2026 INSC 327

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2026
(@ SLP (CRL.) NO.7829 OF 2023)

RENUKA **APPELLANT**

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER **RESPONDENTS**

J U D G M E N T

ATUL S. CHANDURKAR, J.

1. Leave granted.

2. On a complaint filed under Section 138 of the Negotiable Instruments Act, 1881[1], learned Metropolitan Magistrate on being satisfied that there was prima-facie material to proceed against the second respondent issued process on 17th June 2022. The second respondent invoked the revisional jurisdiction of the Sessions Court

1 For short, the N.I. Act

for challenging the said order. The Sessions Court was of the view that on the date of issuance of the cheque in question, there was no legally enforceable debt to be satisfied by the drawer. By the order dated 30th December 2022, it set aside the order passed by the learned Metropolitan Magistrate issuing process. The complainant approached the High Court of Bombay by filing a writ petition under Article 227 of the Constitution of India and challenged the order passed by the Sessions Court. The learned Single Judge, however, dismissed the writ petition observing that no error of jurisdiction was found in the impugned order. Being aggrieved, the complainant has challenged the aforesaid orders in this Criminal Appeal.

3. Shorn of necessary details, the facts relevant for considering the challenge as raised are that it is the case of the appellant that she had some disputes with her husband, Mr. Ashwin Natwarlal Sheth in the matter of alleged illegal and fraudulent transfer of shares pertaining to Sheth Developers and Realtors (India) Limited and Sheth Developers Private Limited. She had

filed various complaints after which her husband commenced negotiations for amicable settlement of the disputes. On 12th January 2022, a final draft settlement agreement was finalised and drawn up between the parties. One of the terms of the settlement was that the appellant's husband would gift to the appellant the fifth, sixth and seventh floor premises of Natwar Bungalow along with interest in a plot located in a Co-operative Housing Society. He also agreed to pay the appellant a sum of ₹50 crores on executing a Declaration-cum-Indemnity document so as to withdraw the complaints filed by her against her husband. With a view to safeguard the interest of the appellant, the second respondent, who was a close friend of the appellant's husband, agreed to act as a mediator and to keep the amount of ₹50 crores in an escrow account till the actual payment was made by the appellant's husband. Accordingly, on 12th January 2022, the second respondent issued Cheque No.080261 for an amount of ₹50 crores in favour of the appellant. The appellant claims to have signed the document titled as Declaration-

cum-Indemnity on 13th January 2022. It is the further case of the appellant that the sale of shares of the concerned entity was completed contrary to the settlement agreement and the appellant's husband received the sale consideration. The appellant accordingly deposited the cheque that had been issued by the second respondent for encashment. However, on 06th April 2022, the said cheque was dishonoured and returned with the remark 'payment stopped by drawer'. The appellant, on 20th April 2022, issued a notice under Section 138 of the N.I. Act to the second respondent. The said notice was replied by the second respondent on 04th May 2022, denying any liability to make such payment. The appellant gave her further reply to the second respondent and again called upon him to make the necessary payment. Since no further steps were taken by the second respondent, the appellant on 16th June 2022 filed a complaint against the second respondent under Section 138 of the N.I. Act.

4. Mr. Mukul Rohatgi, learned Senior Advocate for the appellant submitted that the Sessions Court erred in

setting aside the order passed by the learned Metropolitan Magistrate issuing process on the premise that the dishonoured cheque had been issued for a debt that was not legally enforceable. According to him, on a plain reading of the complaint filed by the appellant under Section 138 of the N.I. Act coupled with the undisputed position as regards the issuance of the cheque by the second respondent, its valid presentation, its subsequent dishonour, issuance of the statutory notice and failure on the part of the second respondent to comply with the statutory notice were the only relevant considerations at the stage of issuance of process in the complaint. In other words, it was urged that the presumption under Section 139 of the N.I. Act that operated in favour of the payee could be dislodged by the drawer of the cheque only during the course of trial and not at the pre-trial stage. When the basic ingredients for making out an offence under Section 138 of the N.I. Act had been made out and process had been issued by the learned Metropolitan Magistrate, scuttling the proceedings at this stage was unjustified. To substantiate

this contention, reliance was placed on the decision in **Sunil Todi and others Vs. State of Gujarat and another**[2] by urging that the Sessions Court had misread the said judgment. It was, thus, submitted that the Sessions Court was not justified in coming to the conclusion that the cheque in question had not been issued for discharge of any legal liability. Such a finding could be rendered only at the trial and not on the basis of the statements made during the course of proceedings challenging the issuance of process. He, therefore, submitted that the impugned orders be set aside and the complaint be restored for its adjudication on merits.

5. On the other hand, Dr. A. M. Singhvi, learned Senior Advocate for the second respondent supported the impugned orders and opposed the contentions raised on behalf of the appellant. He submitted that both the Courts were justified in coming to the conclusion that the cheque in question had not been shown to have been issued towards the discharge of any legally enforceable debt. The document dated 12th January 2022, which was

2 2021 INSC 823

in the form of a settlement agreement, was admittedly not signed by the second respondent. There was no concluded agreement as such and, therefore, the second respondent could not be bound by the statements made in that agreement. The liability under the cheque issued by the second respondent would arise only after the agreement between the parties was complete. The Courts were justified in relying upon the decision in *Sunil Todi (supra)* wherein it was held that where the payment of debt was dependent on the happening of an event which never occurred, there would be no legally recoverable liability to be satisfied. In view of this position on record, no useful purpose would be served by continuing the proceedings under Section 138 of the N.I. Act as it would amount to an abuse of the process of law. It was, thus, submitted that the complaint having been rightly dismissed by the learned Sessions Judge, which order was upheld by the High Court, no interference therein was called for. He, therefore, urged that the appeal ought to be dismissed.

6. We have heard the learned Senior Advocates appearing for the parties at length and we have also perused the relevant documentary material on record. Having given due consideration to the rival submissions, we are of the view that the Sessions Court as well as the High Court were not justified in coming to the conclusion that the complaint as filed by the appellant under Section 138 of the N.I. Act was liable to be dismissed at the pre-trial stage on the ground that the cheque issued by the second respondent was not towards any legally enforceable debt.

7. Perusal of the complaint filed by the appellant under Section 138 of the N.I. Act indicates reference to an amicable settlement of various disputes between the appellant and her husband, pursuant to which the appellant's husband executed a registered irrevocable Power of Attorney dated 10th December 2022 in favour of the appellant. It was agreed under the settlement agreement that the appellant's husband would transfer by way of gift three properties and also pay an amount of ₹50 crores on the execution of a Declaration-cum-

Indemnity document. In reciprocation, complaints made by the appellant as regards fraudulent transfer of her shares in two companies were to be withdrawn. To ensure execution of the Declaration-cum-Indemnity document, the second respondent acted as a guarantor and issued the cheque in question drawn in favour of the appellant. The appellant accordingly signed the Declaration-cum Indemnity document on 13th January 2022. On getting knowledge of the sale of certain shares contrary to the settlement agreement, the appellant presented the cheque issued by the second respondent for being honoured. It has been further stated that said cheque was dishonoured with the remark 'payment stopped by drawer'. A reference is thereafter made to the issuance of a statutory notice under Section 138 of the N.I. Act dated 20th April 2022, its service on the second respondent and his reply dated 04th May 2022 denying any liability. Accordingly, the said complaint came to be filed by the appellant. The appellant's statement was duly verified by the learned Metropolitan Magistrate and on being *prima facie* satisfied that the ingredients of Section 138 of the

N.I. Act were present, process came to be issued to the second respondent.

8. It is to be borne in mind that at the stage of issuance of process by the learned Metropolitan Magistrate, what is *prima facie* required to be seen is the issuance of cheque by the drawer in favour of the complainant, its dishonour on presentation by the payee, issuance of statutory notice under Section 138 of the N.I. Act and filing of the complaint within the prescribed statutory period. If the drawer does not dispute issuance of such a cheque nor does he deny his signature on the dishonoured cheque, the statutory presumption as contemplated under Section 139 of the N.I. Act comes into play. As a result, the burden would shift on the drawer of the cheque to prove that the cheque was not issued for any legally enforceable debt or liability. This exercise has to be undertaken during the trial either by relying upon the material brought on record by the complainant or by the drawer leading evidence in rebuttal. At the stage of issuance of process, the statutory presumption under Section 139 of the N.I. Act cannot be

dislodged in a summary manner merely by contending that the cheque issued was not for any legally enforceable debt or liability.

9. We may in this regard refer to two decisions of this Court that have reiterated the view that once the basic ingredients of Section 138 of the N.I. Act are duly satisfied by the complainant, the rebuttal of statutory presumption by the drawer can only be made during the course of trial.

In **Rangappa Vs. Sri Mohan**[3], it has been explicitly reiterated that the presumption mandated by Section 139 of the N.I. Act includes the presumption as regards existence of a legally enforceable debt or liability. It has been held that Section 139 is an example of a reverse onus clause that has been included in furtherance of the legislative object of improving the credibility of negotiable instruments. The presumption is rebuttable and the accused can raise a defence wherein the existence of a legally enforceable debt or liability can be contested.

3 2010 INSC 289

In **Rajesh Jain Vs. Ajay Singh**[4], it has been held as under:

"**34.** The NI Act provides for two presumptions: Section 118 and Section 139. Section 118 of the Act inter alia directs that it shall be presumed, until the contrary is proved, that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that 'unless the contrary is proved, it shall be presumed, that the holder of the cheque received the cheque, for the discharge of, whole or part of any debt or liability'. It will be seen that the *'presumed fact'* directly relates to one of the crucial ingredients necessary to sustain a conviction under Section 138.

35. Section 139 of the NI Act, which takes the form of a *'shall presume'* clause is illustrative of a presumption of law. Because Section 139 requires that the Court *'shall presume'* the fact stated therein, it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. But this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary as is clear from the use of the phrase *'unless the contrary is proved'*.

36. The Court will necessarily presume that the cheque had been issued towards discharge of a legally enforceable debt/liability in two circumstances. *Firstly*, when the drawer of the cheque admits issuance/execution of the cheque and *secondly*, in the event where the complainant proves that cheque was issued/executed in his favour by the drawer. The circumstances set out above form the fact(s) which bring about the activation of the presumptive clause. ***[Bharat Barrel Vs. Amin Chand] [(1999) 3 SCC 35]***

xxxxxxxxxxxxxxxxxxx

38. As soon as the complainant discharges the burden to

4 2023 INSC 888

> 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."

10. A perusal of the revisional order passed by the learned Judge of the Sessions Court indicates that he has given much importance to the fact that the agreement dated 12th January 2022 was not signed by the second respondent and, hence, the issuance of the cheque in question was not for any enforceable debt. He also appears to have given importance to the dispute between the appellant and her husband by stating that it was a matrimonial dispute and civil litigation between the said parties was pending in various Courts. In our view, the learned Judge misdirected himself when he proceeded to give more weightage to the document dated 12th January 2022 and in the process, ignored the fact that the basic ingredients for attracting the provisions of Section 138 of the N.I. Act had been duly satisfied by the appellant, at

least for issuance of process. The drawing of the cheque by the second respondent, its presentation and subsequent dishonour at the instructions of the second respondent is not in dispute. The second respondent does not also dispute that he had issued the said cheque and that it was duly signed by him. The issuance of statutory notice as well as filing of the complaint within the prescribed period are also not in dispute. In such a situation, when the basic ingredients of Section 138 stand duly satisfied and the statutory presumption under Section 139 gets triggered, coming to a conclusion that the cheque was not issued for a legally enforceable debt at the pre-trial stage itself without granting an opportunity to the complainant to substantiate her case by leading evidence would amount to ignoring the statutory presumption that the cheque had been issued for a legally enforceable debt or liability. As a consequence, the presumption under Section 139 of the N.I. Act gets washed away even prior to commencement of the trial. We are of the view that in the facts of the present case, the dismissal of the complaint as a

consequence of setting aside the order issuing process is totally unjustified in the absence of any material being brought on record by the second respondent to rebut the statutory presumption and prove his contention that the cheque was issued not towards any enforceable debt or liability.

Since we are inclined to restore the complaint for being tried on merits, it is not necessary to deal with the decision in *Sunil Todi and others (supra)* in detail. Suffice it to observe that even in the said decision, it has been held that disputed questions as regards existence of outstanding liability are questions of fact that have to be determined at the trial on the basis of evidence.

11. For all these reasons, we are of the view that the learned Judge of the Sessions Court committed an error in setting aside the order dated 17th June 2022 passed by the learned Metropolitan Magistrate issuing process under Section 138 of the N.I. Act. The High Court also fell into error in upholding the order passed by the learned Sessions Judge. Accordingly, both the aforesaid orders are set aside. The complaint filed by the appellant

being CC1831/SC/2022 stands restored for its adjudication on merits.

We clarify that the complaint shall be decided on its own merits and in accordance with law after giving due opportunity to all parties concerned. Any observations made in this judgment shall not be construed as an expression of opinion on the merits of the said case.

12. The Criminal Appeal is allowed in aforesaid terms.

.....J.
[J.K. MAHESHWARI]

.....J.
[ATUL S. CHANDURKAR]

NEW DELHI,
APRIL 7th, 2026.