

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Acquittal Appeal No.10 of 2012**

[Against the Judgment of acquittal dated 28.07.2008, passed by the learned Judicial Magistrate, 1st Class, Jamshedpur in Complaint C-1 Case No.807 of 2007]

Md. Masudul Haque Ansari @ M. H. Ansari, Son of Late Nisarul Haque Ansari, Partner of B S Marble, resident Flat no.3/3, Alishan Tower, Road no.9, Azadnagar, P.S - Mango, District - East Singhbhum. **Appellant**

Versus

1. The State of Jharkhand
2. Sh. Purender Jha son of Late Srikant Jha resident of Ramjanam Nagar, Road no.6, Holding no.130, Kadma, P.S - Kadma, District - East Singhbhum.
3. Mithila Engineering, having its office Ramjanam Nagar, Road no.6, Holding no.130, Kadma, P.S - Kadma, District - East Singhbhum. **Respondents**

PRESENT

HON'BLE MR. JUSTICE RAJESH KUMAR

For the Appellant : Mr. P. C. Sinha, Advocate
For the State : Mr. Vishwanath Roy, A.P.P

Order No.18/ Dated: 07th May, 2026

1. Heard Mr. P. C. Sinha, learned counsel for the appellant and Mr. Vishwanath Roy, learned counsel for the State.
2. The present acquittal appeal has been filed by the complainant/ appellant against the judgment of acquittal dated 28.07.2008, passed by the court of learned learned Judicial Magistrate, 1st Class, Jamshedpur in Complaint C-1 Case No.807 of 2007, acquitting the respondent Nos.2 & 3 for the offence under Section 138 of the Negotiable Instruments Act (in short N.I Act).
3. The criminal law has been put into motion by lodging

a complaint case by the appellant-complainant.

4. The brief facts of the case, as alleged by the complainant is that on 3.1.07 the complainant having friendly terms with the accused, in order to help the accused, in his business gave a total loan of rupees two lakhs i.e. Rs.1,00,000/- through cheque no.3419 and further amount of Rs.1,00,000/- in cash to the accused against which in security the accused gave two post dated cheques first being cheque no.000234 dated 10.4.07 for Rs.1,50,000/- and second being cheque no.000211 dated. 13.4 2007 for Rs.50,000/-. Thereafter it is alleged that the complainant deposited both the cheques on 10.4.07 and 13.4.07, respectively, which were dishonoured on 11.4.07 and 17.4.07, respectively due to insufficient funds after which the complainant issued a legal notice dt. 16.4.07 on the accused through registered post A/D which was replied by the accused on 8.5.07 saying that cheque no.000234 was lost on 17.3.07 regarding which he has given information to the police but did not mention any thing regarding the second cheque. To the reply of the accused the complainant sent a reply dated 11.5.07 demanding payment of both the cheque amount being Rs.2,00,000/- within 72 hours but the accused failed to pay. In that circumstances the complainant filed this case. Accordingly the complainant presented this complaint before the learned CJM, Jamshedpur on 21.5.07 which was registered as Complaint C-1 case no. 807/07.

5. After conducting the trial, the trial court has

acquitted the respondent Nos.2 & 3 for the offence under Section 138 of the Negotiable Instruments Act 1881 (N.I Act).

6. Being aggrieved by the said judgment of acquittal, the appellant-complainant has preferred the present appeal.

7. The prosecution has examined only one witness, i.e. the complainant himself, whose testimony, in short, is as follows :-

8. **C.W.-1 - Md. Masoodul Haque**, is the complainant and he has supported the case. He has deposed that a friendly loan amounting to Rs.2,00,000/- has been given by him to the accused and as a security, two cheques were given (Ext.-1 & 2) in his own handwriting, but the same were dishonoured (Ext.-1/1 & 2/1).

In his cross-examination at para - 12, he has admitted that on 29.12.2006 he gave Rs.1,00,000/- through cheque and rupees fifty thousand as cash, but in-chief he has stated otherwise.

9. The defence has also examined two witness namely, Rakesh Kumar Singh as D.W.-1 and the accused himself as D.W.-2.

The prosecution has put up the story that it was a friendly loan and for security the cheques have been issued.

10. It has been submitted by the learned counsel for the appellant that since the signature on the cheque has not been denied by the respondent No.02, and as such the

presumption lies in favour of the appellant-complainant.

11. Learned counsel for the State has supported the judgment of acquittal.

12. Having heard learned counsel for the parties and from perusal of record, this Court finds that Section 138 of the N.I Act has been enacted to operate in the commercial transaction. Section 138 of the N.I Act reads as under :-

“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:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

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

13. Thus, the presumption lies in favour of the holder of cheque in due course that the cheque has been issued for discharge of legally enforceable dues and the onus lies

upon the other side to discharge this presumption, but if the material is available on record, suggesting that it is not for the legally enforceable dues, rather it was a friendly transaction between the parties which does not form any contract or does not give any right to impose the same as legally enforceable debt, then that presumption goes and the court has to decide the matter, as per the material available on record.

14. The Hon'ble Apex Court has settled the law in the judgment, passed in the case of **Rajesh Jain Vs. Ajay Singh**, reported in **(2023) 10 Supreme Court Cases 148**. Para - 38, 39 & 44 of the said judgment is relevant, which reads as follows:-

"38. John Henry Wigmore on Evidence states as follows:

"The peculiar effect of the presumption of law is merely to invoke a rule of law compelling the Jury to reach the conclusion in the absence of evidence to the contrary from the opponent but if the opponent does offer evidence to the contrary (sufficient to satisfy the Judge's requirement of some evidence), the presumption 'disappears as a rule of law and the case is in the Jury's hands free from any rule."

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. The accused must meet the standard of "preponderance of probabilities", similar to a defendant in a civil proceeding. [Rangappa v. Sri Mohan]

44. Therefore, in fine, it can be said that once the accused adduces evidence to the satisfaction of the Court that on a preponderance of probabilities there exists no debt/liability in the manner pleaded in the complaint or the demand notice or the affidavit-evidence, the burden shifts to the complainant and the presumption "disappears" and does not haunt the accused any longer. The onus having now shifted to the complainant, he will be obliged to prove the existence of a debt/liability as a matter of fact and his failure to prove would result in dismissal of his complaint case. Thereafter, the presumption under Section 139 does not again come to the complainant's rescue. Once both parties have

adduced evidence, the Court has to consider the same and the burden of proof loses all its importance. [Basalingappa v. Mudibasappa; see also, Rangappa v. Sri Mohan]."

15. In the Indian Contract Act, 1872 to form a legally enforceable contract, there has to be an agreement between the parties and the consideration is the more basic ingredients. The consideration has to be commercial. The friendship cannot be a consideration to form a contract. Thus, if no contract has been formed, then the transaction cannot be legally enforced and it does not come under the definition of legally enforceable debt and the jurisdiction of Section 138 of N.I Act is not applicable.

16. Thus, this Court finds that the material available on record, does not require any interference in the judgment of acquittal dated 28.07.2008, passed by the court of learned Judicial Magistrate, 1st Class, Jamshedpur in Complaint C-1 Case No.807 of 2007.

17. In the result, the acquittal appeal stands dismissed.

18. Let the Trial Court Records be sent back to the Court concerned forthwith, along with the copy of this Judgment.

(Rajesh Kumar, J.)

Jharkhand High Court, Ranchi
Dated, the 07th May, 2026
Ravi-Chandan/- NAFR
Uploaded on 11.05.2026