In the High Court of Madhya Pradesh
CRR 5263/2018
Shrimati Ragini Gupta vs. Piyush Dutt Sharma
Gwalior, dtd. 07-03-2019

Shri RK Sharma, Senior Counsel with Shri V. K. Agrawal, counsel for the revisionist.

Shri Sarvendra Kumar Singh, counsel for the respondent.

This Criminal Revision under Section 397/401 of CrPC has been filed against the judgment and punishment order dated 12th October, 2018 passed by 14th Additional Sessions Judge, Gwalior in Criminal Appeal No.83 of 2018, thereby dismissing the appeal filed by the revisionist against the judgment and punishment order dated 23rd January, 2018 passed by Judicial Magistrate First Class, Gwalior in Regular Criminal Case No.5068 of 2014, by which the revisionist has been convicted under Section 138 of Negotiable Instruments Act and punishment of admonition was given as well as compensation of Rs.12,69,000/- has been awarded against her.

The necessary facts for the disposal of the present revision in short are that the respondent/complainant filed a private complaint against the revisionist under Section 138 of Negotiable Instruments Act, on the allegation that in the month of June, 2013, the revisionist had obtained a loan of Rs.10,00,000/- from him and assured that she would refund the said amount within a period of six months. It was further alleged that in lieu of the said amount, the revisionist had given a cheque, dated 28th January, 2014 drawn on Andhra Bank, Madhoganj, Gwalior bearing no.119954. The said

cheque was deposited by the respondent in the bank account of AXIS Bank, Lashkar, Gwalior on 3rd February, 2014 but the same stood dishonoured by the Bank vide memorandum dated 4th February, 2014 because the bank account was blocked. It is further alleged in the complaint that thereafter, a statutory notice dated 13th September, 2014 was sent by the respondent to the revisionist for payment of cheque amount but the same was returned back with an endorsement that "the addressee has left the premises". Thereafter, the respondent filed a private complaint before the Trial Magistrate.

It was the defence of the revisionist that she did not take any loan amount from the respondent but in fact, the respondent and one Pankaj had stolen the cheque of the revisionist from the shop of her husband and accordingly, instructions were given to the Bank to block the account. The revisionist (DW2) had examined herself as a defence witness under Section 315 of CrPC along with another defence witness, namely, Anil Kumar Gupta (DW1), the husband of the revisionist.

After considering the evidence led by the parties, the trial Court convicted the revisionist for an offence under Section 138 of Negotiable Instruments Act and passed the sentence of admonition as well as directed for payment of compensation of Rs.12,69,000/-.

Being aggrieved by the judgment and order of punishment passed by the trial Court, the revisionist filed an appeal before the Appellate Court, which too has been dismissed by the Appellate Court by judgment and order

of punishment dated 12th October, 2018 passed in Criminal Appeal No.83 of 2018.

Challenging the conviction recorded by both the Courts below, it is submitted by learned Senior Counsel for the revisionist that the respondent has failed to prove his source of income. The respondent was not known to the revisionist. Therefore, there was no occasion for her to take loan of Rs.10,00,000/- from the respondent. No notice was ever served on the revisionist and the respondent has failed to prove that the cheque was issued in discharge of legal liability. It is further submitted by learned Senior Counsel for the revisionist that the respondent has failed to prove that the cheque in question bears the signature of the revisionist and when the revisionist had appeared as a defence witness, then no question was put to her with regard to loan transaction. To buttress his contention, learned Senior Counsel for the revisionist has relied upon the judgments passed by the Supreme Court in the case of **John K. Abraham vs. Simon C. Abraham and Another,** reported in **(2014) 2 SCC 236, K. Subramani vs. K. Damodara Naidu,** reported in **(2015) 1 SCC 99, Krishna Janardhan Bhat vs. Dattatraya G. Hegde,** reported in **AIR 2008 SC 1325** and the judgments passed by this Court in the case of **Rajkumar s/o. Rajendraprasad vs. Ramcharan s/o. Motilal,** reported in **2013 (2) MPLJ (Cri) 265 and Vinod Kumar Namdev vs. Zubed Ahmed,** reported in **2016 (1) MPWN 8.**

Per contra, it is submitted by the counsel for the respondent that so far

as the signature of the revisionist on the cheque in question is concerned, except by giving a suggestion that the respondent has forged the signature of the revisionist, no specific stand was taken by her that the cheque does not contain the signature of the revisionist. For the first time, in her evidence the revisionist took a specific stand that the cheque in question does not bear her signature. Under these circumstances, the respondent immediately filed an application under Section 45 of Evidence Act for sending the cheque in question to the Handwriting Expert to rebut the stand of the revisionist. The said application was vehemently opposed by the revisionist and it was rejected by the Trial Magistrate. It is submitted that in fact, where the revisionist herself had disputed her signature on the cheque in question, then the burden was on her to prove that the cheque in question does not bear her signature and under these circumstances, when the respondent himself had moved an application under Section 45 of Evidence Act for sending the disputed cheque to the Handwriting Expert for verification of the signatures of the revisionist, then she should not have opposed the application. The fact that the revisionist was not willing to get her signatures examined from Handwriting Expert clearly shows that the cheque in question bears her signature. Even otherwise, if the signatures of the revisionist in the order sheets of the Trial Court as well as her signature on the cheque are compared, then it would be clear that the cheque in question bears the signature of the revisionist. It is further submitted that so far as the question of theft of cheque in dispute is concerned, admittedly, the revisionist did not

lodge the FIR with regard to theft of cheque. The stand taken by the revisionist that initially she went to the Police Station but the concerning Police, instead of lodging the FIR, had suggested her to go to the Bank for stoppage of payment, therefore, she did not lodge the FIR, cannot be accepted for the simple reason that theft is an offence under the provisions of the Indian Penal Code. If the police had refused to register the FIR, then the revisionist had an efficacious remedy of approaching the Superintendent of Police or of sending the complaint to the concerning Police Station by Registered Post. Further, the revisionist had not stopped the payment of cheque in question but she had blocked her account itself. If the cheque of the revisionist was stolen, then at the most, she could have filed an application for stoppage of payment but she instead of doing that, she had blocked her entire account which clearly shows guilty consciousness of the revisionist. It is further submitted that the Bank officials are the best witnesses to verify the signatures of account holders because everyday, they are required to compare the signatures of various account-holders on various documents and the cheque of the revisionist was not returned on the ground of difference in signatures, but it was returned on the ground that the account has been blocked. Under these circumstances, it cannot be said that the revisionist had not issued the cheque in favour of the respondent. So far as non-disclosure of source of income by the respondent is concerned, it is submitted that the contention of the revisionist that the respondent had not disclosed his source of income in the Income Tax Return cannot be a

solitary basis for rejecting his evidence. Where issuance of cheque is proved beyond reasonable doubt and where the signature is not disputed by the revisionist at the very initial stage, then a presumption under Section 139 of the Negotiable Instruments Act can be drawn against the accused. The revisionist has failed to rebut the presumption under Section 139 of the Negotiable Instruments Act. The respondent has specifically stated that as his income was not taxable, therefore, he has only submitted the simple Income Tax Return. The respondent was cross-examined by the revisionist with regard to his source of income and he has specifically stated that the respondent was in the business of sale and purchase of vehicles which he had started in the year 2005 and continued till year 2011 and it was completely closed in the year 2013-14. From the month of May, 2005, the respondent is working on the post of Clerk in the Office of State Bar Council of Madhya Pradesh, Gwalior. It is further submitted that since the revisionist had family relations with the respondent, therefore, no document was prepared acknowledging the receipt of amount of Rs.10,00,000/- and thus, it cannot be said that the respondent had not given any loan to the revisionist.

Heard the learned counsel for the parties.

The respondent had issued a notice under Section 138 of Negotiable Instruments Act. Although the said notice was returned with an endorsement that "the addressee has shifted to another place" but the revisionist had sent a registered notice with Acknowledgment Due to the respondent through her

counsel Shri R.V.S. Ghuraiya. The said registered notice has been exhibited as Ex.P7. The registered notice (Ex.P7) with AD is dated 15th October, 2014, in which it was mentioned that the respondent is the family friend of her husband, as a result of which he frequently visits the shop as well as the house of the revisionist, therefore, the family members of the revisionist had deep faith on the respondent. It was further mentioned in the registered notice that the cheque in dispute had disappeared/misplaced from the drawer of computer table of the revisionist and a complaint was made to the police but the police did not lodge the complaint and instructed the revisionist to inform the Bank. It was also mentioned in the registered notice that the respondent, after taking out the cheque in dispute from the drawer of computer table, has either written the other contents on the cheque on his own or has got it written from somebody else and information of the same was received by the revisionist on 28th August, 2014 and it was also mentioned in the registered notice that neither the Bank nor the respondent has ever given any notice to the revisionist. The revisionist in her cross-examination has stated that she had not sent the notice Ex.P7 through Shri R.V.S. Ghuraiya, Advocate. Thereafter, the revisionist was confronted with the Vaklatnama filed by Shri Rukvendra Singh Ghuraiya, Advocate and a suggestion was given that she had engaged Shri Rukvendra Singh Ghuraiya, Advocate, then she stated that the Vaklatnama was blank at the time when the same was signed by her. The revisionist had also accepted her signatures on various order sheets of the trial Court. In paragraph 10 of her cross-

examination, she has further admitted as under:-

> ''**10**.मैं बैंक में प्र0डी0 3 का पत्र देने दिनांक 09.01.14 को गई थी। जिस पर ए से ए. भाग पर मेरे हस्ताक्षर है। उक्त दिनांक चैक क्रमांक 119954 गुम होने की सूचना देने गई थी। स्वतः कहा कि उक्त चैक खाली था। यह कहना सही है कि प्र0डी0 3 पर जो हस्ताक्षर है वही हस्ताक्षर बैंक में भी मेरा नमूना हस्ताक्षर है। .....''

Thus, it is clear from her cross-examination that the signatures on the cheque Ex.D3 have resemblance with specimen signatures of the revisionist available with the Bank. In the registered notice Ex.P7 dated 15th October, 2014 she had merely stated that the other entries in the cheque were filled up either by the respondent or by anybody. However, in the notice Ex.P7, she had never claimed that the cheque does not bear her signature. Further, the revisionist (DW2) has stated in her examination-in-chief that the cheque was stolen from the shop of her husband. She had never claimed that the cheque was stolen from the drawer of the computer table of the revisionist. However, In the registered notice Ex.P7, she had claimed that the cheque was stolen from the drawer of the computer table of the revisionist. In the notice Ex.P7, she had specifically stated as under:-

> ''2.यहकि, मेरी पक्षकारा का एक चैक क्रमांक 119954 आन्ध्रा बैंक शाखा ग्वालियर का व कुछ कागजता कम्प्यूटर टेबल की ड्रोवर से गायब हो गये, इसकी जानकारी मुझे **अपने कम्प्यूटर टेबल की ड्रोवर चैक करने पर मिली।''**

Thus, it is clear that in the registered notice Ex. P7, she had specifically stated that the cheque was stolen from the drawer of the computer table of the revisionist and she came to know on her own after the drawer of the computer table was checked by her. On the contrary, in her

examination-in-chief, the revisionist (DW2) had stated that the cheque was stolen from the shop of her husband. In her evidence, the revisionist (DW2) had stated that she has no family relationship with the respondent and even the respondent is not known to her, whereas in the notice Ex.P7, she has specifically stated that the respondent is a family friend of her husband and he used to visit the house and, therefore, the family members of revisionist had deep faith on him. Thus, in the registered notice the revisionist had accepted her acquaintance with the respondent, but in the Court evidence, she has tried to disown the same. She has further tried to disown the registered notice Ex.P7 sent by Shri RVS Ghuraiya, Advocate. If Shri RVS Ghuraiya, Advocate was never contacted by the revisionist for sending the registered notice, then certainly she would have never engaged him as her counsel, whereas in the cross-examination, she has specifically admitted that Shri RVS Ghuraiya was engaged by her as her counsel. Thus, the subsequent conduct of the revisionist in disowning her own counsel clearly indicates that she was not telling the truth before the Court.

So far as the contention of the revisionist that the respondent has failed to disclose his source of income is concerned, this Court is of the considered opinion that in view of the presumption provided under Section 139 of Negotiable Instruments Act, the burden shifts to the accused to dislodge the presumption. In the present case, the respondent was cross-examined in detail with regard to his source of income.

It is submitted by learned Senior Counsel for the revisionist that as

the respondent has never disclosed his source of income in the Income Tax Return and the respondent has never filed his Income Tax Return, therefore, it should be presumed that he did not have any source of income. This Court is of the considered opinion that mere non-filing of Income Tax Return would not automatically dislodge the source of income of the complainant. Non-payment of Income Tax is a matter between the revenue and the assessee. If the assessee has not disclosed his income in the Income Tax Return, then the Income Tax Department is well within its rights to reopen the assessment of income of the assessee and to take action as per the provisions of Income Tax Act. However, non-filing of Income Tax Return by itself would not mean that the complainant had no source of income and thus, no adverse inference can be drawn in this regard only because of absence of Income Tax Return. Whether there was any loan transaction between the parties or not and whether there was any legally recoverable debt or not, is the subject-matter which can be ascertained in the light of entire case led by the parties. Where the accused has failed to satisfactorily explain the circumstances under which the cheque was issued by the accused or misused by the complainant, then it can be safely inferred/ presumed that the cheque was issued in discharge of legally recoverable dept/liability. It is the case of the revisionist that the respondent had not given loan to the revisionist. The cheque was stolen from the shop of the husband of the revisionist and it does not bear her signature, whereas the evidence which has come on record, clearly establishes that the respondent

had family relations with the revisionist and he was frequently visiting the house of the revisionist, therefore, it cannot be said that the respondent was not known to the revisionist. The revisionist, in her registered notice Ex.P7, had not disputed her signature on the cheque but she had merely stated that the other entries in the cheque were filled up either by the respondent or he got it filled from some other person. Merely because the other entries in the cheque were not filled by the accused, would not absolve her from her liability arising from the cheque. Section 20 of the Negotiable Instruments Act draws a presumption in favour of the holder of the cheque.

The Supreme Court in the case of **Bir Singh vs. Mukesh Kumar passed in Criminal Appeal Nos.230-231 of 2019 [SLP (Crl) Nos.9334-35 of 2018]** has held as under:-

> **"41**. The fact that the appellant-complainant might have been an Income Tax practitioner conversant with knowledge of law does not make any difference to the law relating to the dishonour of a cheque. The fact that the loan may not have been advanced by a cheque or demand draft or a receipt might not have been obtained would make no difference. In this context, it would, perhaps, not be out of context to note that the fact that the respondent-accused should have given or signed blank cheque to the appellant complainant, as claimed by the respondent-accused, shows that initially there was mutual trust and faith between them.
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> **42.** In the absence of any finding that the cheque in question was not signed by the respondent-accused or not voluntarily made over to the payee and in the absence of any evidence with regard to the circumstances in which a blank signed cheque had been given to the appellant-complainant, it may reasonably be presumed that the cheque was filled in by the appellant-complainant being the payee in the presence of the respondent-accused being the drawer, at his request and/or with his acquiescence. The subsequent filling in of an unfilled signed cheque is not an alteration. There was no change in the amount of the cheque, its date or the name of the payee. The High Court

> ought not to have acquitted the respondent-accused of the charge under Section 138 of the Negotiable Instruments Act.
> **43.** In our considered opinion, the High Court patently erred in holding that the burden was on the appellant-complainant to prove that he had advanced the loan and the blank signed cheque was given to him in repayment of the same. The finding of the High Court that the case of the appellant-complainant became highly doubtful or not beyond reasonable doubt is patently erroneous for the reasons discussed above."

Even in the cross-examination of the respondent no suggestion was given to him that the cheque in question does not bear the signature of the revisionist. A single suggestion was given to the respondent that he has forged the signature of the revisionist on the cheque in question, which was denied by the respondent. The respondent had also clarified in his cross-examination that out of total amount of Rs.10,00,000/-, he had borrowed Rs.6 lac from his father and he was having Rs.4 lac with him. It is further submitted by the counsel for the respondent that after the evidence of the respondent was recorded, he lost his father, therefore, his father could not be examined. Thus, it is clear that no specific suggestion was given to the respondent that the cheque in question does not bear the signature of the revisionist but a vague suggestion was given that the signature of the revisionist was forged on the cheque in question. For the first time, in her evidence, it was stated by the revisionist that the cheque in question does not bear her signature and accordingly, immediately thereafter, the respondent filed an application under Section 45 of Evidence Act for sending the cheque in dispute to the Handwriting Expert for examination of the signatures of the revisionist. The said application was decided by trial

Curt by order dated 2nd January, 2018. However, the crux of the matter is that the respondent had taken the stand of sending the cheque in question to the Handwriting Expert for examination of the signatures of the revisionist but the revisionist did not file any application under Section 45 of Evidence Act for sending the disputed signatures to the Handwriting Expert. Under these circumstances, this Court is of the considered view that the remedy available to the respondent for verification of signatures on the disputed cheque was availed by him, whereas the revisionist except by denying her signatures in her defence evidence, did not take any step for sending the same to the Handwriting Expert for examination of her signatures. Furthermore, in the present case, the cheque in question was not returned by the Bank on the ground of difference in her signatures.

A coordinate Bench of this Court in the case of **Sadhna Pandey (Smt.) vs. PC Jain,** reported in **ILR (2016) MP 865,** has held as under:-

> "**5.** Having heard the counsel at length, keeping in view their arguments in order to decide the controversy, I have carefully gone through the revision memo as well as the impugned order of the revisional Court. On perusing such order, I have gathered the information that the impugned cheque given by the applicant to the respondent to pay the due consideration was dishonored by the banker of the applicant on the ground of insufficiency of fund and not on any other ground. I have not found any reply of the applicant, given by him to the respondent, in response of his demand notice given to her before filing the complaint, to show that such defence regarding difference of signature on the cheque was taken by her at the initial stage. Even in the cross-examination of the respondent's witnesses before the trial Court no such specific defence was put forth on behalf of the applicant. The impugned complaint was filed by the respondent only on the ground of dishonoring the cheque on account of insufficiency of fund and not on the ground of difference of signature of the

applicant. As such the grounds which are not the subject matter of the case could not be permitted to raise in the defence. In the case at hand when the banker of the applicant itself has not dishonored the cheque on the ground of difference of the signature then the applicant/ accused could not take such defence. …..... My aforesaid approach is fully fortified by the decision of the Apex Court in the matter of *L.C. Goyal (Supra),* in which it was held as under :

> (2) Dishonoring of the cheque issued by the appellant Ex.C/4 by the bank on account of insufficient fund in the account of the appellant.
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> The complainant alleged that when the appellant realized that the complainant has come to know that he has misappropriated a sum of Rs. 25,491/-, he gave a cheque for a sum of Rs. 38,000/- which is Ext.C-4. The said cheque was drawn on UCO Bank and the same was deposited in the Central Bank of India in the account of Union, viz., Siemens Employees Union, New Delhi. But the said cheque was dishonored due to insufficient funds. The appellant denied his signature on Ext. C-4 and contended that his signature was forged by the complainant. It is in this context that it was urged before the Bar Council of India that some hand-writing expert be examined in order to find out the genuineness of the signature on Ext. C-4. As stated above, the cheque bounced not on account of the fact that the signature on Ext. C-4 was not tallying with the specimen signature of the appellant kept with the Bank, but on account of insufficient funds. Had the signature on Ext. C-4 been different, the bank would have returned the same with the remark that the signature on Ext. C-4 was not tallying with the appellants specimen signature kept with the bank. The memos Ext. C-6 and Ext. C-8 issued by the bank clearly show that signature of the appellant on Ext. C-4 was not objected to by the bank, but the same was returned with the remark insufficient fund. This circumstance shows that the signature on Ext. C-4 was that of the appellant.
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> (3) . . . . . .
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> 4) No reply to the notices (Exts.C-12 and C-13) dated 9.6.93 and 11.1.93, respectively.....
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> 5) No FIR lodged with regard to theft of the cheque book. .....

6. Subsequently such case law was followed by the Karnataka High Court in the matter of *H. M. Satish (Supra),* in which it was held as under:

> 7. In the case of denial of signature of drawer of a cheque, the best witness would be the concerned Bank Manager and not a hand writing expert The learned Magistrate has allowed the application solely on the ground that the accused would be put to greater hardship if the application were rejected. The learned magistrate has not appreciated the facts on record while allowing the application. It is useful to refer to the decision of the Hon'ble Apex court rendered in L. C. Goyal vs. Mrs. Suresh Joshi and Ors. has observed in para 8 of its judgment as under that ...the cheque bounced not on account of the fact that the appellant of Ext.C-4 was not talking with the specimen signature of the appellant kept with the bank, but on account of insufficient funds. Had the signature on Ext C-4 been different, the bank would have returned the same with the remark that the signature on Ext C-4 was not tallying with the appellant's specimen signature kept with the bank. The memos Ext. C-6 and Ext.C-8 issued by the bank clearly show that the signature of the appellant on Ext.C-4 was not objected to by the bank, but the same was returned with the remark "insufficient funds". This circumstances shows that the signature of Ext.C-4 was that of the appellant.
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> 8. .....
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> 9. ….....

7. Aforesaid decision of the Apex Court was further followed by the Andhra Pradesh High Court in the matter of *Manda Syamsundra (Supra)*, and the application of the accused concerned filed under Section 45 of the Evidence Act was dismissed by following verdicts:

> "5. In the light of the above decision and in the light of the return of the cheque not on the ground of signature not tallying, no purpose will be served in sending the documents to the handwriting expert and there are no grounds to interfere with the order of the Lower Court."

The Supreme Court in the case of **Kishan Rao Vs. Shankargouda,** reported in **(2018) 8 SCC 165** has held as under:-

> **"18.** Section 139 of the Act, 1881 provides for drawing the

presumption in favour of holder. Section 139 is to the following effect:

> "**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."

19. This Court in *Kumar Exports vs. Sharma Carpets, 2009 (2) SCC 513,* had considered the provisions of Negotiable Instruments Act as well Evidence Act. Referring to Section 139, this Court laid down following in paragraphs 14, 15, 18 and 19: (SCC pp. 519-20)

> "14. Section 139 of the Act provides that 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.
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> 15. Presumptions are devices by use of which the courts are enabled and entitled to pronounce on an issue notwithstanding that there is no evidence or insufficient evidence. Under the Evidence Act all presumptions must come under one or the other class of the three classes mentioned in the Act, namely, (1) "may presume" (rebuttable), (2) "shall presume" (rebuttable), and (3) "conclusive presumptions" (irrebuttable). The term "presumption" is used to designate an inference, affirmative or disaffirmative of the existence of a fact, conveniently called the "presumed fact" drawn by a judicial tribunal, by a process of probable 13 reasoning from some matter of fact, either judicially noticed or admitted or established by legal evidence to the satisfaction of the tribunal. Presumption literally means "taking as true without examination or proof".
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> 18. Applying the definition of the word "proved" in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118

> and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.
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> 19. The use of the phrase "until the contrary is proved" in Section 118 of the Act and use of the words "unless the contrary is proved" in Section 139 of the Act read with definitions of "may presume" and "shall presume" as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. 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."

20. This Court held that the accused may adduce evidence to rebut the presumption, but mere denial regarding existence of debt shall not serve any purpose. Following was held in paragraph 20: (Kumar Exports vs. Sharma Carpets, (2009) 2 SCC 513) SCC p. 520

> "20....The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. 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..."

21. In the present case, the trial court as well as the Appellate Court having found that cheque contained the signatures of the

accused and it was given to the appellant to present in the Bank of the presumption under Section 139 was rightly raised which was not rebutted by the accused. The accused had not led any evidence to rebut the aforesaid presumption. The accused even did not come in the witness box to support his case. In the reply to the notice which was given by the appellant the accused took the defence that the cheque was stolen by the appellant. The said defence was rejected by the trial court after considering the evidence on record with regard to which no contrary view has also been expressed by the High Court."

The Supreme Court in the case **T.P. MURUGAN (DEAD) THR. LRS. vs. BHOJAN** reported in **(2018) 8 SCC 469** has held as under:-

"21. We have heard Senior Counsel for both parties, and perused the record. Under Section 139 of the N.I. Act, once a cheque has been signed and issued in favour of the holder, there is statutory presumption that it is issued in discharge of a legally enforceable debt or liability. This presumption is a rebuttable one, if the issuer of the cheque is able to discharge the burden that it was issued for some other purpose like security for a loan.

22. In the present case, the respondent has failed to produce any credible evidence to rebut the statutory presumption. This would be evident from the following circumstances:-

22. 1 The respondent-accused issued a Pronote for the amount covered by the cheques, which clearly states that it was being issued for a loan;

22.2 The defence of the respondent that he had allegedly issued 10 blank cheques in 1995 for repayment of a loan, has been disbelieved both by the Trial Court and Sessions Court, on the ground that the respondent did not ask for return of the cheques for a period of seven years from 1995.This defence was obviously a cover-up, and lacked credibility, and hence was rightly discarded.

22.3 The letter dated 09.11.2002 was addressed by the respondent after he had issued two 1 Refer to K.N. Beena Vs. Muniyappan and Another[(2001) 8 SCC 458; para 6] and Rangappa vs. Shrimohan [(2010) 11 SCC 441; para 26] cheques on 07.08.2002 for Rs.37,00,000/- and Rs.14,00,000/- knowing fully well that he did not have sufficient funds in his account. The letter dated 09.11.2002 was an after-thought, and was written to evade liability. This defence also lacked credibility, as the appellants had never asked for return of the alleged cheques for seven

years.

22.4 The defence of the respondent that the Pronote dated 07.08.2002 signed by him, was allegedly filled by one Mahesh-DW.2, an employee of N.R.R. Finances, was rejected as being false. DW.2 himself admitted in his cross-examination, that he did not file any document to prove that he was employed in N.R.R. Finances. On the contrary, the appellants - complainants produced PW.2 and PW.4, Directors of N.R.R. Finances Investment Pvt. Ltd., and PW.3, a Member of N.R.R. Chit funds, who deposed that DW.2 was never employed in N.R.R. Finances.

23. The appellants have proved their case by over-whelming evidence to establish that the two cheques were issued towards the discharge of an existing liability and legally enforceable debt. The respondent having admitted that the cheques and Pronote were signed by him, the presumption under S.139 would operate. The respondent failed to rebut the presumption by adducing any cogent or credible evidence. Hence, his defence is rejected.

24. In view of the aforesaid facts and circumstances, the impugned order dated 27.09.2013 passed in Criminal Revision Petition Nos. 1657 and 1658 of 2008 is hereby set aside, and the order of Conviction and Fine passed by the Trial Court is restored."

The Supreme Court in the case of **John K. John vs. Tom Varghese and another,** reported in **JT 2007 (13) SC 222** has held as under:-

"10. The High Court was entitled to take notice of the conduct of the parties. It has been found by the High Court as of fact that the complainant did not approach the court with clean hands. His conduct was not that of a prudent man. Why no instrument was executed although a huge sum of money was allegedly paid to the respondent was a relevant question which could be posed in the matter. It was open to the High Court to draw its own conclusion therein. Not only no document had been executed, even no interest had been charged. It would be absurd to form an opinion that despite knowing that the respondent even was not in a position to discharge his burden to pay instalments in respect of the prized amount, an advance would be made to him and that too even after institution of three civil suits. The amount advanced even did not carry any interest. If in a situation of this nature, the High Court has arrived at a finding that the respondent has discharged his

> burden of proof cast on him under Section 139 of the Act, no exception thereto can be taken. "

Thus, this Court has already taken note of the conduct of the parties which clearly shows that the revisionist has changed her stand from time to time. In the present case, no FIR was lodged. The place from which the cheque in question was allegedly stolen, is also in dispute. In her evidence, the revisionist has stated that the cheque was stolen from the shop of her husband, whereas in the registered notice Ex.P7 she has stated that the cheque was stolen from the drawer of her computer table. No specific suggestion was given to the respondent alleging that the cheque in question does not bear her signatures. No application was ever filed by the revisionist under Section 45 of Evidence Act for sending her disputed cheque to the Handwriting Expert for examination of her signatures. On the contrary, in paragraph 10 of her cross-examination, she has specifically admitted that the signature on the cheque resembles with the specimen signatures in the Bank. Even otherwise, the Bank has not returned the cheque on the ground of difference in her signatures.

The Supreme Court in the case of **Bir Singh (supra)** has held as under:-

> **18**. The Appellate Court affirmed the aforesaid factual findings. The Trial Court and the Appellate Court arrived at the specific concurrent factual finding that the cheque had admittedly been signed by the respondent-accused. The Trial Court and the Appellate Court rejected the plea of the respondent-accused that the appellant-complainant had misused a blank signed cheque made over by the respondent-accused to the appellant complainant for deposit of Income Tax, in view of the

> admission of the respondent-accused that taxes were paid in cash for which the appellant-complainant used to take payment from the respondent in cash.
> **19.** It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.
> **20.** As held by this Court in Southern Sales and Services and Others vs. Sauermilch Design and Handels GMBH2, it is a well established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is therefore, in the negative."

Under these circumstances, this Court is of the considered opinion that the respondent has succeeded in establishing beyond reasonable doubt, that the cheque bearing no.119954 was issued in lieu of the amount of Rs.10 lac taken by the revisionist from the respondent and later on, she blocked her entire bank account in stead of issuing instructions of stoppage of particular cheque. Although the notice issued by the respondent under Section 138 of Negotiable Instruments Act was received back unserved, but the revisionist on her own had sent the registered notice to the counsel for the respondent. The revisionist had also tried to dispute the registered notice sent by her own counsel, Shri RVS Ghuraiya. If Shri RVS Ghuraiya, Advocate had sent the registered notice without her instructions, then the revisionist would have certainly taken action against Shri RVS Ghuraiya in the Bar Council of Madhya Pradesh. No action was ever taken by the revisionist against Shri RVS Ghuraiya, which clearly indicates that the registered notice Ex.P7 was sent by Shri RVS Ghuraiya on the instructions

of the revisionist.

This Court is of the considered opinion that the Trial Court as well as the Appellate Court did not commit any mistake in holding that the cheque bearing no.119954 was issued by the revisionist in discharge of legal liability which was returned by the Bank on the instructions of the revisionist. Accordingly, the revisionist is held guilty for offence under Section 138 of Negotiable Instruments Act.

So far as the question of sentence is concerned, the Supreme Court in the case of **Suganthi Suresh Kumar vs. Jagdeeshan,** reported in **(2002) 2 SCC 420** has held as under:-

> "**12.** The total amount covered by the cheques involved in the present two cases was Rs.4,50,000. There is no case for the respondent that the said amount had been paid either during the pendency of the cases before the trial court or revision before the High Court or this Court. If the amounts had been paid to the complainant there perhaps would have been justification for imposing a flee-bite sentence as had been chosen by the trial court. But in a case where the amount covered by the cheque remained unpaid it should be the look out of the trial Magistrates that the sentence for the offence under Section 138 should be of such a nature as to give proper effect to the object of the legislation. No drawer of the cheque can be allowed to take dishonour of the cheque issued by him light heartedly. The very object of enactment of provisions like Section 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Magistrate. It is a different matter if the accused paid the amount atleast during the pendency of the case. "

However, in the present case, the Trial Court has adopted a lenient view by imposing the punishment of admonition only. Since the punishment of admonition has not been challenged by the respondent, therefore, under the facts and circumstances of the case, this Court is of the considered

opinion that the punishment of admonition along with compensation amount of Rs.12,69,000/- so imposed by the Courts below, does not require any interference. Accordingly, the judgment and order of punishment dated 12th October, 2018 passed by Appellate Court in Criminal Appeal No.83 of 2018 as well as the judgment and order of punishment dated 23rd January, 2018 passed by Trial Court in Criminal Case No.5068 of 2014 are hereby affirmed.

The compensation amount of Rs.12,69,000/- was awarded by the Trial Court after adding interest @ 9 % from the date of issuance of cheque till the date of delivery of judgment by the trial Court. Accordingly, it is directed that the said compensation amount shall further carry interest @ 9% per annum from the date of judgment of the Trial Court i.e. 23rd January, 2018 till the actual payment is made.

With the aforesaid observations, this revision fails and is hereby **dismissed.**

(G.S.Ahluwalia)
JUDGE

MKB

150 YEARS OF CELEBRATING THE MAHATMA
MAHENDRA KUMAR BARIK
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