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# NEWSLETTER

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## **JUDGEMENTS**

### **1. Sumeti Vij vs M/S Paramount Tech Fab Industries**

**Statement of the accused recorded under Section 313 of Criminal Procedure Code is not a substantive evidence of defence to rebut the presumption under Section 139 of the NI Act – Supreme Court of India**

The Brief Facts of the case are that The Appellant is aggrieved by the judgment passed by the High Court holding the Appellant guilty of offence under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) after reversal of the finding of acquittal returned by the learned trial Judge by its judgment.

The Appellant submitted that, the complainant was not able to prove that the material/goods were ever sent or received by the Appellant and in terms of the complaint, the burden was on the complainant to prove that the material/goods were received by the Appellant, against which the cheques were received as security and even though the Appellant has not placed any evidence to disprove or rebut the presumption in defence, still the complainant has to discharge its burden and has to stand on his own legs. In the absence of the prima-facie burden being discharged by the complainant, mere issuance of the cheques by the Appellant would not have been sufficient to justify that, the cheques were issued in discharge of any debt or other liability.

In the instant case, the Appellant has only recorded her statement under Section 313 of the CrPC, and has not adduced any evidence to rebut the presumption that the

cheques were issued for consideration. Once the facts came on record remained unrebutted and supported with the evidence on record with no substantive evidence of defence of the Appellant to explain the incriminating circumstances appearing in the complaint against her, no error has been committed by the High Court in the impugned judgment, and the Appellant has been rightly convicted for the offence punishable under Section 138 of the Act and needs no interference of this Court.

There is a mandate of presumption of consideration in terms of the provisions of the Act and the onus shifts to the accused on proof of issuance of cheque to rebut the presumption that, the cheque was issued not for discharge of any debt or liability in terms of Section 138 of the NI Act.

The Hon'ble Supreme Court held that *"The statement of the accused recorded under Section 313 of the Code is not a substantive evidence of defence, but only an opportunity to the accused to explain the incriminating circumstances appearing in the prosecution case of the accused. Therefore, there is no evidence to rebut the presumption that the cheques were issued for consideration."*

Link:

[https://main.sci.gov.in/supremecourt/2019/29233/29233\\_2019\\_42\\_1502\\_26778\\_Judgement\\_09-Mar-2021.pdf](https://main.sci.gov.in/supremecourt/2019/29233/29233_2019_42_1502_26778_Judgement_09-Mar-2021.pdf)

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