IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEALS NO. 14, 19, and 20 OF 2013.

CRIMINAL APPEAL NO. 14 OF 2013.

M/s. Agency Real Margao Pvt. Ltd.,
Represented by Authorised person
Shri Nishikant Pednekar,
having registered office at 3rd Floor,
Mascarenhas Building, Panaji- Goa. … Appellant.
(Original Complainant)

v/s

Shri Subhash K. Parab,
Major of age,
Flat no. D-1, Mauricio Apts,
Shirvodem Navelim,
Salcete, Margao-Goa. … Respondent.

WITH

CRIMINAL APPEAL NO. 19 OF 2013.

M/s. Agency Real Margao Pvt. Ltd.,
Represented by Authorised person
Shri Nishikant Pednekar,
having registered office at 3rd Floor,
Mascarenhas Building, Panaji- Goa. … Appellant.
(Original Complainant)

v/s

Shri Subhash K. Parab,
Major of age,
Flat no. D-1, Mauricio Apts,
Shirvodem Navelim,
Salcete, Margao- Goa. … Respondent.
(Original accused)

WITH

CRIMINAL APPEAL NO. 20 OF 2013.

M/s. Agency Real Margao Pvt. Ltd.,
Represented by Authorised person

Shri Nishikant Pednekar,
having registered office at 3rd Floor,
Mascarenhas Building, Panaji- Goa. … Appellant.
(Original Complainant)

v/s

Shri Subhash K. Parab,
Major of age,
Flat no. D-1, Mauricio Apts,
Shirvodem Navelim,
Salcete, Margao- Goa. … Respondent.
(Original accused)

Mr. N. Sardessai, Senior Advocate with Mr. D. Shirodkar, Advocate for the appellant, in all the above appeals.

Mr. S. M. Singbal, Advocate for the respondent, in all the above appeals.

CORAM :- U. V. BAKRE, J.

Reserved on: 28th November, 2014.

Pronounced on: 12th February, 2015.

JUDGMENT :

All the above appeals shall be disposed of by this common judgment since they are directed against the common Judgment and order dated 29.08.2011 passed by learned Judicial Magistrate, First Class "C" Court at Panaji ('J.M.F.C.', for short) in Criminal Cases No. OA/409/2006/C, OA/446/2006/C and OA/271/2006/C respectively, and involve a common question of facts and law.

2. The appellant was the complainant in the said criminal cases whereas respondent was the accused therein. Parties shall be hereinafter be referred to as per their status in the said cases.

3. Complainant had filed complaints against the accused for offence under Section 138 of the Negotiable Instruments Act, 1881 ('N. I. Act' for short) which gave rise to the said criminal cases. Case of the complainant, in short, was as follows:-

Complainant is a company carrying on business of selling liquor in Goa and in rest of India. The accused had purchased liquor from the complainant from time to time to sell the same at his shop by name “Malax Traders”, situated at Navelim, Margao Goa, and towards the purchase of the said liquor the accused owed to the complainant the amounts of ₹ 60,000/-, ₹ 69,005/- and ₹ 1,19,606/-. The accused gave to the complainant a letter/undertaking dated 06/07/2005 in relation to the liability owed by the accused towards the Complainant and issued three cheques: one bearing no.768994 dated 30.12.2005 for ₹ 60,000/-, second bearing no.768995 dated 30.1.2006 for ₹ 69,005/- and the third bearing no. 768996 dated 20.2.2006 for ₹ 1,19,606/-, all drawn on Goa Urban Co-operative Bank Ltd, towards the discharge of the liability. When presented by the complainant to its banker, the said cheques were returned unpaid for reason “Funds insufficient”. The complainant issued legal notice to the accused on 14.1.2006, 20.02.2006, and 14.03.2006 respectively in respect of each cheque, by registered post A/D, which were received by the accused. However, the accused did not make payment. Hence, the complaints.

4. The cheque no. 768995, dated 30.01.2006, for ₹ 69,005/- and legal notice dated 20.02.2006 were subject matter of Criminal Case No. OA/409/06/C. The cheque no. 768996 dated 28.02.2006 for ₹ 1,19,606/- and legal notice dated 14.03.2006 were subject matter of Criminal Case No. OA/446/2006/C. Lastly, the cheque No. 768994 dated 30.12.2005, for ₹ 60,000/- and the legal notice dated 14.01.2006 were subject matter of Criminal Case No. OA/271/2006/C.

5. Substance of accusation was explained to the accused in all the cases, to which the accused pleaded not guilty and claimed to be tried. The complainant examined its authorised person namely Shri Nishakant Pednekar, as PW1. He produced various documents namely the Cheque, Cheque Return Memo, letter of the Goa Urban Co-operative Bank Ltd. thereby returning the cheque unpaid along with the Cheque Return Memo, Power of Attorney given to Nishakant Narsiha Pednekar, legal notice under Section 138 of N. I. Act, letter dated 06.07.2005 given by the accused to the Complainant, copy of the resolution, envelope and A/D card, salary certificate of the accused, letter of appointment of the accused, attendance register, record of leave encashment bills of the accused, record of bonus paid to the accused, notarised copy of the original register containing resolution passed by the Board of Directors of the complainant, and notarised copies of the purchase bills of the liquor. Statement of the accused came to be recorded under Section 313 of Cr.P.C, in each case. The accused examined himself as DW1 and produced documents namely three bills of purchases of Beer made from Kerkar Marketing Co. (Beer Division) and complaint filed before the Labour Commissioner. In the cross examination of DW1, the complainant produced the letter of appointment, promotion letter dated 06/07/2005 and various bills of purchases made by Malax Traders from the complainant.

6. Case of the accused, as could be gathered from his affidavit-in -evidence, in short, was as follows:-

In the year 1975 he was appointed as a salesman for depot situated at Hubli, near Bankapur Chowk and was working at the said depot of the complainant till it was closed i.e till the year 1976. Thereafter, he was transferred to Margao depot as a salesman. He worked as such for a period from 1995 till 2005. On 6.7.2005 at around 10.00 a.m., the accused was called along with the cheque books and other documents relating to Malax Traders in the office of the complainant to meet Managing

Director Mr. Dilip Shirodkar, as well as the Director Mr. Vinod Shirodkar and as per the instructions he went to the cabin of Managing Director and the director where the employee Mr. Nishakant Pednekar was also present. During this meeting, the accused was threatened by the said Directors of the Company that if he did not act as per their say he will be finished. He was confined to office from morning till 6.00 p.m. in the evening without food and water and all the said persons were threatening him and pressurizing him to sign the cheques without any liability or debt due from him. The accused was under immense pressure and fear as his nature was meek and further he had very good relationship and high respect towards the late father of the Managing Director of the complainant-company namely Mr. Gajanan Shirodkar. The accused succumbed to their demands and signed the cheques under force and duress. On the same day at about 4.30 p.m., he was given a letter dated 6.7.2005 which was drafted by their advocate and he was asked to sign the same. The accused signed the said letter under force and duress as he was threatened by them at around 6.00 p.m. and handed over the same along with the cheques which are the subject matter of the present cases. He was scared of his life and being a common man he did not want his name and reputation to be spoiled and, therefore, kept quite without any reaction and did not lodge any police complaint. During the said period the accused was facing depression and tremendous mental agony and hoped that taking into consideration his long term services and good relationship with late father of the Managing Director, the complainant-company would settle the accounts amicably and maintain any dues, if any. Further all the transactions at Margao depot were billed and no transactions were done without issuing either credit bills or cash bills, which were duly accounted for. It was a usual practice that whenever any cash was paid, counter bills (cash memos) were made and goods were delivered. The accused had not received any cash against any goods without issuing cash memo and without recording the transaction. The credit bills were issued only to known customers and once cash was paid, receipts were issued in settlement of respective credit bills. No cash was received by the accused which was unaccounted against the bills and which was not reflected in the books of accounts. Subject cheques without any enforceable debt were procured under threat and duress and there was no enforceable debt. The Directors of the complainant are highly influential and well connected to ministers and police and, therefore, he was scared of his life to file any police case against the Managing Director and Director of the company. He had filed Labour Case praying to allow him to resume the duties with back wages i.e for illegal termination, retrenchment and compensation, in the alternative of around ₹ 3,25,000/- which were legal dues. Letter dated 06.07.2005 was also taken under force, coercion and duress.

7. Upon consideration of the entire evidence on record, the learned J.M.F.C. held that she had territorial jurisdiction to entertain the complaints. The learned J.M.F.C. further held that the debt was not time barred. There was also no dispute regarding execution of the cheques, presentation of the same during the validity period, issuance of legal notice and filing of the complaints within prescribed time limit. Learned J.M.F.C, however, held that the complainant could not prove that the cheques were issued towards discharge of legally enforceable debt. The J.M.F.C. held that the accused had rebutted the presumption available under Section 139 of the N. I. Act. Consequently, the accused in all the above cases came to be acquitted. The complainant is therefore, before this Court.

8. Mr. Sardessai, learned Senior Counsel for the complainant, pointed out that the accused had received the notice in each case, but did not send any reply and there is no explanation for the same. He further pointed out that the cheques bounced for the reason “Funds insufficient”. He urged that if cheques were forcibly taken from the accused, then the accused could have lodged a police complaint and could have written to the bank to stop payment and ought to have replied the notices thereby asserting his case. The learned Senior Counsel pointed out that in the statement under Section 313 of Cr.P.C. there were only denials to the case of complainant and accused had not at all put up his case here. Learned Senior Counsel further submitted that in order to cut short all the lengthy requirements of establishing the legally enforceable debt, Section 139 of the N. I. Act has been enacted and once the execution of the cheques is admitted, presumption under Section 139 of the N. I. Act, comes into play and there is reverse burden on the accused to establish that there was no legally enforceable debt. He submitted that merely by holding that there is doubt will not help. According to him, the doubt has to be substantiated. He pointed out that in the deposition of PW1, a suggestion was put by the accused that both Vinod Shirodkar and Dilip Shirodkar were present in the office when the letter dated 06.07.2005 was obtained. He submitted that two years after giving the said letter dated 06.07.2005, the accused by letter dated 29.08.2007 wrote to the conciliation officer from the office of the Commissioner of the Labour thereby raising industrial dispute and in this letter accused has specifically stated about the presence of only the Managing Director namely Mr. Vinod Shirodkar on

06.07.2005. He, therefore, urged that the accused had taken contrary stand and, therefore, his defence was not reliable. He submitted that in view of the presumption under Section 139 of the N. I. Act, the accused had to prove in trial by leading cogent evidence that there was no debt or liability and the accused miserably failed in proving the same. He, therefore, urged that the impugned judgment and order of acquittal is perverse and bound to be quashed and set aside. He relied upon the judgment of the Supreme Court in the case of ***"K. N. Beena Vs. Muniyappan and another",*** [(2001) 8 SCC 458].

9. On the other hand, Mr. Singbal, learned counsel for the accused, submitted that in cases under Section 138 of the N. I. Act, preponderance of probability is the standard of proof for defence and accused need not enter the witness box. He submitted that in the cross-examination of PW1 itself the accused had showed that he had not misappropriated any amount. He pointed out that in the complaint, nowhere the complainant stated as to how the amount was due and in the evidence no accounts were produced to substantiate the legally enforceable debt. Learned counsel submitted that if money was due against the bills for any particular period the same had to reflect in ledger book as sundry creditors and had to be shown therein. He submitted that the complainant being a company had to maintain stock register in which all goods i.e liquor had to be mentioned and if not mentioned that would amount to unaccounted money. Learned counsel submitted that the accused was in depression and under fear and he even waited for two years to claim the dues before the Labour Commissioner. He submitted that there was absolutely no reason for the accused to give a letter dated 06.07.2005 and the cheques. He pointed out in the said letter it is mentioned that the accused willingly gave the said letter and the cheques. According to the Counsel, this itself showed that the same were taken by force and coercion. He further submitted that if there was any misappropriation there had to be audit in which misappropriated amount would have surfaced. He pointed out that PW1 stated about audit being conducted and also about the income tax returns being filed. He submitted that neither the audited account was produced nor income tax returns were produced. He also questioned as to why the complainant did not file any police complaint of cheating against the accused. He urged that whatever has been discussed by the learned J.M.F.C. is borne out from the cross-examination of PW1. He submitted that some bills which did not reflect the cheque amounts were produced and they were useless. He next submitted that power of attorney given to Nishakant Pendekar which was produced on record was without seal and, therefore, the same was not admissible. He submitted that the complainant being a company had to maintain accounts as per Section 209 of the Companies Act, 1956 ('the Act" for short) and if not maintained that was an offence under Section 209(5) of the Act. He pointed out that under Section 224 of the Act, there had to be an audit. He then submitted that the cheques were payable at Margao though they were presented at Panaji and therefore, Panaji Court had no jurisdiction to entertain the said complaint. Mr. Singbal, learned counsel for the accused relied upon the following judgments:-

i. "*Rajendra Nath Dutta and Others Vs. Shibendra Nath Mukherjee and others*", [1982-52 Comp Case 293 Cal.]
ii. *"Krishna Janardhan Bhat Vs. Dattatraya G. Hegde"*, [(2008) 4 SCC 54]
iii. *"Shirish Vasant Borkar Vs. Shri Vijaykumar K. Pillienkar Fadke and another"*, [2014(1)DCR 184]
iv. *"Rangappa Vs. Sri Mohan"*, [2010(1) DCR 706]
v. *"Western India Shipyard Ltd Vs. M/s Deekay Steels and others",* [(2009)(2) Goa L. R. 233]
vi. *"Jinraj Paper udyog Vs. Dinesh Associates"*, [2008 Law Suit(BOM)2702]
vii. Judgment dated 4.7.2006 of the Hon'ble Supreme Court in the case of *"M. s. Narayana Menon @ Mani Vs. State of Kerala and another"*,

10. By way of rejoinder, Mr. Sardessai, learned Senior Counsel submitted that since the evidence had already started and was completed and even the judgment was passed by the Panaji Court, the question of Panaji Court not having jurisdiction cannot now be raised. He submitted that every case has to be decided on the facts and circumstances of each case. He submitted that at a first instance the accused had to rebut the presumption and in any case, the complainant had produced various bills on record. He submitted that it was the accused himself who had to write accounts and knew that he had not written the accounts and, therefore, the question of complainant producing the accounts did not arise. He submitted that there is no law that accounts must be produced if the complainant is a company.

11. I have gone through the original records and proceedings. I have considered the arguments advanced by the learned counsel for the parties. I have also gone through the judgments relied upon by the learned counsel for the parties.

12. In the case of *"Jinraj Paper Udyog"* (supra), the cheques were issued/delivered at Delhi; they were drawn on a bank at Delhi and accepted by the complainant; and they were presented to the bank at Delhi through payee's bank at Nagpur and were returned unpaid by the bank at Delhi. Learned Single Judge of this Court, in the case supra, held that the place where the debt or other liability was required to be discharged was of crucial importance in deciding jurisdictional issue and that the Court at Delhi had jurisdiction. In the present cases, the cheques, which were drawn on the Quepem Urban Co-operative Credit Society Ltd, Margao Branch were issued/delivered at Margao. They were presented to the same bank at Margao and were returned unpaid at Margao. However, the registered office of the complainant was at Panaji and the notice of demand was issued from Panaji. The learned J.M.F.C. in the order issuing process, had considered the Judgment of the Hon'ble Supreme Court in the case of ***"K. Bhaskaran Vs. Sankaran Vaidyan Balan"*** reported in 1999 Cri. L. J. 4606 and of this Court in the case of ***"Ahuja Nandkishore Dongre Vs. State of Maharashtra"***, reported in 2007 Cri. L. J. 115 and had held that he had jurisdiction to try the case. However, it was made clear that the order shall not bar the accused from raising the issue of jurisdiction. After appearing before the learned J.M.F.C., the accused did not raise the issue of jurisdiction but answered to the substance of accusation framed against him and faced trial. No suggestion was put to PW1 to the effect that the complaint was filed in the Court having no jurisdiction. Only during the final arguments before the learned J.M.F.C., the issue of jurisdiction was raised by the Counsel for the accused. In the case of ***"Dasharath Rupsingh Rathod Vs. State of Maharashtra" & Anr.***, [(2014) 9 SCC

129], the Hon'ble Supreme Court has held that once the cause of action accrues to the complainant , the jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonoured. However, the Hon'ble Supreme Court has made it clear that the category of complaint cases where proceedings have gone to the stage of Section 145(2) of the N.I. Act, or beyond shall be deemed to have been transferred by it from the Court ordinarily possessing territorial jurisdiction, as clarified, in the said Judgment, to the Court where it is presently pending. In the present cases the matters crossed the stage of Section 145(2) of the N.I. Act. The evidence was already over and even the judgments have been pronounced by the learned J.M.F.C., and now it is the appeals which have been heard. No prejudice of whatsoever has been shown to have been caused to the accused on account of the cases being tried and disposed of the learned J.M.F.C., Panaji. The question of now holding that complaints were not maintainable on account of territorial jurisdiction does not at all arise.

13. The power of attorney produced by PW1 was based on the resolution of the complainant-company wherein all five directors of the company were present. The certified true copy resolution passed by the board of directors of the complainant has also been produced by PW1, by which it was resolved to execute power of attorney in favour of PW1, Shri Nishakant. No doubt, the said power of attorney does not bear the seal of the complainant-company. Section 48(1) of the Companies Act, 1956 provides that a company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place either in or outside India. In the case of *"Rajendra Nath Dutta and Others"* (supra), a deed of lease was executed by the two directors of the company but there was no seal of the company affixed to it. The deed of lease was executed on the basis of the authorisation by extraordinary general meeting of the shareholders by which the managing director of the company was directed to execute the lease and he on the basis of thereof executed the same. In the present cases, though the board of directors of the complainant-company by resolution authorised Mr. Dilip Shirodkar to execute power of attorney, on behalf of the company, in favour of Mr. Nishakant N. Pednekar, however, by the same resolution Mr. Nishakant Pednekar was also directly authorized to do various things/acts/deeds as stated in the said resolution, which included representation of the company before any Court of law and to protect and defend interest of the company in any matter whether civil or criminal in nature; to file, initiate, commence legal proceedings, may be criminal as well as civil proceedings before the competent Court of law; to appoint advocate and to sign their wakalatnama, to lodge complaint before any authorities, police department and to prosecute, peruse, follow all complaints till its logical end; and to sign any application, pleadings, verify pleadings, file affidavits, give statement on oath, to depose on oath, to produce documentary evidence before the competent court of law or before any authorities, Government department as and when required. Thus, PW1, in all the cases, had authority to file the complaint and to depose on behalf of the complainant.

14. In the case of ***"Hiten P. Dalal Vs. Bratindranath Banerjee"***, [(2001) 6 S.C.C.16], the Apex Court has held that it is obligatory upon the Court in terms of Sections 138 and 139 of the N. I. Act, to raise the presumption in every case where the factual basis of the raising of presumption has been established.

15. In the case of ***"K. Bhaskaran Vs. Sankaram Balan"***, (AIR 1999 S.C. 3762), the Hon'ble Supreme Court has held that once the signature on the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of the N. I. Act, can legally be inferred that the cheque was drawn for consideration on the date, which the cheque bears.

16. In the case of "***K. N. Beena***", (supra), the Hon'ble Supreme Court has held that in view of the provisions contained in Sections 118 and 139 of the N. I. Act, the Court has to presume that the cheque has been issued for discharging a debt or liability and said presumption could be rebutted by the accused by proving the contrary. In paragraph 7, the Apex Court has observed thus:-

> *"In this case admittedly the 1st Respondent has led no evidence except some formal evidence. The High Court appears to have proceeded on the basis that the denials/averments in his reply dated 21st May, 1993 were sufficient to shift the burden of proof onto the Appellant/Complainant to prove that the cheque was issued for a debt or liability. This is an entirely erroneous approach. The 1st Respondent had to prove in the trial, by leading cogent evidence, that there was no debt or liability. The 1st Respondent not having led any evidence could not be said to have discharged the burden cast on him. The 1st Respondent not having discharged the burden of proving that the cheque was not issued for a debt or liability, the conviction as awarded by the Magistrate was correct. The High Court erroneously set aside that conviction."*

17. In the case of "***Western India Shipyard Limited***"(supra), relied upon by the learned counsel for the accused himself, it is observed that <u>the accused having rebutted the presumption</u>, it was for the complainant to prove that there was a debt or liability to the extent claimed by the complainant. The above means that once the presumption under Sections 118 and 138 of the N. I. Act becomes available to the complainant, it is the accused who has to first rebut the presumption and thereafter the burden shifts on the complainant to prove that there was debt or liability to the extent claimed by him.

18. In the case of ***"Rangappa"***, (supra), the Hon'ble Supreme Court has held thus at paragraph 14:-

> *"In light of these extracts, we are in agreement with the respondent-claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat (supra) may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant. 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. 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 accused/defendant cannot be expected to discharge an unduly high standard of proof. In the absence of compelling justifications, reverse onus clauses 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 enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials 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."

19. In the case of "*Krishna Janardhan Bhat* ", (supra) the Hon'ble Supreme Court held that an accused for discharging the burden of proof placed upon him under a statue need not examine himself. He may discharge his burden on the basis of the materials already brought on record. The Accused has constitutional right to maintains silence. It has been held that standard of proof required on the part of the accused is preponderance of probabilities where as the prosecution must prove the guilt of the accused beyond all reasonable doubt.

20. In the case of ***"M. S. Narayana Menon @ Mani"***, (supra), the Hon'ble Supreme Court has reiterated that standard of proof, in cases under Section 138 of the N. I. Act, evidently, is preponderance of probabilities and inference of preponderance of probabilities can be drawn not only from the materials on records but also by reference to the circumstances upon which the accused relies.

21. In the case of "*Shirish Vasant Borkar*", (supra), this Court has held that it is well settled that the accused need not disprove the existence of consideration by way of direct evidence. The standard of proof for the accused to rebut the presumption under Sections 139 and 118(a) of the N. I. Act, is preponderance of probabilities.

22. In the case of ***"Goa Plast (Pvt.) Ltd. Vs. Chico Ursula D'Souza"***, [(2003) 3 SCC 232], the Hon'ble Supreme Court observed that Chapter XVII containing Sections 138 to 142 was introduced in the N. I. Act by Act 66 of 1988 with the object of inculcating faith in the efficacy of banking transactions and these provisions were intended to discourage people from not honouring their commitments by way of payment through cheques. The Apex Court held that the Court should lean in favour of an interpretation which serves the object of the statute.

23. After knowing the principles as laid down in various cases as above, let us deal with the facts of the present cases. Section 139 of the N. I. 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. It is pertinent to note that in the present cases, the execution of the cheques has not been denied by the accused. On account of the above and in view of Section 139 of the N. I. Act, there was presumption in favour of the complainant that said cheques were issued in discharge of legally enforceable debt or liability favouring the complainant and it was for the accused to rebut the said presumption. It is seen that though according to the accused, letter dated 06.07.2005 and the subject cheques were obtained from him by the directors of the complainant, by force or coercion, however, the accused did not lodge any police complaint against the said directors of the complainant and others nor did he instruct his banker to stop payment. The complainant had given a statutory notice to the accused as required under Section 138(b) of the N. I. Act. The same was returned unclaimed. The accused did not reply the same. Merely because in the said letter dated 06.07.2005, it is mentioned that the same is in the handwriting of the accused and that it is written without any coercion or pressure of any one and that the accused had signed the cheques on his own as matter of amicable settlement, that cannot, in itself, establish that there was coercion on the accused to sign the letter. Such an observation of the learned J.M.F.C. is without any basis. In fact there was no reason for the accused not to lodge any police complaint or not to instruct the bank to stop payment and even there was no reason for the accused not to claim the statutory notice. According to the accused, on 6.7.2005 at around 10.00 a.m., he was called along with <u>the cheque books and other documents relating to Malax Traders</u> in the office of the complainant The accused had not gone to the office of the managing director on 06.07.2005 with the cheque books of Malax Traders, but with his private cheque book or cheques. The coercion or threatening had not started before the accused had gone to the office. There was no reason at all for the accused to carry with him his private cheque book or cheques. It should be kept in mind that the accused had subsequently raised industrial dispute. In such circumstances, it cannot at all be said that the accused had raised probable defence and had successfully discharged the reverse burden to show that the said cheques were not issued towards the discharge of legally enforceable debt or liability.

24. It is pertinent to note that the complainant had produced on record letter of promotion dated 05.08.1996, in respect of the accused, in the cross examination of DW1, the accused, which shows that it was the accused who was entrusted with the responsibility of daily stock supplied to godown under his charge and control and he had to write the accounts. In such circumstances, if the accused had not written the accounts, the complainant cannot be expected to produce the accounts. Be that as it may, if accounts are not maintained by the company, there is penalty. That does not give rise to any inference that there was no debt at all. In none of the cases cited by the learned Counsel for the accused, it has been held that if the transaction of the cheque pertains to a company, the company must show the accounts in which said transaction figures and if this not done Section 138 of N.I. Act is not applicable. PW1 deposed that he stated in the complaint that the cheques were issued for the payment of the liquor purchased by the accused. He deposed that out of the total bills, the outstanding amount was ₹ 60,000/-, 69,005/-, and 1,19,606/-. At least one of the credit bills produced by PW1, bearing No. 73143, dated 06/07/2005, was for ₹ 1,19,606/- for which cheque no. 768996 dated 28.02.2006 was issued by the accused. It should be kept in mind that all the cheques were given by the accused together. Hence, when at least one of the bills was produced, it can be said, unless the contrary is proved by the accused, that all the cheques were issued in the discharge of legally enforceable debt or liability. In his statement under Section 313 of Cr.P.C., the accused denied having purchased any liquor from the complainant. He produced three bills to show that he used to purchase liquor from M/s Kerkar Marketing Company. However, in his cross examination, DW1, the accused, admitted that he used to take the products from the complainant company. He was shown altogether about 23 purchase bills issued by the complainant to Malar Traders. DW1 admitted he had purchased beer vide the said bills. Hence the accused cannot be said to have rebutted the presumption arising out of Section 139 of the N. I. Act.

25. In the circumstances above, the complainant has proved its case beyond reasonable doubt. The learned J.M.F.C. has wrongly acquitted the accused in all the above cases. The impugned Judgment and Order cannot sustain and is bound to be quashed and set aside. Parties were notified to remain present today. However, neither the accused nor his counsel is present. Hence, the accused could not be heard on the point of sentence. Mr. Shirodkar, learned Counsel for the complainant submitted that the accused was an employee of the complainant and hence maximum punishment should be imposed upon him. Considering the facts and circumstances of the case, I am of the view that the sentence which follows should serve the ends of justice.

26. In the result, the appeals are allowed.

(a) The impugned Judgment and order dated 29.08.2011 is quashed and set aside.

(b) The accused is held guilty and convicted of the offence punishable under Section 138 of the N.I. Act, in each of the cases namely (i) OA 409/06/C; (ii) OA 446/06/C; (iii) OA 271/06/C.

(c) In Criminal Case No. OA 409/06/C, the accused is sentenced to undergo simple imprisonment for 30 days and to pay to the complainant a sum of ₹ 70,000/-, as compensation in default to undergo simple imprisonment for further period of 30 days.

(d) In Criminal Case No. OA 446/06/C, the accused is sentenced to undergo simple imprisonment for 45 days and to pay to the complainant a compensation of ₹ 1,20,000/-, in default to under go simple imprisonment for further period of 45 days.

(e) In Criminal Case No. OA 271/06/C, the accused is sentenced to undergo simple imprisonment for 30 days and to pay to the complainant a compensation of ₹ 60,000/-, in default to under go simple imprisonment for further period of 30 days.

(f) The accused shall surrender before the learned J.M.F.C., within a period of 8 weeks from today.

27. All the above appeals stand disposed of accordingly.

U. V. BAKRE, J.

vn*