THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL APPEAL No.1689 OF 2006

JUDGMENT

The complainant, M/s.Adarsh Agro Service rep. by its Managing Partner, S.Koteswara Rao, who maintained the private complaint in
C.C. No.126 of 2002 against the accused M/s.Sri Lakshmi Fertilizers, Pesticides and General Merchants rep. by its Proprietor Pasupuleti Srinivasa Rao, based on dishonor of the cheque bearing No.825737, dated 18.05.2001 said to have been issued by the accused in favour of the complainant, for Rs.56,000/- (Ex.P.3 in C.C. No.126 of 2002), for part payment of the outstanding balance as per the accounts maintained by the complainant firm; when the cheque presented was dishonoured covered under Ex.P.5 – cheque return memo, from the statutory notice issued to the accused under Ex.P.6 dated 20.11.2001, from reply of accused under Ex.P.9 denying the claim of the complainant, maintained the complaint.

2. After recording the sworn statement of the complainant, the complaint was taken cognizance and pursuant to the summons, the accused appeared before the I Additional Chief Metropolitan Magistrate, Vijayawada, (hereinafter referred as trial court) was supplied with copies of documents and when questioned, he pleaded not guilty and claimed to be tried and therefrom the parties were put to trial.

3. In proof of the complaint case, on behalf of the complainant, himself came to the witness box as P.W.1 and cause marked Exs.P.1 to P.13. It is after said evidence of the complainant was completed the accused was examined under Section 313 Cr.P.C. by bringing to his notice entire incriminating evidence, truth of which denied by him. The accused came to the witness box as D.W.1 and cause examined one V.Rambabu as D.W.2 and cause marked Exs.D.1 to D.16. After closure of said evidence and hearing both sides, the learned Magistrate by the judgment, dated 30.08.2006 acquitted the accused.

4. It is impugning said acquittal judgment, the present appeal is maintained with the contentions in the grounds of appeal that the trial court gravely erred in rejecting the evidence of the complainant and acquitting the accused, that the impugned judgment is contrary to law, weight of evidence and probabilities of the case, that the trial court misread the evidence as if there were contradictions in the evidence of P.W.1 and failed to see that the amount due by accused to the complainant is proved from the accounts and the cheque issued and hence to set aside the acquittal judgment and to convict the accused by allowing the appeal as per Law.

5. Learned counsel for the appellant reiterated the same in the course of arguments.

6. Whereas, it is the contention of learned counsel

for the accused/ respondent in the appeal that for this Court while sitting in appeal against the double presumption i.e., from the general principles of innocence of accused that is confirmed by the respective acquittal judgment supra, there is nothing to interfere from the complainant did not approach the Court with clean hands and it is a false claim proved from the cross-examination of P.W.1 with regard to the inconsistency in the evidence on material aspects and hence to dismiss the appeal, confirming the acquittal judgment of the trial court.

7. Perused the material on record. The parties will hereinafter be referred to as arrayed before the trial court for sake of convenience.

8. Now the points that arise for consideration are :

i) Whether the cheque bearing No.825737, dated 18.05.2001, for Rs.56,000/- not issued by the accused in favour of the complainant and if issued, whether it is not for any legally enforceable debt or other liability?

ii) Whether the trial court's acquittal judgment is unsustainable and requires interference by this court to set aside the same and if so with what observations and conclusions?

iii) To what result?

<u>Point Nos.1 & 2:</u>

9. Before advert to the merits of the matter, it is beneficial to quote; the provisions incorporated in Chapter XVII of the N.I. Act make a civil transaction to be an offence **by fiction of law and with**

certain (rebuttable) presumptions that shall be drawn. Sections.138 to 142 are incorporated in the N.I.Act,1881 as Chapter XVII by the Banking Public Financial Institutions and Negotiable instruments Laws (Amendment) Act,1981 (66 of 1988) which came into force w.e.f.01-04-1989 and the N.I.Act was further amended by Act,2002 (55 of 2002) which came into force w.e.f.06-02-2003 incorporating new sections 143 to 147 in this Chapter XVII and further some of the existing provisions not only of the Chapter XVII but also of other Chapters amended to overcome the defects and drawbacks in dealing with the matters relating to dishonour of cheques.

9-(B). The object and intention of these penal provisions of the Chapter XVII (Sections 138 – 147), in particular, Sections 138 & 139 (besides civil remedy), are to prevent issuing of cheques in playful manner or with dishonest intention or with no mind to honour or without sufficient funds in the account maintained by the drawer in Bank and induce the Payee/Holder or Holder in due course to act upon it. The remedy available in a Civil Court is a long drawn matter and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee. Since a cheque that is dishonoured may cause uncountable loss, injury or inconvenience to the Payee due to the latter's unexpected disappointment, these provisions incorporated are in order to provide a speedy remedy to avoid inconvenience and injury to the Payee and further to encourage the culture of use of cheques and enhancing credibility of the instruments as a trustworthy substitute for cash payment and to inculcate faith in the efficacy of Banking operations - GOA PLAST (PVT.) LTD. v. CHICO URSULA D'SOUZA[1].

9-(C). To fulfill the objective, the Legislature while amending the Act has made the following procedure:

In the opening words of the Section 138 it is stated: "Where any **cheque drawn by a person** on an account maintained by him with a banker for payment of any amount of money to another person from out of that account **for the discharge,** in whole or in part, **of any debt or other liability,** is **returned by the bank unpaid**,---------, such person **shall be deemed to have committed an offence** and shall, **without prejudice to any other provision of this Act (See Sec.143)**, be punished ----. Provided, nothing contained in this section shall apply unless,-(a), (b); and (c) Explanation---(supra)."

"(i) Under Section 138 a deeming offence is created **by fiction of law**.

(ii) An **explanation** is provided **to Section 138** to define the words **"debt or other liability" to mean a legally enforceable debt or other liability."**

(iii) In Section 139, a presumption is ingrained that the **holder of the cheque received** it in discharge of debt or other liability.

(iv) Disallowing a defence in Section 140 that drawer has no reason to believe that cheque would be dishonoured.

(v) As per Section 146(new section) the production of **the Bank's slip or Memo with official mark** denoting that the cheque has been dishonoured **is prima facie evidence** for the Court to presume the fact of dishonour of such cheque unless such fact is disproved by the accused.

9-(D). Further the provision for issuing notice within thirty days under section 138 after dishonour is to afford an opportunity to the Drawer of the cheque to rectify his mistakes or negligence or in action and to pay the amount within fifteen days of receipt of notice, failing which the drawer is liable for prosecution and penal consequences.

9-(E). <u>Reasonability of cause for non-payment is not at all a deciding factor. Mensrea is irrelevant. It is a strict liability</u>

incorporated in public interest.

9-(F). Availability of alternative remedy is no bar to the prosecution

9-(G). In the words-where **any** cheque, the word any suggests that for whatever reason **if a cheque is drawn** on an account maintained by him with a Banker in favour of another person **for the discharge of any debt or other liability**, the **liability cannot be avoided in the event of the cheque stands returned by the Banker unpaid.**

10-A. The Apex Court in NARAYAN MENON v. STATE OF KERALA[2] held that once the complainant shown that the cheque was drawn by the accused on the account maintained by him with a banker for payment of any amount in favour of the complainant from out of that account for its discharge and the same when presented returned by the Bank unpaid for insufficiency of funds or exceeds arrangement, such person shall be deemed to have been committed an offence under Section 138 of N.I. Act. What Section 139 of the Act speaks of the presumption against the accused to rebut is the holder of a cheque received the cheque of the nature referred in Section 138 of the Act for discharge of debt. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon. Accused need not enter into the witness box and examine other witnesses in support of his defence. Accused need not disprove the prosecution case in its entirety. Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the "prudent man".

10-B. The presumption that further applied among clauses (a) to (g) of Section 118 of N.I. Act also, like the presumption under Section 139 of the Act, as per Section 4 of the Evidence Act, is a rebuttable presumption for which the burden is on the accused, however, to rebut the presumption if a case is made out by accused either by pointing out from the case of the complainant including very documents and cross-examination or by examining any person and need not be always by coming to witness box vide decision in KUMAR EXPORTS PVT. LTD. V. SHARMA CARPETS[3].

10-C. Further, as per the expression of the Apex Court in RANGAPPA vs. MOHAN[4] (3-Judges Bench) paras-9 to 15 referring to Goa Plast's case (supra), KRISHNA JANARDHAN BHAT (supra)[5] by distinguishing at para-14 saying the observation in KRISHNA JANARDHAN BHAT (supra) of the presumption mandated by Section 139 does not indeed include the existence of a legally enforceable debt or liability is not correct, though in other respects correctness of the decision does not in any way cause doubted; by also referring to HITEN P. DALAL v. BRATINDRANATH BANERJEE[6] holding at paras-22 and 23 therein of the obligation on the part of the Court to raise the presumption under 138, 139 and 118 of the N.I. Act, in every case where the factual basis for raising the presumption has been established since introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused, as a presumption of law distinguished from a presumption of fact as part of rules of evidence and no way in conflict with presumption of innocence and the proof by prosecution against the accused beyond reasonable doubt, but for saying to rebut the accused can discharge the burden showing reasonable probability of non-existence of the presumption of fact and to that proposition, the earlier expression in BHARAT BARREL & DRUM MANUFACTURING COMPANY v. AMIN CHAND PYARELAL[7] para-12 showing the burden on the accused is to bring on record by preponderance of probability either direct evidence or by referring to circumstances upon which he relies, rather than bare denial of the passing of the consideration; apparently that does not appear to be of any defence, to get the benefit in discharge of the onus against, also held referring the M.M.T.C. LTD. AND ANOTHER v. MEDCHL CHEMICALS & PHARMA (P) LTD[8] that where the accused able to show justification of stop payment letter even from funds are there, but no existence of debt or liability at the time of presentation of cheque for encashment to say no offence under Section 138 of the N.I. Act made out in discharge of the burden. It was concluded referring to the above, including of MALLAVARAPU KASIVISWESWARA RAO v. THADIKONDA RAMULU FIRM & ORS[9] paras-14 and 15 that the initial presumption lays in favour of the complainant and Section 139 is an example of a reverse onus clause, which has been included in furtherance of the legitimate objection of improving the credibility of the negotiable instruments. While Section 138 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. 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 and the test of proportionality should guide the construction and interpretation of reverse onus clause and the accused cannot be expected to discharge an unduly high standard or proof and in the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden to discharge by preponderance of probabilities by raising creation of doubt about the existence of a legally enforceable debt or liability to fail the prosecution and for that the accused can rely on the material submitted by the complainant also in order to raise such a defence and he may not need to adduce any evidence of his own.

10-D**.** It was also observed in para-15 that the accused appear to be aware of the fact that the cheque was with the complainant, further-more the very fact that the accused has failed to reply to the statutory notice under Section 138 of the Act leads to the inference that there was merit in the complainant's version. It was also held by this court way back[10] that having received and acknowledged the statutory legal notice after dishonour of cheque, non-giving of reply to said legal notice, improbablises the defence version, as any prudent person under the said circumstances should have, but for no defence to reply.

11. From the above settled propositions of law, coming to the facts save that are already covered, but for at the cost of repetition of any material facts, undisputedly Ex.P.3 is the cheque, dated 18.05.2001. The complainant is the firm represented by its Managing Director, who filed the complaint and the accused is the proprietary concern and there are business transactions covered by credit purchase of pesticides between the accused and complainant that are also not in dispute. As per the case of the complainant, the accused under the Khata transactions fallen due and towards part payment, he issued the Ex.P.3–cheque, dated 18.10.2001 for Rs.56,000/- and the same when presented, returned dishonoured as per Ex.P.4 – cheque return memo with Ex.P.5 dishonour intimation and that the complainant

therefrom issued statutory notice to accused, dated 20.11.2001, under Ex.P.6 by registered post (registered post since returned under Ex.P.7) and by certificate of posting under Ex.P.8 and the accused having received the certificate of posting notice failed to repay the amount. Ex.P.2 is the attested copy of complainant's firm registration certificate and there is no dispute at the time of marking. Ex.P.1 is the true copy of ledger showing before Ex.P.3 – cheque, dated 18.05.2001 for Rs.56,000/-, the closing balance of the account was for Rs.57,878/- by 31.03.2001, after deduction of cash payment receipt No.3/7, dated 27.05.2000 by accused to the complainant. Ex.P.3 – cheque undisputedly bearing signature of accused as proprietor of the Sri Lakshmi Fertilizers, Pesticides and General Merchants and rooted from his account. In Ex.P.6 notice, dated 20.11.2001, issued to the accused by the complainant through his advocate, it is mentioned that out of the credit purchase of pesticides, it was towards part payment, he issued the Ex.P.3 cheque for Rs.56,000/- bearing No.825737 on 18.10.2001 that was presented, dishonoured for insufficient funds on 02.11.2001 under Ex.P.4 and received the intimation from the Bank on 15.11.2001 under Ex.P.5. Hence to pay the amount within 15 days after receipt of notice. The registered notice returned cover shows as continuously absent and returned ultimately after one week on 28.11.2001. The address is Sri Lakshmi Fertilizers, Pesticides and General Merchants, Proprietor P.Srinivasa Rao, Vutukuru Village and Post, Gampalagudem Mandal, Krishna District. Ex.P.9 is the reply, dated 28.01.2002, issued by the accused to complainant through his advocate for the Ex.P.8 certificate of posting notice, dated 20.11.2001, received by him, while admitting the Katha dealings between the complainant and accused of the credit purchases by accused, however, by disputing the issuance of cheque for Rs.56,000/- for alleged amount due. It is averred that as per the contract the accused did business for which he would get 3 times eligibility for Goa tour and the accused since not interested it was to adjust the amount at the rate of Rs.6,000/- per each tour for total Rs.18,000/- out of the dues that is to be given deduction and further 3% of the turnover to be given credit that is also to be deducted and if so done there is nothing due to the complainant. It is further averred that complainant purchased 458 kgs., of Grade I Red Chilies and 160 kgs., of low grade chilies and nearly 15,000/- is due to the accused from complainant for that and further the complainant partnership entity representative V. Ram Babu obtained several blank signed cheques bearing Nos. 8257272 and 825738 on 24.09.1998 as collateral security purpose while commencing business dealings of credit purchase with a promise not to misuse but for any liability and even the accused was asking to settle the account and return the cheques, the complainant has been postponing, misused the cheque and issued the notice falsely. In this case, the private complaint was filed after return of Ex.P.6 - statutory notice dated 20.11.2001, having waited for 7 days, i.e. on 28.11.2001. On 28.01.2002 the accused issued a reply notice to the complainant under Ex.P.9 which is after receipt of summons in the private complaint case and not before. As per the expression of the Apex Court in **C.C. Alavi Hazi vs. Palapetty Muhammed & another**[11]**,** the accused cannot take any defence of non service of Registered post notice for continuous absence, apart from the certificate of posting served; as after receiving of the case summons, he did not choose to pay. In fact he issued the Ex.P.9 –reply by denying liability under Ex.P.3 - cheque, while admitting his signature and rooted from his account with the version of the complainant's firm partner,

V. Rambabu, at the time of commencing of the credit dealings, in April 1998 obtained blank cheques from him with signatures and one of the same is misused. From Ex.P.1 - account copy extract, the credit dealings commenced in the July, 1998 and concluded with last purchase on 29.02.2000 under invoice No.7/25 and there was subsequent payment of Rs.10,500/- vide receipt No.3/7, dated 27.05.2000 out of Rs.68,378/- showing the closing balance as on 31.03.2001 for Rs.57,878/-. Ex.P.10 is the attested copy of the income tax returns of the complainant's firm for the assessment year 2001-02 (accounting year 2000-01), Ex.P.11 is the Partnership deed of the complainant's firm, dated 02.06.1995 and Ex.P.12 is the Assessment Order for the assessment year 2001-02, Ex.P.13 is the letter of the accused on his printed letter head showing his business address also Vutukuru, Gampalagudem Mandal, Krishna District, and it is addressed to complainant on 05.02.2002 stating that he received the legal notice through certificate of posting he mentioned in the letter that he has fallen due to the complainant's firm, amount covered by the cheque mentioned in the legal notice, however, his advocate advised not to admit, so that, time can be granted and thereby for the sake of reply only he cause issued Ex.P.9 reply through his advocate on 28.01.2002 and hence not to find fault as he is going to discharge the debt soon.

12. D.W.2-V.Ram Babu deposed with reference to Ex.P.3 – cheque that it was issued only as security. In fact, in Ex.P.9 reply as referred supra what was stated was blank cheques obtained in the year 1998 by one V.Rambabu. The accused did not submit any of his account copies for any alleged three trips of Goa for each trip Rs.6,000/-, total Rs.18,000/- due, much less any supply or sale of chillies to complainant by accused worth Rs.15,000/- that to be given credit and there is nothing even from the Ex.P.1 – statement of account for the transactions were completed and no credit purchase made after February, 2000. It is when so unknown why the accused not asked for return of the so called blank cheques and not obtained any receipt and even for his saying the complainant allegedly promising and

postponing. It is unknown even what prevented him to give any notice. After having issued Ex.P.9 – reply notice, what made him within one week with his own hand writing to admit the payment due under Ex.P.13 - letter on his letter head that Ex.P.9 reply as falsely issued though the amount is due under the cheque and he was going to repay soon.

13. Coming to the evidence of D.Ws.1 and 2 regarding any alleged discharge covered under Exs.D.1 to D.13 – receipts and equally under Ex.D.14; even in Ex.D.15– letter, dated 13.07.1998 it is mentioned regarding Goa trips; it is unknown why he kept quite after 1998 July till the Ex.P.6 notice issued for dishonour of cheque; if at all anything due under the account copy. Ex.A.1 ledger copy shows payment made by the accused to complainant finally under Receipt No.3/7, dated 27.05.2000 of Rs.10,500/-. It is unknown what made him to pay for nothing if at all due and what made to keep quiet. P.W.1 in his cross-examination deposed that while brought forward the amount in the account of customers, there was no habit of obtaining signatures of customers and denied the suggestion of not obtaining signatures of customers to make possible manipulations later in the accounts and denied the suggestion that he manipulated the accounts and prepared Ex.P.1- statement to support the so-called cheque amount. He denied the suggestion that while opening the credit dealings of accused with complainant firm, obtained blank cheques as security from accused by the complainant's

Field Assistant-Vutukuri Rambabu (D.W.2) as distributor. He also denied the suggestion of Goa trip benefit amount not given and the red chillies amount not given or any red chillies supplied or a blank cheque has misused to harass the accused. He denied the suggestion of payments covered by Exs.D.1 to D.13 - receipts related to account of the year 1996-97 not filed and the amounts not deducted and the accounts are manipulated and nothing is liable to pay by accused. He also denied the suggestion of stock was received and returned on 27.03.1998 worth Rs.6,175/- from accused and the same not deducted: Regarding Ex.P.11, P.W.1 explained that the earlier partnership went on retirement of earlier partners and therefrom Ex.P.11 came into existence. He denied the suggestion of the Ex.P.13 was not written by the accused and it is a manipulated letter or the contents of the letter are fabricated having obtained signatures of accused in blank. Even therefrom, the signature on Ex.P.13 - letter admitted. The letter contents read the accepting to pay the amount of the cheque in acknowledgment of Ex.P.6 notice by certificate of posting under Ex.P.8 by the accused. However for saying on blank letter head paper signature obtained and contents as if cause filled. The accused as D.W.1 stated in the chief-examination that in September, 1998, blank cheques obtained bearing Nos.825727 & 825738 from him. In fact, Ex.P.3 - cheque is not related to the said two numbers as it is 825737 and not 27 or 38, to give any credence to the said version from what suggested to P.W.1 or what mentioned in chief examination of affidavit of accused. In his cross-examination, accused as D.W.1 deposed that in his reply notice Ex.P.9 (after receiving the summons in the complaint case for dishonour of cheque) he admitted the credit katha transactions between them and stated that two cheques obtained as security in 1998 and referred those numbers as 825727 and 38 and not even mentioned as 825737. Ex.P.3 is bearing No.825737 and not 27 or 38. He deposed that he did not ask the bank to stop payment and he filed no proof to show all leaves of the cheque book used in 1998, even to say the cheque as security in the year 1998 obtained by the complainant firm. He admitted that Ex.D.15 is the letter head of him. He denied the suggestion that Ex.D.16 is created so also Ex.D.14 - receipt. P.W.1 also stated Ex.D.14 - receipt and Ex.D.15 - letter not genuine. There is no other proof for Ex.D.14 to D.16 are regarding any supply of chillies worth Rs.15,000/- by accused to complainant. He admitted the Ex.P.13 - letter with his signature and on his letter head, however, disputed the contents written by him on 05.02.2002. He also admitted the rubber stamp on Ex.P.13 as proprietary concern. He denied the suggestion of having issued the cheque and admitted the liability even after Ex.P.9 - reply he was trying to avoid his liability. Coming to the defence of the accused that some blank cheques obtained by V.Rambabu, as supervisor of complainant's firm, D.W.2 - said V.Rambabu claimed that till

2000 he worked as collection agent from 1998 in the complainant's firm in booking orders and collecting amounts from customers and the accused was running katha with complainant's firm by credit purchases, and for the payments made he was passing receipts and Exs.D.1 to D.14 were issued by him and that on behalf of the complainant, he collected one or two blank cheques from accused in the year, 1998, however, he cannot say whether Ex.P.3 cheque is one of the said blank cheques he collected or not and that the accused eligible for Goa trip and he has given coupons and accused did not avail the Goa trip and complainant promised to adjust that amount at the time of settlement of that amount. In the cross-examination, he deposed that he has fallen due to the complainant under the katha dealings and he does not know about the promise made by the accused to discharge the debt by disposal of the properties. There is no proof to say Goa trip offered by the complainant by fixing targets to the dealers. He denied the suggestion that because of the grudge against the complainant, he deposes falsehood. Even from D.W.2 evidence regarding the so-called Goa trip and targets, there is no documentary evidence and regarding Ex.D.15 - letter, so also Ex.D.14 - receipt of alleged payment of Rs.30,000/- in December, 1996 and Ex.P.16 - receipt for Rs.6,175/- issued in March, 1998. Even in Ex.P.9 – reply given by the accused on 28.01.2002, there is no whisper regarding these, but for the alleged Goa trip amount and alleged chillies supplied. D.W.2 deposed that for the chillies supplied to the complainant by the accused, amount given credit to the accused under katha credit dealings account. Thereby even to say blank cheques obtained in the year 1998 are remained unproved apart from said version of what accused positively stated of cheque No.27 or 38 is not tallying with the Ex.P.3 cheque bearing No.37. It is the positive case of the complainant that the accused issued the Ex.P.3 cheque for Rs.56,000/- due towards part payment. Even from the Ex.P.1, accused admitted credit dealings and again show any payment after katha transactions covered by Ex.P.1 admittedly correct and nothing to show any amount to be credited for Goa trip for target reaching and for nothing to show any chilli supply not given credit. D.W.1 did not choose to send Exs.D.14 to D.16 for expert opinion. There is nothing from the accused to belie the case of the complainant including from the evidence of D.Ws.1 and 2 with reference to Exs.D.1 to D.16 to say the accused could not rebut the presumptions available against him and in favour of the complainant that cheque rooted from the account of the accused is issued by him for nothing substantiated of the cheque obtained blank as security in the year 1998. The trial court thus went wrong in acquitting the accused.

14. The accused placed reliance on the decision of this Court reported in **Avon Organics Limited, Hyderabad v. Pioneer Products Limited, New Delhi and others**[12],

wherein it is held that if a blank cheque issued without putting the amount payable, it does not constitute the cheque and subsequent filling amounts to material alteration. The said expression did not consider the scope of Sections 20 & 118 of the Act. Once the inchoate instrument issued rooted from his account with signature, it is an authorization to fill and further the presumptions, under Clauses (a) to (f) of Section 118 regarding the amount, date and other particulars to draw. It is suffice to say there is a legally enforceable debt due therein including to draw the presumption under Section 139 of the Act and the trial court missed the same.

15. Admittedly when the cheque was rooted from his account with his signature, when his version of two blank cheques obtained and those numbers not tallying to Ex.P.3-cheque, it strengthens the case of complainant of accused issued the cheque for the amounts due. In view of the discussion above, the appeal is liable to be allowed. Accordingly, point Nos.1 & 2 are answered.

Point No.3 :

16. In the result, the appeal is allowed, by setting aside the acquittal judgment in C.C. No.126 of 2002 of the trial court and the accused is found guilty for the offence under Section 138 N.I. Act. For appearance of the accused for hearing on sentence, posted to dt.06.02.2015.

Dr. B.SIVA SANKARA RAO, J

30.01.2015

13.2.2015 :

17. The cheque amount is for Rs.56,000/- dated 18.10.2001. Heard on sentence even accused called absent, the learned counsel for both sides. It was held by the apex Court in SOMNATH SARKA VS. UTPAL BASU MALLICK[13] that the Act is not contemplated to grant compensation but envisages imposition of fine not exceeding twice the amount of dishonoured cheque and out of said fine amount only the complainant be compensated under Section 357 Cr.P.C. and that *'unlike for other forms of crime, the punishment here (insofar as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque."*

18. Having regard to the above and from the submission by the appellant/complainant of the endeavour is to recover the amount of compensation from out of fine or otherwise, rather than sentencing the accused to jail, the accused is sentenced to undergo Simple Imprisonment till rising of the day and to pay a fine of Rs.70,000/- and out of which an amount of Rs.60,000/- shall be paid to the complainant towards compensation and the remaining amount of Rs.10,000/- goes to the State. The accused has to appear before trial Court and undergo the sentence and also to pay the fine amount within two months from today else liable for default sentence of three months simple imprisonment under Sections 65 to 68 r/w 53(6) IPC,

which is besides recovery of fine. It is thereby directed the learned Magistrate to secure the presence of accused on warrant (in the event of his compliance as above) to undergo the sentence of imprisonment till raising of a day in open Court and
also to issue warrant by levy and to recover the fine amount under Section 421 of Cr.P.C.

Dr. JUSTICE B. SIVA SANKARA RAO

Dt.13.02.2015.

BV/PNV

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

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CRIMINAL APPEAL No.1689 OF 2006

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[1] AIR 2003 SC 2035

[2] (2006)3 SCC 30

[3] (2009) 2 SCC 513

[4] AIR 2010 SC 1898

[5] AIR 2008 SC 1325

[6] AIR 2001 SC 3897

[7] AIR 1999 SC 1008

[8] AIR 2002 SC 182

[9] AIR 2008 SC 2898

[10] 1971 (1) An.W.R. 65

[11] 2007 (2) CLJ (SC)153

[12] 2003(2) ALD (Crl.) 219 (AP)

[13] (2014 (1) ALT Crl.145