



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.....OF 2026

@ SLP(CRL.) NO. 3236/2023

CHITHRA P. NAIR

...APPELLANT

VERSUS

RAVI PRASAD & ANR.

...RESPONDENTS

ORDER

1. Leave granted.

2. The present appeal has been preferred by the appellant–accused, who was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881¹, assailing the judgment dated 9th January, 2023, passed by the High Court of Kerala at Ernakulam² in Criminal Appeal No. 963 of 2018. By the impugned judgment, the High Court allowed the appeal preferred by the respondent–complainant under Section 378(4) of the Code of Criminal Procedure, 1973,³ and set aside the judgment dated 27th February, 2018, passed by the Court of Temporary Judicial I Class Magistrate, Attingal⁴ in ST

¹ For short “NI Act”

² Hereinafter, referred to as “High Court”.

³ For short, “CrPC”.

⁴ Hereinafter, referred to as “Trial Court”.

No. 623 of 2015, whereby the appellant–accused had been acquitted.

3. The brief facts, necessary for the disposal of the present appeal, are narrated hereinbelow: -

3.1. According to the respondent-complainant⁵, the appellant–accused had issued two cheques⁶ dated 13th August, 2013, each for a sum of Rs. 10,00,000/-, drawn on the State Bank of India, Pattom Branch, allegedly towards discharge of her liability. Upon presentation, the said cheques came to be dishonoured by the Bank with the endorsement “funds insufficient”. Thereafter, the respondent-complainant issued a statutory notice dated 28th August, 2013 in compliance with the requirements of Section 138 of the NI Act and, upon failure of payment, instituted the complaint in question.

3.2. During the course of trial, the complainant examined three witnesses and marked twelve documents as exhibits. On behalf of the appellant–accused, four witnesses were examined and eight documents were exhibited in defence.

3.3. Upon appreciation of the evidence on record, the Trial Court, by judgment dated 27th February, 2018, dismissed

⁵ Hereinafter, referred to as “complainant”.

⁶ Bearing Nos. 597146 and 597147 marked as Exhibit Nos. 2 and 3.

the complaint and acquitted the appellant–accused under Section 255(1) of CrPC, holding that the offence under Section 138 of the NI Act had not been established.

3.4. Aggrieved thereby, the respondent–complainant preferred an appeal before the High Court under Section 378(4) of CrPC.

3.5. The High Court, *vide* judgment dated 9th January, 2023, reversed the order of acquittal passed by the Trial Court and proceeded to convict the appellant for the offence punishable under Section 138 of the NI Act in the following terms: -

Sentence	Fine
Simple imprisonment for a day till rising of the Court.	Rs. 25,00,000/-; Rs. 24,75,000/- shall be given to complainant and the remaining amount will go to State exchequer; in-default, accused (appellant herein) to undergo imprisonment for 6 months.

4. Aggrieved thereby, the appellant is before this Court.

4.1. This Court, by order dated 20th March, 2023, issued notice in the present appeal and stayed the operation of the impugned judgment passed by the High Court.

5. Learned counsel appearing for the appellant has made the following submissions: -

- i. That the High Court erred in reversing the well-reasoned order of acquittal passed by the Trial Court without demonstrating that the findings recorded therein were perverse. It was submitted that the appellant had successfully rebutted the statutory presumptions under Sections 118 and 139 of NI Act on the standard of preponderance of probabilities.
- ii. That the High Court placed undue reliance on Exhibit P-12, the alleged acknowledgment letter, despite the same neither being disclosed in the complaint nor proved during the complainant's evidence. It was contended that the document surfaced belatedly during cross-examination and appeared ex facie manipulated.
- iii. That the complainant's case regarding payment of Rs. 20,00,000/- in cash was inherently improbable and unsupported by any documentary evidence, whereas the defence had brought on record sufficient material, including bank evidence and surrounding circumstances, to probabalise the appellant's case that the subject cheques had been misused.

On these grounds, learned counsel appearing for the appellant prayed that the present appeal be allowed, the

judgment passed by the High Court be set aside, and the order of acquittal recorded by the Trial Court be restored.

6. *Per contra*, learned senior counsel appearing for the respondent-complainant supported the impugned judgment and submitted as follows: -

- i. That the complainant had entrusted the construction of his house to the appellant-accused upon her representation that she was a civil engineer associated with the construction of the Dubai International Airport. Pursuant thereto, amounts aggregating to Rs. 20,00,000/- were paid to the appellant towards the construction work, however, despite lapse of considerable time, no substantial work was commenced by her.
- ii. That the complainant had duly discharged the initial burden cast upon him under Sections 118 and 139 of NI Act through the oral evidence of PW-1 to PW-3 and documentary evidence including the subject cheques and acknowledgment letter (Exhibit P-12). It was further submitted that the appellant had admitted her signatures on the cheques and had also admitted receipt of the statutory notice, yet failed to send any reply thereto.
- iii. That the appellant-accused failed to rebut the statutory presumptions by leading any cogent

evidence and the defence sought to be projected by her was wholly unsubstantiated. It was therefore submitted that the High Court rightly reversed the order of acquittal and convicted the appellant upon proper appreciation of the evidence on record.

Learned senior counsel appearing for the respondent-complainant, therefore, prayed that the judgment passed by the High Court be affirmed and the present appeal be dismissed.

7. We have heard learned counsel appearing for the parties and carefully perused the material placed on record.

8. Before adverting further, we deem it appropriate to briefly notice the reasoning recorded by the Trial Court while dismissing the complaint. The Trial Court held that the complainant's assertion of having advanced a sum of Rs. 20,00,000/- to the appellant-accused without any documentary evidence was inherently improbable and difficult to believe. Proceeding on that basis, the Trial Court concluded that the alleged oral agreement between the parties itself appeared doubtful. Consequently, it held that the complainant had failed to establish that the said amount was ever paid to the appellant-accused or that the

subject cheques had been issued towards discharge of any legally enforceable liability.

9. Since the High Court has reversed the aforesaid findings, it becomes equally necessary to notice the reasoning which weighed with it while allowing the appeal:

- i. That PW-1, namely the complainant, deposed that he had come into contact with the appellant-accused through her husband. According to him, the appellant represented herself to be a civil engineer who had been associated with the construction of the Dubai International Airport. Relying upon such representations, the complainant entrusted the construction of his house to the appellant for a total consideration of Rs. 55,00,000/-. In furtherance thereof, a sum of Rs. 10,00,000/- was allegedly paid on 28th April, 2013 and another sum of Rs. 10,00,000/- on 3rd June, 2013, which amount was subsequently handed over to the appellant-accused at her residence on 4th June, 2013.
- ii. That PW-3, in his deposition, stated that he had witnessed the handing over of Rs. 10,00,000/- to the appellant-accused at her residence on 4th June, 2013 at about 7:00 P.M.
- iii. That the appellant-accused had admitted her signatures on the subject cheques and was unable

to furnish any satisfactory explanation regarding the circumstances in which she had issued the acknowledgment letter dated 16th November, 2013 (Exhibit P-12), wherein she acknowledged issuance of the subject cheques.

- iv. That the complainant had discharged the initial burden cast upon him with respect to the transaction underlying the issuance of the subject cheques. The same stood corroborated by the acknowledgment letter (Exhibit P-12), which admittedly bore the signatures, name, and handwriting of the appellant-accused. Consequently, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act operated in favour of the complainant.
- v. That the appellant-accused failed to adduce any cogent evidence to rebut the aforesaid statutory presumptions or to probabalise her defence.

10. Before advertng to the manner in which the courts below have dealt with the merits of the matter, it would be apposite to first examine the legal position governing the field.

11. With the increasing incidence of cheque dishonour and its adverse impact on commercial credibility and financial discipline, Parliament enacted Act No. 66 of 1988

introducing stringent penal provisions in relation to dishonour of cheques. It was in this backdrop that Chapter XVII came to be incorporated into the NI Act.

12. The relevant portion of Section 138 of the NI Act dealing with dishonour of cheques reads thus: -

“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 provision of this Act, be punished with 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:

...

Explanation.- For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.”

13. In the same spirit, Parliament also incorporated provisions relating to statutory presumptions in favour of the holder of the cheque so as to ensure efficacy of banking transactions and credibility of negotiable instruments. Section 139 of the NI Act, therefore, reads as follows: -

“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.”

14. The Explanation appended to Section 138 of the NI Act makes the legislative intent abundantly clear that the dishonour of a cheque would attract criminal liability only when such cheque has been issued in discharge of a “legally enforceable debt or other liability”. Thus, the mere issuance of a cheque or admission of signature thereon does not *ipso facto* conclude the matter. The existence of a legally enforceable debt constitutes the very substratum of the offence under Section 138 of the NI Act.

15. Further, the presumption under Sections 118 and 139 of the NI Act undoubtedly operates in favour of the holder of the cheque. However, the said presumption is rebuttable in nature. This Court in **Basalingappa v. Mudibasappa**⁷ and **Rangappa v. Sri Mohan**⁸ has consistently held that the burden upon the accused is not one of proving his defence beyond reasonable doubt, but merely of creating a probable defence on the touchstone of preponderance of probabilities. Such rebuttal may arise either from the evidence adduced by the accused or even

⁷ (2019) 5 SCC 418

⁸ (2010) 11 SCC 441

from the circumstances emerging from the complainant's own case.

16. Equally important is the requirement that the complainant must lay a proper factual foundation regarding the underlying transaction. The criminal liability under Section 138 of NI Act cannot rest upon vague assertions or bald oral allegations bereft of foundational particulars. The pleadings and evidence must disclose, with reasonable certainty, the nature of the transaction, the manner in which the liability arose, the circumstances under which the amount was allegedly advanced, and the nexus between such liability and the issuance of the cheque. This becomes all the more necessary where large sums of money are alleged to have been paid in cash without any contemporaneous documentation.

17. In the present case, the entire prosecution rests upon the allegation that the complainant had entrusted a sum of Rs. 20,00,000/- in cash to the appellant for construction of his residential house pursuant to an oral understanding. Admittedly, no written agreement, receipt, voucher, account statement, or contemporaneous document evidencing such entrustment has been brought on record. The complainant's version is that substantial amounts withdrawn from a housing loan account were

routed through one Bineesh and thereafter allegedly handed over in cash to the appellant-accused. However, the complainant has failed to furnish any cogent explanation as to why such large amounts were not directly transferred to the appellant-accused through banking channels or why no written acknowledgment was obtained at the relevant point of time.

18. The evidence led on behalf of the defence further probabalises the appellant-accused's case. DW-1, the bank official, has categorically deposed that the housing loan in question was sanctioned under a construction-linked plan, under which successive disbursements were made only upon verification of the progress of construction. The evidence further reveals that the amounts withdrawn from the complainant's account were in fact withdrawn by one Bineesh, who, according to the defence witnesses, was associated with the construction activity itself. These circumstances materially dent the complainant's assertion that no construction activity whatsoever had commenced despite alleged payment of huge sums to the appellant.

19. We also find considerable force in the submission advanced on behalf of the appellant regarding the inherent improbability of the complainant's version. The appellant-accused was admittedly serving as a Junior

Superintendent in the Civil Supplies Department at Thiruvananthapuram during the relevant period. There is no material whatsoever on record to indicate that she was carrying on any independent business as a private contractor or builder. In such circumstances, the complainant's assertion that he entrusted a sum of Rs. 20,00,000/- in cash to the appellant for construction activities, without any written agreement or verification of credentials, appears highly doubtful and does not inspire confidence.

20. We further find that the High Court has placed disproportionate reliance upon Exhibit P-12, the alleged acknowledgment letter. The record reveals that the said document neither formed part of the original complaint nor found mention in the affidavit in lieu of examination-in-chief of the complainant. Significantly, the document surfaced for the first time only during the cross-examination of the appellant. The Trial Court, which had the benefit of appreciating the evidence firsthand, rightly entertained serious doubts regarding the credibility and evidentiary worth of the said document. In our considered opinion, the High Court was not justified in upsetting the order of acquittal principally on the basis of such a disputed document, particularly in the absence of

compelling reasons demonstrating perversity in the findings recorded by the Trial Court.

21. It is settled law that an appellate court, while reversing an order of acquittal, must record cogent reasons demonstrating that the view taken by the Trial Court was wholly unreasonable or perverse. Merely because another possible view exists on the evidence would not justify reversal of acquittal. In the present case, the view adopted by the Trial Court was a plausible and well-reasoned view emerging from the evidence on record. The High Court, in our opinion, erred in substituting its own view without first dislodging the core reasoning of the Trial Court.

22. We are therefore, satisfied that the appellant-accused had successfully rebutted the statutory presumptions operating under Sections 118 and 139 of NI Act by establishing a probable defence. Once such burden stood discharged, the onus shifted back upon the complainant to establish the existence of a legally enforceable debt by cogent and reliable evidence, which he has failed to do in the present case. The essential ingredient of Section 138 of NI Act, namely the existence of a legally enforceable debt or liability, therefore remains unproved.

23. Accordingly, the appeal deserves to be allowed.

24. The judgment dated 9th January, 2023, passed by the High Court of Kerala at Ernakulam in Criminal Appeal No. 963 of 2018 is hereby set aside and the judgment dated 27th February, 2018, passed by the Court of Temporary Judicial I Class Magistrate, Attingal in ST No. 623 of 2015 acquitting the appellant is restored.

25. Consequently, the appellant stands acquitted of the charge under Section 138 of the Negotiable Instruments Act, 1881.

26. The bail bonds, if any, shall stand discharged.

27. Pending application(s), if any, shall stand disposed of.

.....**J.**
[VIKRAM NATH]

.....**J.**
[SANDEEP MEHTA]

NEW DELHI
March 24, 2026