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Evidentiary Thresholds and the Role of Initial Defences in Cheque Dishonour Cases under Section 139 of the Negotiable Instruments Act

BURDEN OF PROOF



The simple act of signing a cheque, seemingly a routine occurrence in commercial transactions, carries profound legal implications. Within the framework of the Negotiable Instruments Act, 1881 (the 'NI Act'), Section 139 emerges as a cornerstone, establishing a robust legal principle that dictates the initial burden of proof in cases of cheque dishonour.

What fundamental principle does Section 139 enshrine? In essence, it posits that upon the drawer's admission of their signature on a cheque, the court shall presume that the instrument was issued in discharge of a legally enforceable debt or other liability. This presumption imbues the cheque with an inherent credibility, streamlining commercial interactions and acting as a deterrent against unfounded denials of financial obligations. It places the onus of rebuttal squarely on the signatory.

Consider the scenario where a cheque, the tangible representation of a financial promise, is dishonoured, casting a shadow of doubt on the underlying transaction. The aggrieved party, holding this bounced cheque bearing the admitted signature, seeks legal recourse. The pivotal question then becomes: How can the signatory (the accused) effectively challenge this statutory presumption of debt under Section 139? What quantum and nature of evidence is required to dismantle this legal edifice?



This very conundrum formed the crux of the case before the Supreme Court, in **Ashok Singh Versus State Of Uttar Pradesh & Anr.** emanating from a decision of the Allahabad High Court. The High Court had overturned the concurrent convictions of an accused for an offence under Section 138 of the NI Act, seemingly predicated on the complainant's perceived failure to adequately demonstrate the initial advancement of the loan. This judicial intervention spurred the complainant to approach the apex court, leading to a significant reaffirmation of the well-established principles governing Section 139.

In a decisive pronouncement, the Supreme Court unequivocally asserted that the presumption enshrined in Section 139 of the NI Act, once the drawer acknowledges their signature, remains a formidable legal pillar. It cannot be lightly dismissed by merely questioning the complainant's financial capacity to extend the alleged debt, particularly if such a defence was conspicuously absent in the accused's initial response to the mandatory statutory notice of dishonour. This pronouncement naturally leads to the inquiry: **Why did the Supreme Court place such emphasis on the timing and substance of the defence raised? What is the critical significance of the accused's initial reply to the statutory notice?**

To unravel the Court's rationale, let us briefly consider the arguments advanced by both sides. The complainant, drawing strength from the concurrent findings of the trial and appellate courts, contended that the High Court had exceeded the permissible limits of its revisional jurisdiction by re-evaluating the evidence. They underscored the accused's admitted signature and the statutory presumption favouring the existence of a legally enforceable debt. Conversely, the accused challenged the complainant's ability to disburse such a substantial loan without providing corroborative documentary evidence and even presented a belated claim of the cheque having been lost.

The Supreme Court, in its judicious determination, firmly grounded its decision on the bedrock of its consistent judicial precedents. It reiterated the established legal framework of the NI Act, specifically Sections 118 (presumptions as to negotiable instruments) and 139, which casts an initial burden on the accused to adduce a *probable* defence to rebut the presumption of a legally enforceable debt. A bare denial or an ambiguous assertion, especially when contradicted by the accused's own conduct (such as admitting the signature without initially alleging loss or questioning the lender's financial standing), typically falls short of discharging this crucial onus.

This juncture brings us to a critical understanding. The Supreme Court's reliance on its prior jurisprudence highlights the consistent and enduring interpretation of these vital provisions



of the NI Act. To fully appreciate the nuances of this recent judgment, it is imperative to examine the lineage of these foundational decisions. **What pivotal principles were established in these earlier cases that have shaped the Supreme Court's current unwavering stance? How have these judgments meticulously defined the contours of the accused's burden of proof under Section 139?**

In the present case, the Supreme Court held that the High Court's presumption that the complainant was obligated to prove the source of funds at the initial stage was erroneous. The apex court emphatically stated that the onus to prove financial capacity only arises when the accused raises a specific objection regarding the complainant's inability to advance the alleged loan. Simply put, the complainant is not required to demonstrate their financial wherewithal upfront. The Court emphasized that once the signature on the cheque is admitted, the presumption under Section 139 of the NI Act kicks in, shifting the burden onto the accused to raise a probable defence.

In arriving at this conclusion, the Supreme Court placed strong reliance on its earlier pronouncements, particularly the principles enunciated in **Rohitbhai Jivanlal Patel v. State of Gujarat, (2019) 18 SCC 106** and **M/s S. S. Production v. Tr. Pavithran Prasanth, 2024 INSC 1059**, which in turn referred to **Tedhi Singh v Narayan Dass Mahant (2022) 6 SCC 735**.

Drawing from **Rohitbhai Jivanlal Patel(supra)**, the Court reiterated that once the accused admits to the signature, the burden shifts to them to demonstrate a "reasonable probability of the non-existence of legally recoverable debt." In that case, the accused's defence of a transaction with a third party, devoid of any supporting evidence, was deemed insufficient to rebut the presumption. The salient principle underscored was that mere suggestions during cross-examination, lacking substantive proof, do not discharge the accused's legal obligation to present a probable defence.

Furthermore, referencing **M/s S. S. Production(supra)**, the Court underscored that a mere counter-assertion to raise a defence does not automatically transfer the burden back to the complainant. The accused's plea must be substantiated by credible evidence, whether oral or documentary, which was found wanting in the present matter as well. Crucially, this judgment clarified that even in the absence of the complainant initially proving the source of funds through formal financial documents like account statements or income tax returns, their claim remains valid if the issuance and signing of the cheque are admitted and no cogent evidence is presented to demonstrate the complainant's lack of financial capacity. **This raises a pertinent question: Why is the initial lack of proof of funds not fatal**





to the complainant's case when the signature is admitted? The rationale lies in the statutory presumption itself. The law presumes a legally enforceable debt existed; it is then for the accused to dismantle this presumption with credible evidence.

The decision in **Tedhi Singh v Narayan Dass Mahant**(*supra*) provided crucial clarity on the timing of the inquiry into the complainant's financial capacity. The Supreme Court explicitly stated that in a Section 138 NI Act case, the complainant is not obligated to prove their financial capacity at the outset. This obligation arises *only* if the accused specifically raises this as a credible defence in their reply to the statutory notice. However, the accused retains the right to challenge the complainant's capacity through various means, including their own evidence, rigorous cross-examination of the complainant's witnesses, or by drawing attention to inconsistencies or admissions within the complainant's own documents. Ultimately, the court's duty is to meticulously evaluate the totality of the evidence presented to determine whether the accused has successfully established a probable defence capable of rebutting the statutory presumption.

Applying these firmly established legal principles to the specific facts of the present appeal, the Supreme Court concluded that the High Court had erred in expecting the complainant to prove the source of the loan amount at the initial stage of the proceedings. Given the accused's admission of their signature on the cheque and their failure to initially challenge the complainant's financial capacity in their response to the mandatory legal notice, the presumption under Section 139 operated with significant force in favour of the complainant. The accused's subsequent defence of the cheque being lost, particularly when juxtaposed with the suspiciously delayed reporting to the police, further undermined their attempt to rebut this statutory presumption.

Conclusion

The Supreme Court's consistent upholding of the presumption under Section 139 of the NI Act reinforces the sanctity of negotiable instruments in commercial transactions. This judgment clarifies that the complainant in a cheque dishonour case is not initially burdened with proving their financial capacity to lend. Instead, the admission of the signature by the accused triggers a statutory presumption of a legally enforceable debt, effectively shifting the onus onto the accused to present a credible and evidence-backed defence. This stance streamlines the legal process, preventing undue delays and ensuring that frivolous challenges to cheque transactions are discouraged. The emphasis on the accused raising the lack of financial capacity as a specific defence early on also underscores the importance of timely and comprehensive responses to statutory notices.





Looking ahead, this judgment may raise a hypothetical question: In cases where the accused successfully demonstrates the complainant's highly improbable financial capacity to advance the alleged loan, even if raised later in the proceedings, how will courts balance the robust presumption under Section 139 with the demonstrated improbability of the underlying debt? This scenario could necessitate a more nuanced evaluation of the "preponderance of probabilities" required for the accused to rebut the presumption, potentially requiring a closer scrutiny of the complainant's financial standing at the relevant time, even if not initially challenged.

1. Ashok Singh Versus State Of Uttar Pradesh & Anr.Criminal Appeal No.4171 Of 2024; April 02, 2025
 2. Rohitbhai Jivanlal Patel v. State of Gujarat, (2019) 18 SCC 106
 3. M/s S. S. Production v. Tr. Pavithran Prasanth, 2024 INSC 1059
 4. Tedhi Singh v Narayan Dass Mahant (2022) 6 SCC 735.
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