2025:KER:78615

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 22ND DAY OF OCTOBER 2025 / 30TH ASWINA, 1947

CRL.A NO. 222 OF 2015

AGAINST THE ORDER/JUDGMENT DATED 16.01.2015 IN CRL.L.P. NO.449 OF 2014 OF HIGH COURT OF KERALA ARISING OUT OF THE ORDER/JUDGMENT DATED 30.09.2014 IN ST NO.61 OF 2012 OF JUDICIAL MAGISTRATE OF FIRST CLASS - II, CHALAKUDY

APPELLANT/COMPLAINANT :

JOSE, AGED 48 YEARS
S/O.LONAPPAN,PAYAMMA(HOUSE),
NORTH CHALAKUDY DESOM,
CHALAKUDY TALUK

BY ADV SHRI.SHEEJO CHACKO

RESPONDENT/ACCUSED AND STATE :

1 **JOSE, S/O. DOMINI**
PUTHENKUDI(HOUSE),CHALAKUDY P.O,
VETTUKADAVU DESOM,
CHALAKUDY TALUK 680 014

2 **STATE OF KERALA**
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM 682 031.

BY ADVS. SAYED MANSOOR BAFAKHY THANGAL -R1
SHRI.SUNIL N.SHENOI
SRI.P.VISWANATHAN (SR.)
SRI.AJITH VISWANATHAN
SMT.SREEJA V., PP

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 22.10.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

2025:KER:78615

“C.R”

BECHU KURIAN THOMAS, J.

……..……

Crl.Appeal No. 222 of 2015

……..……

Dated this the 22nd day of October, 2025

JUDGMENT

Appellant was the complainant in S.T.No.61/2012 on the files of the Judicial First class Magistrate Court-II, Chalakudy. The complaint was filed alleging offences punishable under Section 138 of the Negotiable Instruments Act, 1881 [for short, 'the Act'].

2. By the impugned judgment dated 30.09.2014, the learned Magistrate acquitted the accused after finding that the complainant had failed to prove the execution and issuance of Exhibit P1 cheque and also held that the said cheque was not supported by consideration.

3. The complainant alleged that, in satisfaction of an amount of Rs.3,00,000/-, borrowed by the accused on 12.06.2011, he issued a cheque dated 12.09.2011, drawn on the South Indian Bank, Chalakudy Branch, which when presented for encashment, dishonoured with the endorsement ‘funds insufficient’. Pursuant to the statutory notice dated 12.10.2011, demanding repayment of the amount, the accused though failed to repay the amount and instead issued a reply notice, and thus committed the offences alleged.

4. In order to prove the complainant's case, he examined himself as PW1 and marked Ext.P1 to Ext.P7 while the defense marked Ext.D1. After analysing the evidence adduced in the case, the learned Magistrate held that the defense version seems to be more probable and correct and hence acquitted the accused.

5. I have heard Smt.Sailakshmi, the learned counsel for the appellant, Sri. Sayed Mansoor Bafakhy Thangal, the learned counsel for the first respondent and the learned Public Prosecutor.

6. The appeal is against an order of acquittal, in a complaint alleging commission of an offence under section 138 of the N.I Act. The statute has created a presumption under Section 139 of the Act. As per the said provision, the holder of a cheque shall be presumed to have received the cheque in discharge of any debt or other liability, either in whole or in part. Of course, the presumption is rebuttable. The burden upon the accused in his attempt to rebut the presumption is heavy. Going by the strict terms of the statute, the presumption can be rebutted only by proving the contrary that the holder of the cheque had not received it in discharge of a debt or other liability.

7. However, the mode and manner in which the statutory presumption under section 139 of the N.I Act can be rebutted have been the subject matter of consideration in various decisions. It would be relevant to refer to the principles laid down in some of those decisions to enable this Court to arrive at a proper conclusion.

8. Presumptions are the means by which the courts are equipped to arrive at conclusions on certain issues, even in the absence of evidence. In ***Kumar Exports v. Sharma Carpets*** [(2009) 2 SCC 513], it was observed that 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 there is only insufficient evidence.

9. In ***Basalingappa v. Mudibasappa*** [(2019) 5 SCC 418] the Supreme Court summarised the principles relating to presumptions available under the Act and laid down the following:-

> *"25.1 Once the execution of cheque is admitted S.139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.*
>
> *25.2 The presumption under S.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.*
>
> *25.3 To rebut the presumption, it is open for the accused to rely on evidence led by him or the 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.*
>
> *25.4 That it is not necessary for the accused to come in the witness box in support of his defence, S.139 imposed an evidentiary burden and not a persuasive burden.*
>
> *25.5 It is not necessary for the accused to come in the witness box to support his defence."*

10. Yet again, in ***Rajaram v. Maruthachalam*** [2023 INSC 51], it was

observed that the standard of proof for rebutting the presumption is that of preponderance of probabilities and to rebut the presumption, it is open for the accused to rely on the evidence led by him or that the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. It has been held that 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.

11. After considering various facets of presumptions available under law, the Supreme Court had again, in ***Rajesh Jain v. Ajay Singh*** [(2023) 10 SCC 148] observed as follows :-

> *"37.As soon as the complainant discharges the burden to prove that the instrument, say a cheque, was issued by the accused for discharge of debt, the presumptive device under Section 139 of the Act helps shifting the burden on the accused. The effect of the presumption, in that sense, is to transfer the evidential burden on the accused of proving that the cheque was not received by the Bank towards the discharge of any liability. Until this evidential burden is discharged by the accused, the presumed fact will have to be taken to be true, without expecting the complainant to do anything further. "*

12. Thereafter the Supreme Court further observed in paragraph No.39 & 40 of the aforesaid judgment, as follows :-

> *"39. The standard of proof to discharge this evidential burden is not as heavy as that usually seen in situations where the prosecution is required to prove the guilt of an accused. The accused is not expected to prove the non-existence of the presumed fact beyond reasonable doubt. <u>The accused must meet</u>*

the standard of 'preponderance of probabilities', similar to a defendant in a civil proceeding.....”(emphasis supplied)

40. In order to rebut the presumption and prove to the contrary, it is open to the accused to raise a probable defence wherein the existence of a legally enforceable debt or liability can be contested. The words 'until the contrary is proved' occurring in Section 139 do not mean that accused must necessarily prove the negative that the instrument is not issued in discharge of any debt/liability but the accused has the option to ask the Court to consider the non-existence of debt/liability so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that debt/liability did not exist.....” (emphasis supplied)

13. Notwithstanding the above, recently, in ***Sanjabij Tari v. Kishor S. Borcar*** [2025 INSC 1158] the Supreme Court noted that some District Courts and High Courts are not giving effect to the presumptions incorporated in S.118 and S.139 of NI Act and are treating the proceedings under the NI Act as another civil recovery proceedings and are directing the complainant to prove the antecedent debt or liability. It was further observed that such an approach was contrary to the mandate of the Parliament, namely, that the drawer and the bank must honour the cheque, otherwise, trust in cheques would be irreparably damaged.

14. Thus, an analysis of the above decisions makes it discernible that while dealing with the presumption under section 139 of the Act, an accused has two options. The first option is by proving that the debt/liability does not exist - i.e; by leading defense evidence and conclusively establishing with certainty that the cheque was not issued in discharge

of a debt/liability. The second option is to prove the non-existence of debt/liability by a preponderance of probabilities, referring to the particular circumstances of the case.In view of the above prepositions of law, an accused can rebut the presumption under section 139 of N.I Act by a preponderance of probabilities also. If neither of the above options are satisfied, the Court is bound to accept the case of the complainant on the basis of the presumptions, provided the other legal requirements under the statute are complied with.

15. When the evidence adduced in the instant case is appreciated in the light of the above principles, it is evident that, the complainant had, during the cross examination, admitted that Ext.D1 reflects the agreement relating to the transaction between him and the accused. A reading of Ext.D1 indicates that out of an amount of Rs.1,84,000/- due from the accused to the complainant, he had received Rs.20,000/- on 16.02.2011 and the balance was only Rs.1,64,000/-. The consistent case of the accused had been that he had not borrowed Rs.3,00,000/- and that only Rs. 20,000/- was owed by him to the complainant. The various inconsistencies, especially those relating to the statement concerning the knowledge of the accused or the lack of it regarding a person by name Joy Muthedan or relating to other transactions between the wife of the complainant and the accused also probabilize the defense of the accused that the cheque was issued in connection with another transaction. In this context, complainant’s case that he had lent to the accused a sum of Rs.3,00,000/- at a time when the

accused owed Rs.1,64,000/- to the wife of the complainant also assumes significance.

16. The cumulative effect of the nature of evidence adduced by the complainant himself probabilizes the defense version. In Exhibit P7 reply notice, the accused had in fact specifically averred that on 15.02.2011, at the intervention of the Office Bearers of the Merchants Association, he had handed over Rs.20,000/- along with a signed document and a blank signed cheque which was not returned, and instead was misused by the complainant by presenting for encashment. Thus the evidence of the complainant as PW1 itself renders the defence version more probable.

17. Under the circumstances, this Court has to act under the belief that the debt or liability as alleged by the complainant did not exist. The trial court, as mentioned earlier, believed the version of the accused to be more probable and held that presumption under Section 139 of the Act does not arise in the instant case. Hence, I find no reason to interfere with the findings of the trial court.

Accordingly, there is no merit in this appeal and it is dismissed.

sd/-

BECHU KURIAN THOMAS
JUDGE

AMV/24/10/2025