the Supreme Court of India, made the following suggestions:

1. Reject dubious PIL at the threshold, and in appropriate case with exemplary costs,

2. In cases where important projects or socio-economic regulations are challenged after gross delay, such petitions should be thrown out at the very threshold on the ground of latches. Just because a petition is termed as PIL does not mean that ordinary principles applicable to litigation will not apply. Latches are one of them.

Public Interest Litigants fear that implementation of these suggestions will sound the death-knell of the people friendly concept of PIL. However, it cannot be denied that PIL activists should be responsible and accountable. It is also notable here that even the Consumers Protection Act, 1986 has been amended to provide compensation to opposite parties in cases of frivolous complaints made by consumers. PIL requires rethinking and restructuring. Overuse and abuse of PIL will make it ineffective. PIL has translated the rhetoric of fundamental rights into living reality for at least some segments of our exploited and downtrodden humanity. Under trial prisoners languishing in jails for inordinately long periods, inmates of asylums and care-homes living in sub-human conditions, children working in hazardous occupations and similar disadvantaged sections. Hence, any change to improve it further should be encouraged and welcomed.

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PRESUMPTION OF EXISTENCE OF LEGALLY ENFORCEABLE DEBT/ LIABILITY IN CASES OF DISHONOUR OF CHEQUE

By

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Introduction:

Proper and smooth functioning of all business transactions, particularly of cheques as instruments, primarily depends upon the integrity and honesty of the parties. In our country, in a large number of commercial transactions, it was noted that cheques were

issued even merely as a device not only to stall but even to defraud creditors. The sanctity and credibility of issuance of cheques in commercial transactions was eroded to a large extent. Cheques were issued for payment of admitted liability but drawer used to dishonor the said liability by issuing instructions for stop payment or by not maintaining sufficient funds in the bank account. Undoubtedly, disohnour of cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. To avoid the aforesaid and to create an element of credibility and dependability, Sections 138 and 139 were enacted which provide a criminal remedy of penalty if the ingredients of the sections are satisfied. The remedy available in a civil Court is costly, a long-term matter and unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee[1].

Statutory Position:

In order to curb the delay and with a view sharpen the provisions of the Act with more effectiveness, the Section 4 of the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 has inserted Chapter XVII (Sections 138-147) which deals with the Penalties in case of dishonor of certain cheques for insufficiency of funds in the accounts.

The Section 138 of N.I. Act deals with the dishonor of cheque for insufficiency, *etc.*, of funds in the account. The essential requirements of the said provision are that cheque shall be 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, *i.e.*, a legally enforceable debt/liability and the same 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 exceed the amount arranged to be paid from that account by an arrangement made with that bank. The punishment is imprisonment for a term which may extend to two years, or with fine may extend to twice the amount of the cheque, or with both. Provided that, the cheque shall be presented within 6 months; the payee shall give a notice in writing to drawer within 30 days of receipt of information of dishonor from banker; and the drawer fails to make payment of the said amount of money.

The Section 118(a) of N.I. Act raises a presumption of consideration. According to it,

> "*118. Presumptions as to negotiable instruments:* Until the contrary is proved, the following presumptions shall be made:
>
> (a) of consideration: that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration; ….."

Section 139 of the Act raises a presumption in favour of the holder to the effect that, the holder of cheque received the cheque of the nature referred in Section 138, for the discharge of any debt or other liability, in whole or in part. No doubt, the said presumption is under Section 139 is a rebuttable presumption. The presumption under Section 139 reads as under:

> "*139. Presumption in favor of the 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."

1. *Goa Plast (P) Ltd. v. Chico Ursula D'Souza*, AIR 2004 SC 408 = 2004 (1) ALD (Crl.) 309 (SC).

Judicial Position:

The judgments of the Supreme Court of India, which is the apex Court, act as precedents, are binding on all the Courts throughout the country, and remain in force until the same are differed by the Supreme Court itself in any subsequent judgments. As such, some important decisions of the Supreme Court dealing with the aspect of the presumption of the legally enforceable debt/ liability in cheque bounce cases are discussed hereunder.

In *Hiten P. Dalal v. Bratindranath Banerjee*[2], the Supreme Court observed that Sections 138 and 139 of the Act introduced exceptions to the general rule as to the burden of proof in criminal cases and shifted the onus on the accused, in the following manner:

> "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*[3], it is obligatory on the Court to raise this presumption in every case where the factual basis for raising of the presumption had been established. "it introduced an exception to the general rule as to the burden of proof in criminal cases and shifts the onus to the accused" (ibid). 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 reasonable possibility of the non-existence of the presumed fact". It was further held that, "provided the facts required to form the basis of a presumption of law exists, the discretion is left with the Court 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 the Court either believes its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. 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 reasonable probable, the standard of reasonability being that of a prudent man."

In *K.N. Beena v. Muniyappan*[4], the Supreme Court observed that it would be erroneous approach in case the burden is cast on the prosecution/complainant to prove that the cheque was issued for a debt or liability. It was further observed that, the accused had to prove in the trial by leading cogent evidence that there was no debt or liability and that the accused no having leaded any evidence, except some formal evidence could not be said to have discharged the burden cast on him.

Further, the Section 138 of the Act can indeed be attracted when a cheque is dishnoured on account of "stop payment" instructions sent by the accused to his band in respect of a post-dated cheque, irrespective of insufficiency of funds in the account. This position was clarified by the Supreme Court in *Goa Plast (Pvt.) Ltd. v. Chico Ursula*

2. AIR 2001 SC 3897 = 2001 (2) ALD (Crl.) 234 (SC)
3. AIR 1958 SC 61
4. AIR 2001 SC 2895 = 2001 (2) ALD (Crl.) 824 (SC)

D'Souza[5], wherein it was held that, the purpose of a post-dated cheque is to provide some accommodation to the drawer of the cheque and it will lose its credibility and acceptability if the payment can be stopped routinely. Therefore, it is all the more necessary that the drawer of the cheque should not be allowed to abuse the accommodation given to him by a creditor by way of acceptance of a post-dated cheque. It was further held that, in view of Section 139 it has to be presumed that a cheque is issued in discharge of any debt or other liability and the burden of proof is on accused who wants to rebut the presumption. A contrary view would render Section 138 a dead letter and will provide a handle to persons trying to avoid payment under legal obligations undertaken by them through their own acts which in other words can be said to be taking advantage of one's own wrong.

Further, in *M.M.T.C. Ltd. and another v. Medchal Chemicals & Pharma (P) Ltd.*[6], the Supreme Court observed that, if the accused shows that in his account there was sufficient funds to clear the amount of the cheque for encashment at the drawer bank and that the stop payment notice had been issued because of the other valid causes including that there was no existing debt or liability at the time of presentation of cheque for encashment, then offence under Section 138 would not be made out. The important thing is that the burden of so proving would be on the accused.

The Supreme Court has discussed regarding presumption of consideration under Section 118(a) in *Bharat Barrel & Drum Manufacturing Company v. Amin Chand Pyarelal*[7] and observed that, if the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. It was further held that, the bare denial of the passing of consideration apparently does not appear to be any defence. In *Mallavarapu Kasiviswesware Rao v. Thadikonda Ramulu Firm and others*[8] the Supreme Court has reiterated the above position.

The Supreme Court in *Krishna Janardhan Bhat v. Dattatraya G. Hegde*[9] has taken a different view and holds that, the existence of legally recoverable debt is not a matter of presumption under Section 139 of the Act. It merely raises a presumption in favour of a holder of the cheque that the same has been issued for discharge of any debt or other liability. It was further held that, the prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof as to prove a defence on the part of the accused is "preponderance of probabilities". The Supreme Court further held that, statue mandates raising of presumption but it stops at that. It does not say how presumption drawn should be held to have been rebutted. Other important principles of legal jurisprudence, namely, presumption of innocence as a human right and the doctrine of reverse burden introduced by Section 139 should be delicately balanced.

The Supreme Court, on the legal question put before it pertaining to the proper

5. AIR 2004 SC 408 = 2004 (1) ALD (Crl.) 309 (SC)
6. AIR 2001 SC 182 = 2002 (1) ALD (Crl.) 585 (SC)
7. (1993) 3 SCC 35
8. AIR 2008 SC 2898 = 2008 (4) ALD 15 (SC)
9. AIR 2008 SC 1325 = 2008 (1) ALD (Crl.) 485 (SC)

interpretation of Section 139 of N.I. Act which shifts the burden of proof on the accused in respect of cheque bouncing cases and the manner in which this statutory presumption can be rebutted, has made detailed observations in the Special Leave Petition filed before it in case of *Rangappa v. Sri Mohan*[10], by considering a catena of its previous decisions and has held that, the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability and gone to the extent of holding the impugned observations in *Krishna Jadardhan Bhat*[11] (supra) to be incorrect. It has further opined regarding the nature of rebuttable presumption that, it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested, but there can be no doubt that there is an initial presumption which favours the complainant and that, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. Further, regarding the construction and interpretation of reverse onus clause it has held that, "test of proportionality" should guide Court and the accused/defendant cannot be expected to discharge an unduly high standard of proof and it imposes an evidentiary burden and not a persuasive burden. It has settled the position that, to rebut presumption under Section 139, the standard of proof is that of 'preponderance of probabilities' and if the accused is able to raise a probable defence which creates doubts about existence of legally enforceable debt or liability, the prosecution can fail and also that 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.

Conclusion :

The presumption of legally enforceable debt/liability in cases of dishonor of cheque lies in favour of the complainant, but the same is rebuttable. The accused has responsibility to rebut the said presumption by leading cogent evidence or even from the materials submitted by the complainant, but bare denial of the transaction does not relieve the accused. Hence, the presence of this presumption is necessary for an effective redressal mechanism and it also instills faith in business community to use cheque confidently without fear.

10. AIR 2010 SC 1898 = 2010 (2) ALD (Crl.) 734 (SC)
11. AIR 2008 SC 2898 = 2008 (4) ALD 15 (SC)

GLOBALIZATION AND WOMEN'S RIGHTS

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"*Gender inequality, which remains pervasive worldwide, tends to lower the productivity of labour and the efficiency of labour allocation in households and the economy, intensifying the unequal distribution of resources. It also contributes to the non-monetary aspects of poverty – lack of security, opportunity and empowerment – that lower the quality of life for both men and women. While women and girls bear the largest and most direct costs of these inequalities, the costs cut broadly across society, ultimately hindering development and poverty reduction*," by Gender and Development Group - World Bank, from the report