

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEALS NO. 15, 16, 17, and 18 OF 2013.

CRIMINAL APPEAL NO. 15 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,
Flat no. D-1 Mauricio Apts,
Shirvodem Navelim,
Salcete, Margao-Goa.

... Respondent.
(Original Accused)

WITH
CRIMINAL APPEAL NO. 16 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. 17 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. 18 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.

Mr. N. Sardessai, Senior Advocate with Mr. D. Shirodkar, Advocate
for the appellant.

Mr. S. M. Singbal, Advocate for the respondent.

CORAM :- U. V. BAKRE, J.

Reserved on : 28th November, 2014.

Pronounced on:-12th February, 2015.

JUDGMENT :

All the above appeals are disposed of by this common judgment since they are filed against the same common judgment

and order dated 29.08.2011 passed by the learned Judicial Magistrate, First Class "C" Court at Panaji ("J.M.F.C.", for short) in Criminal Cases No. OA/142/2006/C, OA/143/2006/C, OA/144/2006/C and OA/145/2006/C, respectively and involve common facts and law.

2. The appellant was the complainant in the said criminal cases whereas respondent no.1 was the accused therein. Parties shall be hereinafter be referred to as per their status in the said cases.

3. The complainant had filed the complaint 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:-

The complainant is a company carrying on business of selling liquor in Goa and in rest of India. The accused was the employee of the complainant and had collected the payment of sale of liquor made by the customers on behalf of the complainant-company as representative of the complainant. However, the accused did not pay the money collected from the customers to the complainant. The accused owed to the complainant-company money which he had collected from the customers. The accused issued a letter/undertaking dated 06.07.2005 in relation

to the liability owed by the accused towards the complainant. The accused also issued cheques bearing no. 042360, 042361, 042362, 042364 respectively for a sum of ₹ 82,601/-, ₹ 82,601/-, ₹ 82,601/- and ₹ 1,18,461/-, each dated 30.7.2005, 30.08.2005, 30.09.2005, and 30.10.2005 respectively in favour of the complainant towards the liability. The said cheques when presented for clearance were dishonoured for reasons "Funds insufficient". The complainant issued legal notices to the accused. In spite of receiving the notices, the accused did not make the payment and hence the complaints.

4. The cheque no. 042361 dated 30/09/2005 for an amount of ₹ 82,601/- and legal notice dated 23/12/2005 pertains to Criminal case No. OA/142/06 and Criminal Appeal No. 17/2013. The cheque bearing no. 042364 dated 30/11/2005 for an amount of ₹ 1,18,461/- and legal notice dated 23/12/2005 pertains to Criminal Case No. OA/143/06 and Criminal Appeal No. 15/2013. The cheque no. 042362 dated 30/10/2005 for an amount of ₹ 82,601/- and legal notice dated 23/12/2005 pertains to Criminal Case No. OA/144/06 and Criminal Appeal No. 18/2013. Lastly, the cheque no. 042360 dated 30/08/2005 for ₹ 82,601/- and legal notice 23/12/2005 pertained to Criminal Case No. 145/OA/06 and Criminal Appeal No. 16/2013.

5. The substance of accusation was explained to the accused to which the accused pleaded not guilty and claimed to be tried. The complainant examined its authorised officer namely Shri Nishakant Pednekar as PW1. PW1 produced all the relevant documents. Statement of the accused came to be recorded under Section 313 of Cr.P.C. The accused merely denied the case of the prosecution. The accused examined himself as DW1 and produced documents.

6. Case of the accused in short was as follows:-

In the year 1975 he was appointed as a salesman for depot situated at Hubli, near Bankapur Chowk and he 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 does 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 to 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 spoil 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 relation with the 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 are 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 is 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 were 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 persons 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 complaint. 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 presented during the validity period, issuance of legal notice and filing of the complaint 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 to the complainant 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, submitted that the accused had received the legal notice in each case, but did not reply to the same 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 he could have lodged a police complaint and could have written to the bank to stop payment and ought to have replied the notices thereby explaining his case. The learned Senior Counsel pointed out that in the statement under Section 313 of Cr.P.C. there are 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 legal 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 a suggestion was put by the accused to PW1 that both Vinod Shirodkar and Dilip Shirodkar was 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 of the office of the Commissioner of Labour thereby raising industrial dispute and in this letter accused has specifically stated about the presence of only 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 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 has 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 is due against the bill for any period the same has to come in ledger book as sundry creditors and has to be shown therein. He submitted that the complainant being a company had to maintain stock register in which all goods i.e liquor has 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 the letter dated 06.07.2005 and the cheques. He pointed out that in the said letter it is mentioned that the accused has willingly given the said letter and the cheques and this itself shows that the same were taken by force and coercion. He submitted that there is nothing in writing given by the customers to prove that they had paid the money to the accused. He further submitted that if there was any misappropriation there had to be audit in which misappropriation amount would have surfaced. He pointed out that PW1 has stated about audit being conducted and also about the income tax return being filed. He submitted that neither the audited account has been produced nor income tax returns are 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 the some bills which do not reflect the cheque amount are produced and they are useless. He next submitted that power of attorney given to Nishakant Pendekar which is produced on record is without seal and, therefore, the same was not admissible. He pointed out that in the verification statement under Section 200 of Cr.P.C., PW1 has stated that amount was misappropriated whereas in his deposition after framing of charge PW1 stated that it was a loan liability. He

submitted that the complainant being a company had to maintain accounts as per Section 209 of the Company Act, 1956 ('the Act' for short) and if not maintained that is an offence under Section 209(5) of the Act. He pointed out that under Section 224 of the Act, there has to be 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. Shri 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. Sardesai, learned Senior Counsel submitted that since the evidence has 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 each case has to be decided on the facts and circumstances of that case. He submitted that at the first instance the accused had to rebut the presumption and in any case, the complainant had produced invoices on record. He submitted that it is the accused himself who had to write accounts and knows that he had not written the accounts and, therefore, the question of complainant producing the account does 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 by 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 the accused having rebutted the presumption, 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 become available to the complainant, it is the accused who has to first rebut the said presumptions 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) 20 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 21 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 or 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 “***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.

20. In the case of “***Krishna Janardhan Bhat***”, (supra) the Hon'ble Supreme Court has held that an 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. The Accused has constitutional right to maintain silence. It has been held that standard of proof required on the part of the accused is preponderance of probabilities whereas the prosecution must prove the guilt of the accused beyond all reasonable doubt.

21. In the case of “***M. S. Narayana Menon @ Mani***”, (supra), the

Hon'ble Supreme Court has reiterated that standard of proof for the accused to rebut the presumption evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on records but also by reference to the circumstances upon which he relies.

22. After knowing the principles laid down in the various cases as above, let us proceed to deal with the facts of the present cases. 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, In view of the 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 force or coercion, however, the accused did not lodge any police complaint against the directors of the complainant and others nor did he instruct his banker to stop payment. The complainant had given statutory notices to the accused as required under Section 138(b) of the N.I. Act, and same were served upon the accused though they were not accepted by him and thus were returned "unclaimed" to the complainant. The

accused therefore is deemed to have the statutory notices. However, the accused did not reply the same. Adverse inference is bound to be drawn as against the accused. 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 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 reply the statutory notices. According to the accused, on 6.7.2005 at around 10.00 a.m., he was called along with the cheque books and other documents relating to Malax Traders 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 raised industrial dispute. In such circumstances, it cannot be at all be said that the accused had successfully

discharged the initial reverse burden to show that the said cheques were not issued towards the discharge of legally enforceable debt or liability.

23. It is pertinent to note that the complainant had produced on record letter of promotion which shows that it is the accused who 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 the accused sold liquor belonging to the complainant and misappropriated the amount and towards the repayment of the said liability, the accused issued the cheques, in favour of the complainant. Along with the cheques which are subject matter of the above cases, the accused had also issued three more cheques which were issued for the payment of the liquor purchased by the accused himself. Those cheques were subject matter of cases No: OA 271/06/C; OA/446/06/C; and

OA/409/06/C. PW1 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, produced in the said other cases, 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.

24. 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.

- 25.** 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 142/06/C; (ii) OA 143/06/C; (iii) OA 144/06/C and (iv) OA/145/06/C.
 - (c) In Criminal Case No. OA 142/06, the accused is sentenced to undergo simple imprisonment for 30 days and to pay to the complainant a sum of ₹ 83,000/-, as compensation in default to undergo simple imprisonment for further period of 30 days.
 - (d) In Criminal Case No. OA 143/06, the accused is sentenced to undergo simple imprisonment for 45 days and to pay to the complainant a compensation of ₹ 1,19,000/-, in default to undergo simple imprisonment for further period of 45 days.
 - (e) In Criminal Case No. OA 144/06, the accused is sentenced to undergo simple imprisonment for 30

days and to pay to the complainant a compensation of ₹ 83,000/-, in default to undergo simple imprisonment for further period of 30 days.

- (f) In Criminal Case No. OA/145/06, the accused is sentenced to undergo simple imprisonment for 30 days and to pay to the complainant an amount of ₹ 83,000/- as compensation, in default to undergo simple imprisonment for a further period of 30 days.
- (g) The accused shall surrender before the learned J.M.F.C., within a period of 8 weeks from today.

26. All the above appeals stand disposed of accordingly.

U. V. BAKRE, J.

vn*