



2026:CGHC:16738

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 15 of 2018

- Anup Gidwani, S/o Shri Nawal Rai Gidwani, aged about 40 Years (wrongly mentioned in the judgment), R/o 102, Dhebar Steel City, Awanti Vihar, Colony Tahsil and District Raipur, Chhattisgarh.

---Appellant

versus

- Mahendra Singh Thakur, S/o Sudan Singh Thakur, aged about 48 Years, R/o H. No. B-04, Vashundhara Nagar, Changora Bhata, Raipur Tahsil and District Raipur, Chhattisgarh.

--- Respondent

ACQA No. 16 of 2018

- Anup Gidwani, S/o Shri Nawal Rai Gidwani, aged about 40 Years (wrongly mentioned in the judgment), R/o 102, Dhebar Steel City, Awanti Vihar Colony Tahsil and District Raipur, Chhattisgarh.

---Appellant

Versus

- Mahendra Singh Thakur, S/o Sudan Singh Thakur, aged about 48 Years, R/o H. No. B -04 Vasundhara Nagar, Changora Bhata , Raipur Tahsil and District Raipur, Chhattisgarh.

--- Respondent

For Appellant	:	Mr. Yogesh Pandey, Advocate.
For Respondent	:	Mr. B.S. Rajput, Advocate.

(Hon'ble Shri Justice Radhakishan Agrawal)

Judgment on Board

10/04/2026

1. These two acquittal appeals have been preferred by the appellant/complainant against the separate judgments dated 31.08.2017 passed by the learned Additional Sessions Judge, Raipur in Criminal Appeal Nos. 217/2016 and 218/2016, whereby the respondent/accused has been acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the NI Act, 1881"), by setting aside the separate judgments of conviction dated 30.09.2016 passed by the learned Judicial Magistrate First Class, Raipur in Criminal Case Nos. 51/2013 and 52/2013, whereby the accused/respondent was convicted for the said offence and sentenced to undergo rigorous imprisonment for six months and to pay compensation of Rs.15,00,000/- & 20,00,000/- to complainant, with a further direction that, in default of payment of compensation, he shall undergo additional R.I. for three months respectively.
2. Since both appeals arise from the judgments dated 31.08.2017, they are being heard together and decided by this common judgment.
3. Case of the prosecution, in brief, is that respondent- Mahendra Singh Thakur was engaged in the business of purchase and sale of land and was acquainted with the appellant/complainant. It is alleged that the appellant/complainant paid a total sum of Rs.35,00,000/- cash to the respondent as advance for purchase of land. When the respondent failed to execute the sale deed or return the amount, he issued two cheques bearing Nos. 968460 and 968461 drawn on Punjab National Bank, Raipur, in favour of the appellant/complainant towards discharge of liability. The said cheques, when presented for encashment in their respective cases, were dishonoured due to insufficient funds. Thereafter, legal notices were issued, and upon failure of the

respondent/accused to make payment, complaints under Section 138 of the Act, 1881 were filed, leading to registration of Criminal Case Nos. 51/2013 and 52/2013.

4. The learned trial Court, after recording the evidence of the parties, convicted and sentenced the respondent as mentioned in paragraph 1 of this judgment. Aggrieved thereby, respondent–Mahendra Singh Thakur preferred Criminal Appeal Nos. 217/2016 and 218/2016. The learned appellate Court, by separate judgments dated 31.08.2017, allowed both the appeals and acquitted the respondent of the charge under Section 138 of the Negotiable Instruments Act, 1881. Against the said judgments, complainant- Anup Gidwani has filed the present appeals.
5. Learned counsel for the appellant/complainant submits that the Appellate Court has erred in reversing the well-reasoned judgment of conviction passed by the learned trial Court. He submits that once the issuance of the cheques in question and the signatures thereon are admitted, the statutory presumptions under Sections 118 and 139 of the Act, 1881 come into operation in favour of the complainant, and the burden shifts upon the respondent to rebut the same. He also submits that the defence of the respondent that the cheques were obtained under threat is false and only an afterthought, as no evidence or complaint has been produced to support it. He also submits that the finding of Appellate Court regarding lack of financial capacity is erroneous. On the issue of notice, he submits that the notice was sent to the correct address and even if it was returned, it will be treated as served. Therefore, it is prayed that the impugned judgment of acquittal be set aside and the conviction recorded by the learned trial Court be

restored. Reliance has been placed upon the decision of Supreme Court in the matters of *Ashok Singh vs. State of Uttar Pradesh* reported in (2025) 4 SCR 504 and *D. Vinod Shivappa vs. Nanda Belliappa* reported in (2006) 6 SCC 456.

6. Per contra, learned counsel for the respondent supports the impugned judgments and submits that the complainant/appellant has failed to prove the existence of any legal liability. He further submits that no documentary evidence has been produced to show payment of Rs.35,00,000/- cash to the respondent and that the complainant/appellant has failed to establish the source of such amount. He also submits that the respondent had issued prior instructions to his bank to stop payment of the cheques, which probalises the defence and shows that the alleged cheques were not issued in discharge of any legal liability or debt. He also submits that the respondent has successfully rebutted the presumption by establishing a probable defence supported by documentary evidence. He also submits that the statutory notice was not served upon the respondent. Therefore, it is prayed that the appeals filed by the complainant, being devoid of merit, deserve to be dismissed.
7. I have heard learned counsel for the parties and perused the material available on record.
8. The Supreme Court in the matter of *Jafarudheen and others vs. State of Kerala* reported in (2022) 8 SCC 440 has considered the scope of interference in Appeal against acquittal, which reads as under:-

“25. While dealing with an appeal against acquittal by invoking Section 378 CrPC, the appellate court has to consider whether the trial court's view can be terms as a possible one, particularly when evidence on record has

been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”

9. The prosecution, in order to substantiate its case, examined complainant/PW-1 Anup Gidwani. In his examination-in-chief, he stated that the respondent was known to him in connection with earlier land transactions at village *Urkura* and, on account of such acquaintance, he paid a sum of Rs.35,00,000/- cash to the respondent as advance for purchase of land. He further deposed that when the respondent failed to execute the sale deed, he issued two cheques in discharge of his liability, and when the said cheques were presented, they were dishonoured due to insufficient funds. However, in his cross-examination, he admitted that his annual income is about Rs.3,50,000/- and that he files income tax returns only when he earns income, but no such documents were produced in Court. He further admitted that the complaint does not state when and where Rs.35,00,000/- cash was paid or from where the money was arranged. He also admitted that the complaint and affidavit do not mention which land was to be sold, at what rate, and with whom the deal was fixed. He also admitted that no documents were filed with the complaint. Although he claimed that the alleged payment was shown in his income tax returns, but he did not produce them. He also admitted that he never had Rs.35,00,000/- in his Bank of Baroda account. He also admitted that the complaint does not mention the place of payment or any witness, and that no written agreement was made for the alleged

payment. Thus, the evidence of the complainant/appellant does not inspire confidence and fails to establish the existence of any legal liability.

10. On the other hand, the respondent examined himself as DW-1 Mahendra Singh Thakur. He categorically denied having received any amount from the complainant. He stated that, due to a dispute regarding possession of land, the complainant forcibly obtained two cheques of Rs.15,00,000/- and Rs.20,00,000/- from him. He further stated that he did not receive any statutory notice from the complainant. He proved documents Ex.D-1 to Ex.D-3, which indicate that he had issued instructions to his bank on 29.08.2012 to stop payment of the cheques. His testimony remained consistent in cross-examination and is supported by documentary evidence, thereby rendering the defence probable.
11. In the matter of *Kamla S. vs Vidhyadharan M.J. and another* reported in (2007) 5 SCC 264, the Hon'ble Supreme Court has held in paras 15 to 17 which read as under:-

“15. The Act contains provisions raising presumption as regards the negotiable instruments under Section 118(a) of the Act as also under Section 139 thereof. The said presumptions are rebuttable ones. Whether presumption stood rebutted or not would depend upon the facts and circumstances of each case.

16. The nature and extent of such presumption came up for consideration before this Court in *M.S. Narayana Menon Alias Mani V. State of Kerala and Anr.* [(2006) 6 SCC 39] wherein it was held : (SCC p.50, para 30)

“30. Applying the said definitions of "proved" or "disproved" to the principle behind Section 118(a) of the Act, the court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a

prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon."

17. This Court clearly laid down the law that standard of proof in discharge of the burden in terms of [Section 139](#) of the Act being of preponderance of a probability, the inference therefor can be drawn not only from the materials brought on record but also from the reference to the circumstances upon which the accused relies upon. Categorically stating that the burden of proof on accused is not as high as that of the prosecution, it was held: (SCC p.51, para 33)

"33. Presumption drawn under a statute has only an evidentiary value. Presumptions are raised in terms of the [Evidence Act](#). Presumption drawn in respect of one fact may be an evidence even for the purpose of drawing presumption under another."

12. When the present case is examined in the light of the aforesaid decision of the Supreme Court and the evidence available on record, it is clear that the complainant/appellant has failed to prove the basic facts necessary to establish any legal liability or debt. There is no documentary evidence to establish payment of Rs.35,00,000/- cash to the respondent, nor is there any satisfactory explanation regarding the source of such huge amount, particularly when the complainant has admitted that his annual income was only Rs.3,50,000/-. The complainant/appellant has also failed to disclose the exact date, place, and mode of payment of the alleged huge amount of Rs.35,00,000/- cash. He also admitted that he did not know the details of the land, such as the *khasra* number and ownership. It is pertinent to mention that for a transaction involving such a large amount, some documentary evidence would ordinarily be expected; however, no such evidence has been produced in the present case. This creates serious doubt about

the alleged cash advance payment of Rs.35,00,000/-. This apart, regarding service of notice, it appears from the material on record that although the statutory notice was not physically served upon the respondent and was returned with the remark that the premises was locked and no one was available, but the notice was sent to the correct address mentioned in the complaint. The respondent has failed to establish that he was not residing at the said address or that the address was incorrect. In such a situation, since the notice was sent to the correct address and filing of the complaint requires such notice, it can be presumed that the notice was served upon the respondent in view of the law laid down in *D. Vinod Shivappa* (supra). However, the respondent could not reply to the said notice.

13. The learned appellate Court, in both separate judgments, has recorded a finding that the complainant has failed to prove the existence of any legal liability or debt. It has been observed that there is no documentary evidence regarding the alleged advance payment of Rs.35,00,000/- cash, nor any satisfactory explanation regarding its source. The defence version has been found to be probable in view of the documentary evidence on record and, accordingly, the respondent has been acquitted.

14. The Hon'ble Apex Court in its judgment dated 12.02.2024 passed in Criminal Appeal No.1162 of 2011 in case of *Mallappa and Ors. Versus State of Karnataka*, has held in para 36 as under:-

"36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:-

"(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive inclusive of all evidence, oral and documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."

15. Considering the facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court in *Jafarudheen, Kamla S.* and *Mallappa* (supra), it is clear that the complainant/appellant has failed to prove the existence of any legal liability or debt. The respondent has successfully raised a probable defence sufficient to rebut the presumptions under Sections 118 and 139 of the Act, 1881. Having gone through the judgment relied upon by learned counsel for the respondent in the matter of *Ashok Singh* (supra) and the principle of law laid down therein, in the given facts and circumstances of the present case, the aforesaid judgment, being distinguishable on facts, is of no help to the counsel for the respondent. The learned Appellate Court has rightly appreciated the evidence available on record, and its judgments do not suffer from any illegality or perversity. The view taken by the learned appellate Court is a plausible and possible view and does not

warrant interference by this Court.

16. In the result, both the acquittal appeals filed by the appellant/complainant- Anup Gidwani against the acquittal of the respondent- Mahendra Singh Thakur are hereby dismissed.

Sd/-
(Radhakishan Agrawal)
Judge

Akhilesh