 1897. Even otherwise, according to him, had there been no liability of the accused towards the complainant under the cheque in question, accused would not have entered into the settlement dated 28.05.2012 with the complainant for a sum of Rs. 32,68,000/- and would also not have made part payments in terms of the settlement after getting the complaint adjourned sine die by the Court vide order dated 28.07.2012. He has thus prayed for conviction of accused for the offence u/s 138 of NI Act and has relied upon the judgment of Hon'ble Supreme Court in Ganga Bhavani v. Rayapati Venkat Reddy and Ors CrI. App. No. 86 of 2011 decided on 04.09.2013.

9. On the other hand, it is submitted by counsel for accused that the present complaint filed by the complainant is liable to be dismissed in as much as complainant has failed to prove its case by examining any competent witness. He submits that though the complaint was filed by the complainant through its alleged AR Mr. Dinesh Kumar Basista but during post summoning evidence another person namely Mr. Praveen Bidhuri, alleged new AR of complainant, was examined by the complainant as CW-1. He submits that admittedly CW-1 was neither a witness Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018 to the alleged loan transaction between the parties nor any of the documents Ex. CW-1/3, Ex. CW-1/4 and Ex. CW-1/6 were executed in his presence. Even the entries in the statement of account Ex. CW-1/5, according to him, were neither made by him or in his presence nor the printout of the same was taken by him. According to counsel for accused, CW-1 could not even depose about the name of person who had filled in the details in the documents Ex. CW-1/3, Ex. CW-1/4 and Ex. CW-1/6. He submits that admittedly CW-1 had joined the complainant company in the year 2012-13 i.e. much after the alleged loan transaction as well as the presentation and dishonour of cheque in question. Thus, according to counsel for accused, CW-1 was not a competent witness to prove the documents relied upon by the complainant in support of its case and the observations made by Hon'ble Supreme Court in Ganga Bhavani's case (Supra) are of no assistance to the complainant. It is further submitted by him that since the witness was not having basic knowledge of facts of the case mentioned in the complaint and about execution of the documents relied upon by the complainant, no suggestions could have been given by the counsel for accused to the aforesaid witness. In support of his Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018 aforesaid submission, counsel for accused has relied upon the judgment of Hon'ble Supreme Court

in A. C. Narayanan Vs. State of Maharashtra and Another I (2015) SLT 685 and judgment of Hon'ble Madras High Court in Madras Cements Ltd. Vs. TMT Kannammal Educational Trust and Another SA No.163 of 2008 decided on 27.11.2014.

10. It is further submitted by him that the complainant has failed to prove the statement of account Ex.CW-1/5 as per the rules of evidence in as much as no supporting document has been filed by the complainant in support of entries made in the statement of account and the same is not accompanied by any certificate u/s 65-B of Indian Evidence Act. He submits that the statement of account Ex.CW-1/5 has not been prepared by the complainant in consonance with the provision of Section 34 of Indian Evidence Act and even otherwise, the same is not sufficient to charge the accused with the liability to the extent of cheque amount. In support of his aforesaid submissions, counsel for accused has relied upon the judgments of Hon'ble Supreme Court in CBI Vs. V. C. Shukla and Others AIR 1998 SC 1406 and Anvar PV Vs. P. K. Basheer and Others VIII (2014) SLT

223. Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018

11. It is further submitted by counsel for accused that once the presumption arising in favour of complainant in terms of Section 118 and 139 of NI Act is rebutted by the accused, the onus to prove his case beyond reasonable doubts shifted to the complainant and since the complainant has failed to prove that the cheque in question was issued by the accused in discharge of any legally enforceable liability and for consideration, the accused is liable to be acquitted in as much as no complaint u/s 138 of NI Act is maintainable on account of dishonour of security cheque. In support of his aforesaid submission, counsel for accused has relied upon the judgment of Hon'ble Supreme Court in M/s Kumar Exports Vs. M/s. Sharma Carpets AIR 2009 SC 1518 and M. S. Narayana Menon @ Mani Vs. State of Kerala and Another 2006 JCC (NI) 198 and the judgments of Hon'ble Delhi High Court in Satish Kumar Vs. State NCT of Delhi and Another 2013 VIII AD (Delhi) 465 and M/s. Collage Culture and Others Vs. Apparel Export Promotion Council and Another 2007 (4) JCC (NI) 388.

12. A bare perusal of the demand promissory note and receipt Ex.CW-1/3 and Ex.CW-1/4, according to him, shows that the blanks in the same have been subsequently filled up by the Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018 complainant and hence, the said documents do not create any liability of the accused towards the complainant. He submits that CW-1 has admitted during his cross examination that as per RBI guidelines, complainant could not have charged interest beyond 24% per annum, however, the alleged statement of account Ex.CW-1/5 reflects that the actual interest charged by the complainant was @60% per annum. Thus, according to him, the complainant has failed to prove the legally enforceable liability of the accused towards the complainant to the extent of cheque amount. Even the alleged compromise dated 28.05.2012, according to him, does not support the case of complainant in as much as it has not been explained by the complainant as to why the accused had agreed to pay more than Rs.32 lacs despite the fact that the cheques involved in both the cases filed against accused were of Rs.19 lacs approximately. The aforesaid fact coupled with the testimony of DW-1, according to him, proves that the signatures of the accused on the alleged compromise dated 28.05.2012 were fraudulently obtained by the complainant. He has thus prayed for acquittal of the accused from the charge u/s 138 of NI Act.

13. I have heard the submissions made on behalf of the parties and Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018 have also perused the record. Before appreciation of evidence led on behalf of the parties, at the very outset, I would like to narrate the legal principles laid down in several judgments of Hon'ble Supreme Court of India and of various High Court including our own High Court which have a bearing on adjudication of the present complaint under Section 138 of the Negotiable Instruments Act. In my considered opinion, it is now well settled that in case the accused admits his signatures on the cheque in question, there arises a presumption in terms of Sections 118(a) and 139 of the NI Act to the effect that the same was issued for valid consideration and in discharge of legally enforceable debt or liability. Though a Division Bench of Hon'ble Supreme Court of India in Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54 has observed that the presumption under Section 139 of the NI Act does not go to the extent of presuming the existence of a legally recoverable debt, however in a later judgment titled as Rangappa v. Sri Mohan, (2010) 11 SCC 441 a larger Bench of Hon'ble Supreme Court has expressed its disagreement with the aforesaid view holding that there is also an initial presumption regarding the existence of legally recoverable liability under Section 139 of the NI Act. Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018 Further, it has been held that the presumptions under Sections 118(a) and 139 of the NI Act are rebuttable in nature and for rebuttal of the same accused need not even step into the witness box as the accused can rebut the same by placing reliance on the material brought on record by the complainant. It is also well settled legal position that the presumptions can be rebutted even by raising presumptions of facts and law on the basis of material available on record. The aforesaid propositions of law have been laid down by Hon'ble Supreme Court in M/s Bharat Barrel & Drum Mfg. Co. v. Amin Chand Pyarelal (1999) 3 SCC 35, Krishna Janardhan Bhat's case (Supra) and Rangappa v. Sri Mohan's case (Supra). It is further well settled in the aforesaid judgments that the standard required from the accused to prove his defence is preponderance of probabilities and accused need not prove his defence beyond reasonable doubts. In none of the judgments relied upon by counsels for both the parties, any principle contrary to the principles quoted hereinabove has been laid down by any of the High Courts or by Hon'ble Apex Court.

14. Now let us examine the facts of case in hand in the light of aforesaid legal principles. No doubt, in view of admission of Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018 accused as to his signatures on the cheque in question, there arises a presumption in favour of complainant in terms of Section 118 and 139 of the NI Act that the cheque in question must have been issued by the accused for consideration and in discharge of his legally enforceable liability, however, as has already been observed hereinabove, the aforesaid presumption is rebuttable in nature and for rebuttal of the same it was not incumbent upon the accused to even step into the witness box. The accused could have rebutted the aforesaid presumptions not only by placing reliance upon the material brought on record by the complainant but also by way of presumptions of fact and law arising on the basis of facts admitted or proved on record. Whether or not the accused has been able to rebut the aforesaid presumption is a question of fact which can be decided only after appreciation of evidence led by the parties in the present case.

15. It is significant to note that besides admission of his signatures on the cheque in question, accused has also admitted that he had availed the loan of Rs. 15,00,000/- from the complainant as

alleged in the complaint. However, he has raised a dispute as to the rate of interest to be charged by the complainant on the said Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018 loan as well as regarding the number and amount of installments in which the same was to be repaid by the accused to the complainant. Though as per the complainant, loan was repayable by the accused in 365 daily installments of Rs. 6576/- each, but according to the accused the loan was repayable by him in 272 daily installments of Rs. 6500/- each. In para no. 5 of the complaint, it has been alleged by the complainant that accused failed to pay the aforesaid installment to the complainant and therefore a sum of Rs. 9,44,361/- became due and payable by accused to the complainant on account of said outstanding installments, interest on belated installments, visit charges etc. The complaint is conspicuously silent about the number of installments allegedly paid by the accused to the complainant, amount which was due towards outstanding installment, amount which was due towards interest on belated payments and amount which was due towards visit charges etc. Though a computer generated statement of account reflecting the details of the outstanding liability is filed by the complainant and the same is EX. CW-1/5, however, the same is not accompanied by any certificate under Section 65B of Indian Evidence Act, in the absence of which, it is not admissible in Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018 evidence in view of authoritative pronouncement of Hon'ble Supreme Court in Anvar PV's case (supra).

16.It is settled legal position that merely because an exhibit mark has been given to a document, it does not mean that the document stand proved until the same is proved as per the rules of evidence laid down under the Indian Evidence Act. It was admitted by CW-1 during his cross-examination that the entries in the statement of account Ex. CW-1/5 were not made by him, nor had he taken the printout of the same. Thus, he was not a competent witness to prove the said document.

17.Even otherwise, complainant has failed to place on record any document supporting the entries made in the statement of account EX. CW-1/5 in the absence of which the statement of account Ex. CW-1/5 by itself is not sufficient to charge the accused with the liability mentioned therein in view of provisions of Section 34 of Indian Evidence Act.

18.Though in the statement of account Ex. CW-1/5 and the demand promissory note Ex. CW-1/3 the agreed rate of interest has been mentioned as 60% per annum, however, the method of charging the said interest i.e. whether it was flat or floating rate of interest and whether the same was to be applied on reducing Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018 balance method is not a subject matter of any of the aforesaid documents. From the cross-examination of CW-1, it is apparent that a loan agreement was executed between the complainant and the accused at the time of advancement of loan in question by complainant to the accused though according to accused certain blank papers were signed by him. Complainant has failed to produce the aforesaid loan agreement before the court in the absence of which charge of interest at the rate of 60% per annum in the statement of account Ex. CW-1/5 and entry pertaining to late fees and other charges of Rs. 1,12,369/- dated 28.07.2011 in the statement of account is not justifiable. In fact, CW-1 during his cross-examination has admitted that as per RBI guidelines, complainant could not have charged interest beyond 24% per annum from the accused. The aforesaid admission, coupled with the omission on the part of complainant to produce the loan

agreement is sufficient to give rise to an inference against the complainant and in favour of accused in terms of Section 114(g) of Indian Evidence Act that the loan agreement, if produced by the complainant, would have supported the case of accused that agreed rate of interest was in fact Rs. 18% per annum and not 60% per annum as charged by Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018 the complainant. The defence sought to be raised by the accused as to the rate of interest being 18% per annum instead of 60% per annum has thus been rendered reasonably probable by virtue of aforesaid admission on the part of CW-1 and presumption arising in favour of accused under Section 114(g) of NI Act on account of omission of complainant to produce the loan agreement executed between the parties. If the agreed rate of interest between the parties is taken to be 18% per annum then, in my considered opinion, accused has been able to show through the statement of Account EX. CW-1/5 that the liability of accused as on the date of presentation of cheque in question could not have been either equal to or more than the cheque amount. It is settled legal position that if the liability of accused as on the date of presentation of cheque is even one rupee less than the cheque amount, provision of Section 138 of NI Act is not attracted to dishonour of such a cheque.

19. Moreover, the liability need to be legally enforceable. Even if it is assumed for the sake of arguments that the agreed rate of interest between the parties was 60% per annum, however, in my considered opinion, such an exorbitant rate of interest cannot be said to be legally enforceable in view of provisions of Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018 Section 73 and 74 of Indian Contract Act.

20. So far as the documents Ex. CW-1/3 and Ex. CW-1/4 are concerned, in my considered opinion, mere admission of his signatures by the accused on the said documents cannot amount to admission by the accused of their due execution or of contents thereof particularly in view of testimony of accused that the same were signed by him in blank before grant of the loan. Complainant has failed to prove the execution of any of the aforesaid documents by examining any of the attesting witnesses to the said documents though each of the documents bears the signatures of two attesting witnesses. CW-1, the sole witness examined by the complainant in support of his case, has categorically deposed during his cross-examination that none of the said documents were executed in his presence. He expressed his ignorance about the name of person who had filled in the details in the said documents as well as the cheque in question. Thus, mere exhibition of said documents by CW-1 is of no consequence as the execution of the same has not been duly proved by the complainant by examining the attesting witnesses. The aforesaid documents Ex. CW-1/3 and Ex. CW- 1/4 are thus also required to be kept out of consideration while Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018 appreciating the evidence led on behalf of complainant as the same have not been properly proved by the complainant.

21. If the documents Ex. CW-1/3, Ex. CW-1/4 and EX. CW-1/5 are left out of consideration, there is no document on record to prove the liability of accused to the extent of cheque amount in question as on the date of presentation of cheque in question except the cheque in question. A bare perusal of the cheque Ex. CW-1/6 shows that the signatures on the same are in different ink and handwriting than the ink and handwriting in which the remaining particulars are filled in the cheque. CW-1 pleaded his ignorance about the name of person who had filled in the cheque in question.



Complainant has failed to examine any witness who could have deposed that the cheque in question was duly filled in when the same was signed by the accused and handed over to the complainant. On the other hand, accused has categorically deposed that the cheque in question was given by him to the complainant as blank signed security cheque before grant of the loan and suggestion to the contrary was denied by the accused. The accused, in my considered opinion, has thus been able to rebut the initial presumption arising in favour of complainant under Section 118 and 139 of the NI Act and Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018 despite rebuttal of the same complainant has failed to prove that the cheque in question was issued by accused in discharge of any legally enforceable debt or liability towards the complainant.

22. In my considered opinion, reliance by the complainant on the judgment of Hon'ble Supreme Court in Gangabhavani's case (Supra) on account of omission of the accused to put his defence to CW-1 during his cross-examination, is highly misplaced in view of the fact that in the case in hand CW-1 was not a competent witness as admittedly no part of transaction in question had taken place in his presence and hence CW-1 did not prove anything. When CW-1 had not proved anything against the accused, in my considered opinion, no suggestions were required to be given by accused to him to disprove the case of complainant and to prove his defence.

23. So far as the alleged agreement dated 28.05.2012 allegedly arrived at between the parties during pendency of the present complaint is concerned, in my considered opinion, even if it is assumed for the sake of arguments that accused had voluntarily entered into the said agreement, the same does not amount to admission by the accused of his guilt under Section 138 of the Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018 NI Act and complainant was required to prove all the ingredients of the offence under Section 138 of NI Act against the accused independent of said agreement. Even otherwise, complainant has failed to prove that the said agreement was voluntarily entered into by the accused by examining any competent witness in this regard, whereas, the accused has been able to probablize his defence by way of his uncontroverted testimony. The fact that accused had allegedly agreed to pay a sum of more than RS. 32,00,000/- against the two cheques totaling to Rs. 18,80,000/- approximately to the complainant further indicates towards the fact that signatures of the accused on the said settlement agreement were obtained by complainant deceitfully as alleged by the accused.

24. In the absence of any cogent evidence on the part of complainant to prove his case against the accused, complainant cannot be permitted to take the plea that omission on the part of accused to respond to the legal notice is sufficient to infer admission of his liability by him towards the complainant.

25. In view of the aforesaid discussions, accused is acquitted of charge u/s 138 of the Negotiable Instruments Act, 1881(as amended upto date).

Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018

26. Ordered accordingly.

27. Accused has already furnished PB and SB in sum of Rs. 25,000/- each in terms of provisions of Section 437-A of Cr.P.C. and the same have been accepted and shall remain in force for a period of six months from today.

Announced in the Open Court on this 9th day of July 2018. This Judgment consists of 24 signed pages.

(ARUN KUMAR GARG) Metropolitan Magistrate-03 (NI Act(South) Saket Courts, New Delhi/09.07.2018 Bulland Leasing & Finance Pvt. Ltd. v. Manoj Singh Nirman Judgment dated 09.07.2018