

**(i) Negotiable Instruments Act, 1881 (26 of 1881), Sections 138 and 146 - Bank endorsement/Cheque return memo - Electronic Clearance System - Seal and signature not mandatory - Post-Electronic Clearance System, physical/manual verification dispensed with; seal and signature on bank endorsement not mandatory; absence thereof cannot be a ground to reject complaint**

Prior to introduction of Electronic Clearance System, physical and manual verification required signature of bankers of the accused and the complainant on the endorsement issued through the clearing house - After introduction of ECS, physical and manual intervention is dispensed with; the cheque is electronically cleared by comparing with the data available with the bankers of the accused and the complainant and the endorsement so issued requires no specific signature of any officer of the bank - Seal and signature of the bank are therefore not mandatory; absence thereof on the bank endorsement cannot be a ground to reject the complaint under Section 138 of the Act. **[Paras 20, 21, 25, 26, 27]**

**(ii) Negotiable Instruments Act, 1881 (26 of 1881), Section 146 - Cheque return memo - No particular form prescribed - Neither Section 138 nor Section 146 prescribes any particular form; absence of official stamp does not render memo invalid or trial a nullity; accused's belated challenge held an afterthought**

Neither Section 138 nor Section 146 of the NI Act prescribes any particular form of cheque return memo; the cheque return memo is a memo informing the payee's banker and the payee of the dishonour of the cheque - Section 146 presumes the fact of dishonour of the cheque on presentation of the memo unless and until such fact is disproved - If the cheque return memo is not bearing any official stamp of the bank, it does not render the memo invalid or illegal, nor does it render the entire trial under Section 138 a nullity - Accused having admitted in his cross-examination that Ex.P-2 is the bank endorsement in respect of dishonour of Ex.P-1/cheque, and having not complained to his banker or taken any action against the bank for allegedly wrong issuance, the contention that Ex.P-2 is not in consonance with Section 146 is only an afterthought - Relied on *Guneet Bhasin v. State (NCT of Delhi)*, 2022 SCC OnLine Del 3967 and *Pravin Kumar Tiwari v. Ajit Chandra Mandal*, 2025 SCC OnLine Cal 779. **[Paras 30, 32, 33]**

**(iii) Negotiable Instruments Act, 1881 (26 of 1881), Sections 118 and 139 - Presumption - Once execution of the cheque is admitted presumption under Section 118 that the cheque was drawn for consideration, and the presumption under Section 139 that the holder received the cheque in discharge of a legally enforceable debt or liability, arise against the accused**

By creating this presumption the law reinforces the reliability of cheques as a mode of payment in commercial transactions - The presumption is rebuttable but the initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused/drawer of the cheque - Observations to the contrary in *Krishna Janardhan Bhat v. Dattatraya G. Hegde* stand set aside by the Three-Judge Bench in *Rangappa v. Sri Mohan* - Relied on *Rangappa v. Sri Mohan*, (2010) 11 SCC 441; *Rajesh Jain v. Ajay Singh*, (2023) 10

SCC 148; *Sanjabij Tari v. Kishore S. Borcar*, 2025 SCC OnLine SC 2069. **[Paras 35, 36]**

**(iv) Negotiable Instruments Act, 1881 (26 of 1881), Sections 118 and 139 - Duty of Courts to give effect to statutory presumptions - Approach of some District Courts and High Courts in not giving effect to the presumptions under Sections 118 and 139 of the NI Act and treating the proceedings as civil recovery proceedings requiring the complainant to prove the antecedent debt or liability is not only prolonging the trial but is also contrary to the mandate of Parliament - The drawer and the bank must honour the cheque, otherwise trust in cheques would be irreparably damaged. [Para 37]**

**(v) Negotiable Instruments Act, 1881 (26 of 1881), Section 139 - Rebuttal of presumption - Quality of evidence - Admissions by accused regarding actual borrowing, absence of counterfoils, no demand for return of security cheques , and no criminal action for alleged misuse, rendered rebuttal evidence insufficient.**

Where the accused admits in his cross-examination that he had borrowed Rs.50,000/- from the complainant and admits that two blank cheques said to have been issued as security to the Society were neither supported by any counterfoil nor followed by any demand for their return in Ex.D-6 or Ex.D-8, and no criminal action was initiated against the complainant for the alleged misuse of the cheque, the oral and documentary evidence led by the accused is insufficient to rebut the presumption available to the complainant - Presumptions under Sections 118 and 139 can ordinarily be rebutted by the accused examining the Income Tax Officer and bank officials of the complainant/drawee. **[Paras 40, 41, 42, 43, 44]**

**(vi) Criminal Procedure Code, 1973 (II of 1974), Sections 397 and 401 - Bharatiya Nagarik Suraksha Sanhita, 2023, Section 438 - Scope of revisional jurisdiction - In exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings - It is not for the revisional Court to re-analyse and re-interpret the evidence on record - The revisional Court will not interfere even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error - Conviction under Section 138 of the NI Act concurrently recorded by the Trial Magistrate and the First Appellate Court, upheld; revision petition dismissed. [Paras 37, 39, 44, 45]**

#### **Cases Referred to :**

1. AIR 2008 SC 1325, *Krishna Janardhan Bhat v. Dattatraya G. Hegde* - Observations therein on presumption under Section 139 set aside by Three-Judge Bench in *Rangappa*. (Para 36)
2. (2010) 11 SCC 441, *Rangappa v. Sri Mohan* - Once execution of cheque is admitted, presumption under Section 139 of the NI Act arises. (Paras 12, 36)
3. 2022 SCC OnLine Del 3967, *Guneet Bhasin v. State (NCT of Delhi)* - No particular form of cheque return memo prescribed; absence of official stamp does not render memo invalid or trial under Section 138 a nullity. (Para 32)

4. (2023) 10 SCC 148, *Rajesh Jain v. Ajay Singh* – Reiterates presumption under Sections 118 and 139 of the NI Act and rebuttal threshold. (Para 36)
5. 2025 SCC OnLine Cal 779, *Pravin Kumar Tiwari v. Ajit Chandra Mandal* – Follows *Guneet Bhasin* on form of cheque return memo. (Para 33)
6. 2025 SCC OnLine SC 2069, *Sanjabij Tari v. Kishore S. Borcar* – Courts must give effect to presumptions under Sections 118 and 139; revisional Court does not upset concurrent factual findings absent perversity. (Paras 36, 37)

*Sri Rishi Pal Singh Varma, for the petitioner. Sri Chandrashekar P. Patil, for respondent Nos.1(A) to 1(C).*

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**V. Srishananda, J.** – (16-04-2026) –

**Facts :** The petitioner-accused stood convicted for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, by the 13th A.C.M.M., Bengaluru in C.C. No.3975/2015 by judgment dated 21.09.2016 and sentenced to pay a fine of Rs.4,00,000/- (with Rs.3,95,000/- as compensation to the complainant under Section 357 Cr.P.C.), in default six months' simple imprisonment; the conviction was confirmed by the LXVIII City Civil and Sessions Judge, Bengaluru in CrI. Appeal No.1154/2016 on 09.08.2018. The case of the complainant was that a loan of Rs.3,00,000/- advanced in cash on 24.10.2014 to the accused (an old acquaintance) was to be repaid within two months with 16% interest; a post-dated cheque dated 24.11.2014 drawn on SBI, West of Chord Road Branch, issued towards repayment was dishonoured on 26.11.2014 with the endorsement 'funds insufficient'; statutory notice went uncomplied. The accused did not dispute the cheque or his signature but pleaded that two blank cheques had been issued as security to a Society and one had been misused by the complainant. Before the High Court in revision, the accused challenged the conviction principally on the ground that the bank endorsement Ex.P-2 did not bear the seal or signature of the bank and did not conform to Section 146 of the NI Act. The High Court, holding that after the introduction of the Electronic Clearance System seal and signature are not mandatory, that Section 146 does not prescribe any particular form of cheque return memo, that the statutory presumptions under Sections 118 and 139 stood attracted once execution of the cheque was admitted, and that the rebuttal evidence was insufficient, dismissed the revision petition.

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