



Crl. Appeal No. 2311/2007

2025:KER:79324

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

SATURDAY, THE 25TH DAY OF OCTOBER 2025 / 3RD KARTHIKA, 1947

CRL.A NO. 2311 OF 2007

JUDGMENT DATED 11.09.2007 IN CC NO.399 OF 2006 OF JUDICIAL
MAGISTRATE OF FIRST CLASS-I, PERAMBRA

APPELLANT/COMPLAINANT:

THANGAM, S/O. VALSAN,
KUPPERIYIL HOUSE,, P.O.AVALA KUTTOTH,, MEPPAYUR VIA.

BY ADVS.
SHRI.K.P.SUDHEER
SMT.PRIYA VIJAYAN

RESPONDENT/ACCUSED:

- 1 V.V.HARIDASAN, S/O. SAMI, VADAKKEVELUTHEDATH HOUSE,,
CHEEKILODU P.O., ATHOLI (VIA), KOZHIKODE DISTRICT.
- 2 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH
COURT OF KERALA,ERNAKULAM.

BY ADVS.
SHRI.P.SHRIHARI
SMT.P.VANI
R1 BY SRI. CHELSON CHEMBARATHY, STATE BRIEF
R2 BY SRI. ALEX M. THOMBRA, SR. PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 23.10.2025, THE
COURT ON 25.10.2025 DELIVERED THE FOLLOWING:

**'C.R'****JOHNSON JOHN, J.**-----
Crl. Appeal No. 2311 of 2007
-----Dated this the 25th day of October, 2025**J U D G M E N T**

This appeal by the complainant is against the acquittal of the accused under Section 138 of the Negotiable Instruments Act, 1881 ('N.I Act' for short).

2. As per the complaint, the accused, a friend of the complainant, borrowed Rs.50,000/- on 06.05.2006 and subsequently on 07.08.2006, the accused issued a cheque dated 09.08.2006 for Rs.50,000/- to the complainant in discharge of the debt.

3. When the complainant presented the cheque for collection, the same was dishonoured due to insufficiency of funds in the account of the accused and in spite of issuance of statutory notice, the accused failed to pay the cheque amount to the complainant.

4. Before the trial court, PW1 examined and Exhibits P1 to P6 were marked from the side of the complainant and from the side of the accused, DW1 examined and Exhibit D1 marked.



5. After hearing both sides and considering the oral and documentary evidence on record, the trial court found that the accused has succeeded in rebutting the statutory presumptions and that the complainant has not succeeded in proving the offence under Section 138 of the N.I Act against the accused and hence, the accused was acquitted.

6. Heard Smt. Bhavan J. Menon, the learned counsel representing the learned counsel for the appellant on record, Sri. Chelson Chembarathy, the learned State Brief appearing for the accused/first respondent and Sri. Alex M. Thombra, the learned Senior Public Prosecutor appearing for the second respondent.

7. The learned counsel for the appellant argued that the accused has not disputed the signature in Exhibit P1 cheque and that the trial court has not appreciated the evidence in a proper manner and the finding of the trial court that the accused has succeeded in rebutting the statutory presumptions is not legally sustainable

8. The learned State Brief appearing for the accused/first respondent argued that the specific case of the complainant is that she



used the consideration received in connection with the sale of her property for advancing the loan to the accused and the evidence of DW1 and Exhibit D1 would show that the complainant has not received any money as consideration for executing Exhibit D1, mutual exchange deed, and that the evidence of PW1 in cross examination would show that she availed a loan of Rs.50,000/- from Cheruvannoor Co-operative Bank and a loan of Rs.40,000/- from Thiruvannur KDC Bank for her personal needs.

9. In cross examination, PW1 stated that one Raveendran has introduced the accused to her. According to PW1, she sold her property to one Manilal. PW1 denied the suggestion that she has no acquaintance with the accused and that she filed the case after obtaining the cheque from one Raveendran. She also denied the suggestion that the accused never had any transaction with her.

10. The evidence of DW1, Manilal, and Exhibit D1, certified copy of Exchange Deed No. 355 of 2006, clearly shows that there was no financial transaction between the parties in connection with the execution of the said exchange deed and therefore, I find that the



Crl. Appeal No. 2311/2007

2025:KER:79324

accused has succeeded in rebutting the presumption regarding consideration in favour of the complainant. In ***Shree Daneshwari Traders (M/s.) v. Sanjay Jain and Another*** [2019 (4) KHC 495], the Honourable Supreme Court held thus:

"20. The accused in a trial under S.138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non - existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. 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. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in S.114 of the Evidence Act to rebut the presumptions arising under S.118 and S.139 of the Act."

11. The accused, when questioned under Section 313 Cr.P.C., stated that he has given a blank cheque as security to one Theeyakandy Raveendran in connection with a chitty transaction and when he demanded back the cheque after the expiry of the period of the chitty, he was told that the cheque could not be traced out. According to the accused, the complainant got possession of the said cheque from Raveendran and misused the same for filing this complaint.

12. ***In Basalingappa v. Mudibasappa ((2019) 5 SCC 418)***, the Hon'ble Supreme Court summarised the principles of law governing the



presumptions under Sections 118 and 139 of the N.I Act in the following manner:

- “(i) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.
- (ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.
- (iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.
- (iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.”

13. It is well settled that the standard of proof which is required from the accused to rebut the statutory presumption under Sections 118 and 139 of the N.I Act is preponderance of probabilities and that the accused is not required to prove his case beyond reasonable doubt. The standard of proof, in order to rebut the statutory presumption, can be inferred from the materials on record and circumstantial evidence.



14. In ***ANSS Rajashekar v. Augustus Jeba Ananth [2019 (2) KHC 155= 2019 (1) KLD 492]***, it was held that when evidence elicited from complainant during cross examination creates serious doubt about the existence of debt and about the transaction and the complainant fails to establish the source of funds, the presumption under Section 139 is rebutted and the defence case stands probalised.

15. In ***APS Forex Services Pvt. Ltd. v. Shakti International Fashion Linkers and Others [2020 (1) KHC 957 = 2020 (1) KLD 313]***, it was held that whenever the accused questioned the financial capacity of the complainant in support of his probable defence despite the presumption under Section 139 onus shifts again on the complainant to prove his financial capacity.

16. The learned counsel for the appellant relied on the decision of the Hon'ble Supreme Court in ***Sanjabij Tari v. Kishore S.Borcar [2025(6) KHC 250(SC)]*** and argued that the failure of the accused to reply to the statutory notice under Section 138 of the N.I Act leads to an inference that there is merit in the version of the complainant and that the burden is on the accused to prove that there was no existing debt or



Crl. Appeal No. 2311/2007

2025:KER:79324

liability, as held by the Hon'ble Supreme Court in ***M.M.T.C Ltd. v. Medchil Chemicals And Pharma (P) Ltd. [2002 KHC 241]***.

17. The decision of the Hon'ble Supreme Court in ***Sanjabij Tari's case (Supra)*** would clearly show that ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether, in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.

18. It is well settled that the offence made punishable under Section 138 of the N.I Act is a regulatory offence for improving the credibility of negotiable instruments and therefore, the test of proportionality should guide the construction and interpretation of the statutory presumptions and the accused cannot be expected to discharge an unduly high standard of proof. Therefore, if the accused is able to raise a probable defence, which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. In ***Chandrappa v. State of Karnataka [(2007) 4 SCC 415]***, the Honourable Supreme Court laid down the general principles regarding



the powers of the appellate court while dealing with an appeal against an order of acquittal in paragraph 42 of the said judgment as follows:

“**42.** From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having



secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

19. On a careful re-appreciation of the entire evidence, I find that the view taken by the trial court is a possible view, as the evidence of DW1 and Exhibit D1 is sufficient to rebut the statutory presumption regarding consideration, especially in view of the fact that the accused has disputed the transaction and financial capacity of the complainant and therefore, I find no reason to interfere with the finding of the trial court and I find that this appeal is liable to be dismissed.

In the result, this appeal is dismissed.

sd/-
JOHNSON JOHN,
JUDGE.

Rv