**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, NALBARI**

Present : Sri Imdad Ahmed, Chief Judicial Magistrate, Nalbari.

N.I Act case no. 56/2016

Date of Institution of complaint – 26/08/2016;

Offence Complained of - Section 138, N.I Act;

Date of Reserving the Judgment – 13/09/2022;

Date of Decision - 27/09/2022;

Plea of accused - Not Guilty;

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| Complainant : | Name of the complainant<br>(Sri Ranjit Sarma) |
| Represented by | Smti Dalimi Barman |
| Accused | 1. Sri Pramod Barman, aged 55 years,<br>S/o – Bapuram Barman,<br>Vill – Phulguri, P.S – Belsor, Dist – Nalbari. |
| Represented by | Smti Ranu Goswami |

## J U D G M E N T

**BRIEF REASONS FOR THE ORDER:**

1. The complainant has filed the present complaint under Section 138, Negotiable Instruments Act, 1881 (hereinafter called the N.I Act). The complainant has stated his case as under:

1.1. The accused person has good friendly relation with each other and both visited each other's home. The accused one day approached the complainant for financial assistance of Rs. 12,000/- for his need. The complainant gave the same to honour their friendship. The accused then assured the complainant that he would repay the amount whenever the complainant demands repayment.

1.2. The accused did not repay the loan amount when demanded by the complainant .After repeated demand by the complainant, the accused in order to make the repayment of the said sum of money to the complainant, the accused issued one cheque bearing no. 535255 dated 27/06/2016 for Rs. 12,000/- drawn at SBI, Nalbari Branch in favour of the complainant.

1.3. The complainant presented the aforesaid cheque for its encashment with his banker on 27/06/2016. However, the cheque got dishonoured and returned unpaid due to the banker's reason "Funds Insufficient" vide return memo dated 21/07/2016.

1.4. Thereafter, the complainant issued a legal notice dated 27/07/2016 upon accused through registered post with A/D under Section 138 NI Act calling upon the accused to make payment of the cheque amount within 15 days from the date of receipt of notice. The notice was duly served. However, no payment has been made but the accused replied through his pleader on 09/08/2016. Hence, the present complaint has been filed.

2. The complainant was examined on oath. After perusing the material available on record, cognizance was taken and process was issued against the accused. Accused appeared in the Court. He was released on bail.

3. Particular of offence under Section 138 of the NI Act was explained to the accused to which he pleaded not guilty and claimed for trial.

4. The complainant examined himself as PW-1 and one bank witnesses as PW2 to prove his case. The complainant / PW-1 has reiterated the facts stated in the complaint. He has relied upon the following documents:

Exhibit -1 Cheque bearing no. 535255; Exhibit – 1(1) Signature of Pramod Barman;

Exhibit -2 Cheque return memo dated 21/07/2016;

Exhibit – 3(a) Legal notice, Exhibit – 3(b) Acknowledgment card Exhibit – 3(c) Postal Receipt;

Exhibit – 4 Summons issued to Branch Manager, SBI, Nalbari Branch;

Exhibit – 5 Statement of account, Exhibit – 5(1) Entry dated 18/07/2016 showing Rs. 3035.82/- as balance amount;

Exhibit – 6 Cheque return register, Exhibit – 6(1) Relevant entry dated 19/07/2016.

5. The accused was examined and his statement was recorded under Section 313 Cr.P.C, by putting all the incriminating circumstances to him, on 29/09/2018.

6. The accused stated in his statement under Section 313 Cr.PC that "He did not take any loan from the complainant. Ranjan Sarma nephew of Ranjit Sarma approached his son Kuladhar Barman stating that he will be able to provide loan from SBI to his son if he stood as a guarantor. Accordingly, he appeared in SBI, Nalbari but Ranjit Sarma appeared and told him that the loan will not be sanctioned in SBI, Nalbari but in SBI, Bonda Branch, Noonmati. He was taken to SBI, Bonda branch, Noonmati. The Branch Manager of SBI, Bonda branch took his signature in some papers. The complainant somehow managed to put his signature in Assamese and English. Then, the Manager told him that the loan will be sanctioned against him. Then, he told the complainant that he did not need any loan. But already the loan was sanctioned in his name. Later, he recovered the loan. The cheque which is submitted in the court is not in his name. The accused stated that he received the notice but he replied through Advocate Jamini Deka that he

has not taken any loan or issued any cheque to the complainant. There was no liability. He is innocent."

7. The accused has examined himself as DW-1. The witness was examined, cross examined and discharged and the matter was fixed for final arguments.

**Evidence of the complainant:-**

8. Complainant examined three (3) witnesses. He reiterated the facts of his complaint in his evidence affidavit. They were duly cross-examined by the Ld. Counsel for accused.

9. In his cross-examination he deposed that he does not personally give loan to other people. The accused had taken loan from him in June 2016. The complainant admitted the fact that loan taken by accused in June 2016 is not mentioned in the complaint and in his affidavit. The complainant stated that he has forgotten on which date the accused took the loan. The complainant stated that the accused did not take the whole loan on one single date. He does not remember between which months, the accused took loan from him. The complainant stated that he took the cheque as security at the time of giving loan to accused. The signature of the accused person was made by accused at the time of handing over of cheque. The accused asked him to put the cheque amount. The complainant stated that his wife was witness when the accused took loan. The complainant stated that he has forgotten the amount lent by him to the accused when his wife was present. He has not cited his wife as witness

in this case. The cheque was presented on 27/06/2016 and return memo was received on 21/07/2016. He communicated with the accused after two dates of bouncing of the cheque but the said fact is not noted in his complaint petition and in his affidavit. He knows the accused since 4 – 5 years. The complainant stated that he cannot say whether the signature of accused in acknowledgment and cheque are same signature or not. He knows Kuladhar Barman who is the son of accused. The complainant denied that he and his nephew Ranjan Sarma are agents of getting loan from SBI. He denied that he assured Kuladhar Barman of getting him a loan of Rs. 3 lakhs from SBI and asked him to get his father's documents. The complainant denied that when the loan was sanctioned, the accused went to the bank to surrender the loan and then he asked the accused to give him Rs. 90,000/- for getting him the loan. The complainant denied that he conspired with Ranjan Sarma in getting the account of accused transferred to Bonda Branch, Guwahati. He denied that he took the documents of accused by photocopying the same. He admitted that accused has filed a money suit case against him which is pending in Nalbari Court.

10. PW-2 Arpan Dey (Asstt. Manager of SBI, Nalbari branch) exhibited the statement of account of the accused being no.11004765498 of SBI, Nalbari Branch from 01/07/2016 to 31/07/2016 as Exhibit-5. The maximum amount in the account of Pramod Barman was Rs. 3035.82. PW2 exhibited the entry dated 19-07-16 as Exhibit-5 (1) showing Rs 3,035.82/- as balance amount. PW2 exhibited the cheque return register as

Exhibit-6 and the entry dated 19-07-16 as Exhibit-6(1) which shows that the cheque was returned due to reason "fund insufficient". PW2 identified Exhibit 2 as the cheque return memo and the seal of the bank in the return memo as Exhibi-2(1). PW2 stated that the Exhibit-2 was issued in connection with cheque no 535255 for an amount of Rs 12,000/- drawn from an account in the name of the accused being no.11004765498.

11. During cross-examination PW-2 stated that there is no similarity of handwriting of the contents of the cheque with the signature.

**Evidence of accused:-**

12. In his defence accused examined himself as the sole defence witness i.e., DW1. To prove that the accused had not taken any loan from the complainant, he examined himself as DW-1 and stated that Exhibit 1 cheque was not issued by him and Exhibit 1(1) is not his signature. He does not know the contents of the cheque. He did not put the signatures on the back side of the cheque. He also did not put the signature in the acknowledgment of legal notice issued to him. The accused stated that he gave Rs. 2 lakhs to the complainant in the year 2008 and he had filed FIR against accused in the past. The accused stated that there are other cases pending between him and complainant with regard to issuance of a hand note.DW1 stated that he had never taken loan from the complainant.

13. Further the accused has stated in his statement under section 313 Cr.P.C that he had not issued the impugned cheque to the complainant in discharge of any legally enforceable debt whatsoever. The accused even denied his signature on the impugned cheque in his statement under section 313 Cr.P.C.

14. Throughout his cross-examination, the accused maintained that he had not taken any loan from the complainant and that no cheque was issued by him to the complainant in discharge of any legal liability whatsoever.

15. Ld. Counsel for the complainant has argued that the complainant has proved his case beyond reasonable doubts and therefore, the guilt of the accused has been proved as per law. The cheque was not bounced for mismatch of the signatures on the cheque with the signature of the account holder but on the ground of "insufficient fund". It is proved that accused was liable to make the payment; however, he did not make the payment within stipulated time. Accused had failed to rebut the statutory presumption drawn in favour of the complainant. He has taken false defence. None of the defence taken by him has been proved as per law. It is proved by complainant that all the steps were taken by the complainant within the time provided by the law. Further, the accused has taken contradictory defence while adducing evidence as well as during statement under Section 313 Cr.P.C. Therefore, accused is liable to be held guilty.

16. Per contra, Ld. Counsel for the accused has argued that the complainant has failed to prove his case against the accused beyond reasonable doubt and hence the statutory presumption has been rebutted by the defence by cross-examination of the accused. The accused has been falsely implicated. The accused never took any loan from the complainant as alleged.

17. I have heard the rival submissions of the Ld. Counsels of the parties and carefully perused the material on record.

18. On analysis of the facts and legal position stated above, the questions before the court for the disposal of the complaint are framed in the following :-

**POINTS FOR DETERMINATION:**

i) Whether the cheque was issued for the discharge of any legally enforceable debt or liability?

ii) Whether the accused is guilty of committing an offence under Section 138 of the N.I Act?

**Discussion, decision and reasons thereof:-**

**Point No i & ii) :-**

19. The complainant as PW-1 has alleged that he had paid amount of Rs. 12,000/ to the accused as the accused was in need of financial assistance and accused promised to return the same within short period. PW1 further stated that in order to make the payment of aforesaid liability towards complainant,

the accused had issued one cheque bearing no. 535255 dated 27/06/2016 for Rs. 12,000/- drawn on SBI, Nalbari Branch in favour of the complainant. The complainant presented the aforesaid cheque for its encashment with his banker on 27/06/2016. However, the cheque got dishonoured and returned unpaid due to the reason "Funds Insufficient" vide return memo dated 21/07/2016. The complainant issued legal notice dated 27/07/2016 upon accused through registered post with A/D under Section 138 NI Act calling upon the accused to make payment of the cheque amount within 15 days. The notice was duly served. However, no payment has been made but the accused replied through his pleader on 09/08/2016 denying issuance of any cheque as well as his signature on the cheque.

20. Section 138 of Negotiable Instruments Act, 1881 makes dishonour of cheques an offence. It provides that "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 provisions 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".

21. It is a well settled principle of criminal jurisprudence that a criminal trial proceeds on the presumption of innocence of the accused i.e., an accused is presumed to be innocent unless proved guilty. Thus, normally the initial burden to prove is on the complainant/ prosecution to prove the guilt of the accused. Also, the standard of proof is beyond reasonable doubt. However, in offences under section 138 of the Act, there is a reverse onus clause contained in sections 118 and 139 of the Act.

22. Section 118(a) of the Act provides that until the contrary is proved, it shall be presumed that "that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration."

23. Further, Section 139 of the Act lays down that "it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

24. On bare reading of these provisions, it becomes clear that the court shall presume the execution of a negotiable instrument for consideration unless and until the contrary is proved. Similarly, the Court shall also draw a presumption in

favour of the complainant/holder of the cheque that the said cheque has been issued in discharge of legally enforceable debt of other liability.

25. There is a statutory presumption under section 139 of the Act which arises in the favour of the complainant. This presumption is rebuttable and the accused is required to raise a probable defence. Burden of proof is hence upon the accused in such cases. Reliance can be placed on the decision of the ***Hon'ble Supreme Court in the case of M.S Narayan Menon vs. State of Kerala (2006) 6 SCC 39***, wherein the Hon'ble Court has discussed in detail the scope and ambit of statutory presumption under section 118 read with section 139 of the Act. The relevant extract of the judgment is reproduced below:

> "Applying the said definitions of 'proved' or 'disproved' to 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"

26. Further, it is also a settled proposition of law that the standard of proof which is required from the accused to rebut the statutory presumption under section 118 read with section 139 of the Act is preponderance of probabilities. The accused is not required to prove his case beyond reasonable doubt. This onus on the accused can be discharged from the materials available on record and from the circumstantial evidences. At this point, the ***Hon'ble Supreme Court in M.S Narayan Menon case (supra)*** has interalia held the following:

> "The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which he relies"

27. Further as discussed above, it should also be noted that the standard of proof in order to rebut the statutory presumption may be inferred from the materials on record and circumstantial evidences. It is not always mandatory for the accused to examine its own witnesses in order to rebut the said statutory presumption. At this point, reliance may be placed on the decision of the ***Hon'ble Supreme Court in the case of Krishna Janardhan Bhat (supra)***, wherein the Hon'ble Court has categorically held the following:

> "32. Accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. As accused has a constitutional right to remain silence. Standard of proof on the part of an accused and that of the prosecution in a criminal case is different.

28. Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove defence on the part of an accused is "preponderance of probabilities". 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 he relies.

29. "This principle has been reiterated by the ***Hon'ble Supreme Court in Rangappa vs. Sri Mohan (2010) 11 SCC 441*** wherein while discussing the scope and ambit of statutory presumption under section 139 of the Act, the Hon'ble Court has held the following:

> "27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments.

30. While section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the

rebuttable presumption under section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard of proof.

31. In the absence of compelling justifications, reverse onus clause usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally recoverable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the material submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."

32. Thus, section 139 of the Act puts the burden on the accused to prove his defence. However, the accused has to prove his defence on the balance of probabilities and not beyond reasonable doubt. Accused can prove his defence by

drawing inferences from the materials already on record (including complainant's evidences), circumstances of the case and also leading his own evidences. If the accused successfully creates doubts in the complainant's claim about the existence of legally enforceable debt then the burden of proof shifts back to the complainant who is the required to prove the guilt of the accused beyond reasonable doubt.

33. As discussed in the preceding paragraphs, section 118 (a) read with 139 of the Act raises a presumption in favour of the complainant regarding the issuance of the cheque by the accused for consideration and in discharge of a legally enforceable debt.

34. However, it should be noted that this statutory presumption would be raised in favour of the complainant only when the accused admits its signature on the cheque or if the complainant proves the issuance of cheque by the accused. At this point, reference can be taken from the decisions of the ***Hon'ble Supreme Court in the case of Kumar Exports vs. Sharma Carpets (2009) 2 SCC 513***, wherein while discussing the contours of section 118(a) r/w 139 of the Act, the Hon'ble Court has held interalia the following:-

> "14. Section 139 of the Act provides that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

> Applying the definition of the word "proved" in section 3 of the Evidence Act to the provisions of sections 118 and 139 of the Act, it becomes evident that in a trial under section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under section 118 and 139 of the Act help him shift the burden on the accused. The presumption will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists."

35. Therefore, in light of the above mentioned decision of the Hon'ble Supreme Court, it is amply clear that the presumption under section 118(a) and 139 would arise only when the execution of the cheque or other negotiable instruments, as the case may be, is either proved by the complainant or admitted by the accused. In the instant case, the accused has not admitted his signature in the cheque in

question. The statutory presumption cannot be drawn in this case as the accused did not admit his signature in the cheque. The complainant is required to prove that the signature in the cheque belongs to the accused, particularly when the accused had disputed the signature on the cheque.

36. Admittedly, there is no receipt of the alleged payment. Now, as per complainant, accused has taken loan of Rs. 12,000/ from accused but during cross-examination complainant stated that he had given the money in the month of June, 2016. During evidence, complainant has relied upon legal notice dated 27.07.2016. On perusal of the legal notice, it has transpired that in notice i.e., Exhibit 3(a), complainant stated that accused has taken loan of Rs. 92,000/- and to discharge his liability, four cheques amounting Rs. 12,000/- , Rs. 33,000/- , Rs. 35,000/- , Rs. 12,000/- were issued to him by the accused vide cheque nos. 535253, 535254, 535256 & 535255 dated 27.06.2016. So as per notice, loan amount was Rs. 92,000/- and four cheques of different amounts have been issued to discharge the debt whereas the complainant in his complainant as well as affidavit had only mentioned about loan of Rs. 12,000/- and hence, the demand notice is not in consonance with the statement and averment made in the complaint and affidavit.

37. On the other hand, the complainant in the present case had examined the bank official as PW-2 who has deposed in his examination-in-chief that "the cheque has been dishonored due to the reason “funds insufficient". The accused

while cross-examining PW-2 did not ask any specific question regarding his signature. It should be noted that the return memo filed on record as well as the statement of PW-2 do not show that the cheque was dishonored due to mismatch in signature of the accused.

38. In the instant case, it is pertinent to note that the accused in his statement recorded under section 313 Cr.P.C as well as in his examination in chief and cross-examination as DW-1 has denied the issuance of impugned cheque by him. In his statement under section 313 he has also denied his signature on the impugned cheque and also on the acknowledgment card. It is a settled proposition of law that statement under section 313 Cr.P.C can be used only to complete the chain of evidences already on record. It cannot be the sole basis of conviction or acquittal. In the present case, the denial of signature on the impugned cheque by the accused in his statement under section 313 cannot be used in his favour unless there is evidence to substantiate the plea taken in Section 313 CrPC statement.

39. Further the complainant remained silent on the exact month and date of advancing of loan to the accused in the complaint as well as affidavit. Complainant has not stated in his complaint as well as in his examination-in-chief about any specific date on which the alleged transaction had taken place. Also perusal of the statements made by the complainant in his examination-in- chief and cross-examination of the complainant

clearly shows that there are contradictions in his statements *vis-à-vis* the statutory demand notice issued by the complainant. PW1 has stated in his cross-examination that loan of Rs. 12,000/- was given to the accused in presence of his wife whereas PW1 mentioned in his demand notice that the loan amount was Rs. 92,000/- and four cheques were issued including the instant cheque of Rs. 12,000/- to discharge the debt of Rs. 92,000/-. He also did not examine any witness on this aspect including his wife in presence of whom the transaction took place. PW1 in his cross-examination failed to mention the first month and the last month during which money was given to the accused by him as loan. PW1 admitted that the entire loan amount was given in instalments from the starting month to the ending month. This court while comparing the signature in the cheque with the specimen signature of the accused found that it does not tally with the admitted signature of the complainant. Further, PW1 could not say the details about the period from 1st to last month within which the money was given by him to the accused. The absence of any details of the date on which the loan was advanced as also the absence of any documentary or other evidence to show that any such loan transaction had taken place between the parties is a significant circumstance. The accused is able to highlight the vital omissions in the pleadings as well as evidence of complainant which raises serious doubts about the alleged transaction.

40. Further, the complainant in his demand notice stated that an amount of Rs. 92,000/- was taken as loan from him by the accused and in discharge of the debt, the accused issued four cheques of Rs. 12,000/- , Rs. 33,000/- , Rs. 35,000/- and Rs. 12,000/- . The complainant in his evidence as PW1 stated that the accused only took an amount of Rs. 12,000/- as loan from him without mentioning the date on which the loan amount was advanced by him to the accused. Hence, the contents of the statutory demand notice Exhibit-3(a) is not in consonance with the deposition of PW1. Therefore, considering the evidences on record and in light of the above discussions, I am of the considered view that the accused had successfully raised doubt regarding the grant of impugned loan by the complainant to him.

41. At this stage, it should be noted that when the accused successfully created doubt in the complainant's case by drawing inferences from the materials on record and also from circumstances, statutory presumptions under section 118(a) r/w 139 of the Act stand rebutted and burden to proof is then shifted to the complainant to prove the guilt of accused beyond reasonable doubt. Reference can be taken from the decision of the ***Hon'ble Supreme Court from the case of Bharat Barrel & Drum Manufacturing Company vs. Amin Chand Pyarelal 1999 (3) SCC 35***, wherein it has held the following:

> "Upon consideration of various judgments as noted hereinabove, the position of law which emerges is

that once execution of the promissory note is admitted, the presumption under section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non- existence of the consideration can be either direct or by bringing on record preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading

evidence as the existence of negative evidence is neither possible not contemplated nor even if led, it is to be seen with a doubt..."

42. In the instant case, as discussed above, the burden of proof shifted to the complainant to prove the existence of legally enforceable debt when the accused successfully rebutted the statutory presumptions under section 118(a) and 139 of the Act. Therefore, it is for the complainant to prove the guilt of the accused beyond reasonable doubt by leading cogent evidences on record in order to get the benefit of the statutory presumption. The failure to mention the date on which the loan amount was handed over to the accused by the complainant had raised doubt about any such transaction between the two parties as alleged by the complainant. PW1 could not mention the dates between which the alleged loan amount was given by him to the accused .Further , there is contradiction between the averment made in the complaint and the content of the demand notice as the loan amount was mentioned as Rs. 92,000/- whereas loan amount in the complaint was mentioned as Rs. 12,000/- . It appears that complainant tried to hide some vital facts which raised doubt and therefore, this Court restrained itself from giving the benefit of statutory presumption .A complete reading of the complaint, deposition of PW1 and the demand notice clearly shows that the accused had effectively raised doubt in the realm of preponderance of liability about non- existence of any legally enforceable debt. ***The Hon'ble***

***Supreme Court in Vijay-Vs- Laxman & another reported in (2013) 3 SCC 86*** held that-

> "The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by the reference to the circumstances upon which he relies".

43. The plea of the accused was that complainant and his nephew Ranjan Sarma had good relationship with Kuladhar @Jitu Barman (who is the son of the accused) and the complainant often visits the house of the accused. Kuladhar @Jitu Barman is unemployed youth and the complainant informed him that he can manage a loan for business purpose for which a guarantor is necessary and as the father; the accused will be a fit person to stand as guarantor. The son of the accused agreed and gave some documents of the accused to the complainant. The complainant also demanded Rs 90,000/- after the loan gets sanctioned. Later on, the accused came to know about the proposal and communicated with the Bank and refused to become a guarantor and requested to cancel the loan. It is alleged that when the loan has been cancelled, the complainant on revenge lodge this case against the accused. As stated in ***Vijay –Vs- Laxman***, preponderance of probabilities can be drawn from the circumstances on which the accused relies. The failure of complainant to mention the date on which the loan amount was demanded and advanced

by the complainant leads to the conclusion that no such loan transaction had ever taken place between the two parties. The evidence elicited through PW1 during cross-examination coupled with the circumstances projected by the accused in his statement under Section 313 CrPC probabilize the non-existence of a debt.

44. Therefore, in view of the above discussions, I am of the view that there exist insufficient materials on record to hold that the accused had taken the loan amounting to Rs. 12,000/- from the complainant. In this light, this court is of the considered opinion that the accused has successfully demolished the case of the complainant regarding the existence of legally enforceable debt through evidence brought on record through effective cross-examination of PW1.

45. It is therefore held that the complainant has failed to prove the necessary facts to draw the statutory presumption under Section 139 of the N.I Act.

46. Accused Sri Pramod Barman is therefore acquitted of the charge under Section 138 of N.I Act.

47. Bail Bond shall remain valid till the expiry of six months from today as per Section 437-A CrPC.

48. Given under my hand and seal of this court on this 27th day of September, 2022 at Nalbari.

Chief Judicial Magistrate,
Nalbari

N.I Act case no. 56/2016

## Accused Details

| Rank of the accused | Name of accused | Date of Arrest | Date of release on bail | Offences charged with | Whether Acquitted or convicted | Sentence Imposed | Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.P.C |
|---|---|---|---|---|---|---|---|
| N/A | Sri Pramod Barman | N/A | 17/04/2017 | 138 of N.I Act | Acquitted | N/A | N/A |

Chief Judicial Magistrate
Nalbari

N.I Act case no. 56/2016

## List of Prosecution / Defence / Court Witnesses

A. Complainant:

| Rank | Name | Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other witness) |
|---|---|---|
| PW-1 | Ranjit Sarma | Complainant |
| PW-2 | Arpan Dey | Asstt. Manager of SBI, Nalbari Branch |
| PW-3 | Dr. Bapukan Choudhury | Scientific Officer, FSL Kahilipara |

B. Defence Witnesses, if any:

| Rank | Name | Nature of evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other witness) |
|---|---|---|
| DW-1 | Pramod Barman | Accused |

C. Court Witnesses, if any:

| Rank | Name | Nature of evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other witness) |
|---|---|---|
| Nil | | |

Chief Judicial Magistrate
Nalbari

N.I Act case no. 56/2016

**LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS**

A. Complainant:

| Sr. No. | Exhibit number | Description |
|---|---|---|
| 1 | Exhibit -1 | Cheque bearing no. 535255 |
| 2 | Exhibit – 1(1) | Signature of Pramod Barman |
| 3 | Exhibit -2 | Cheque return memo |
| 4 | Exhibit 2(1) | Seal of SBI, Nalbari branch |
| 5 | Exhibit – 3(a) | Legal notice |
| 6 | Exhibit – 3(b) | Acknowledgment card |
| 7 | Exhibit – 3(c) | Postal Receipt |
| 8 | Exhibit – 4 | Authority note |
| 9 | Exhibit 4(1) | Signature of Branch Manager Indrajit Bhuyan |
| 10 | Exhibit 5 | Summons issued to Branch Manager, SBI, Nalbari Branch |
| 11 | Exhibit – 6 | Statement of account |
| 12 | Exhibit – 6(1) | Entry dated 18/07/2016 showing Rs. 3035.82/- as balance amount |
| 13 | Exhibit – 7 | Cheque return register |
| 14 | Exhibit – 7(1) | Relevant entry dated 19/07/2016 |

B. Defence:

| Sr. No. | Exhibit Number | Description |
|---|---|---|
| Nil | | |

C. Court Exhibits:

| Sr. No. | Exhibit Number | Description |
|---|---|---|
| Nil | | |

D. Material Objects:

| Sr. No. | Exhibit Number | Description |
|---|---|---|
| Nil | | |

Chief Judicial Magistrate

Nalbari