THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL APPEAL Nos. 344 and 358 of 2009

COMMON JUDGMENT:

Criminal Appeal No.344 of 2009 is maintained against the acquittal judgment dated 10.12.2008 in Criminal Appeal No.80 of 2008 by the X Additional District & Sessions Judge (FTC), Guntur by reversing the conviction judgment of the trial Court (I Additional Junior Civil Judge, Narasaraopet) dated 01.04.2008 in the C.C.No.443 of 2004, filed as a private complaint case for the offence under Section 138 of Negotiable Instruments Act by the complainant viz., Gorajala Suryanarayana against the accused K.Subbarao, proprietor of Dhanalakshmi Rice and Flour mill, Pasarapadu Village of Kurnool District. It was based on Ex.P1 cheque bearing No.653139, dated 02.12.2003 drawn on State Bank of India, Nandyala for Rs.5,00,000/- since presented for collection through Central Bank of India, Narasaraopeta returned dishonoured for having insufficient funds evidenced by cheque return memo Ex.P2; Exs.P3 and P4 are the postal receipts, Exs.P5 and P6 are unserved registered notices, Ex.P7 is the office copy of the registered notice, Ex.P8 is the counter foil, Ex.P9 is account statement of the accused, Ex.P10 is the letter showing the cheques returned by the bank from the accused account, the said case was filed as per the private complaint and after taking sworn statement of the complainant, the learned I Additional Munsif Magistrate, Narasaraopet taken cognizance of the offence against the accused, who appeared as per summons, pleaded not guilty, subjected to trial. In the course of the trial, the complainant was examined as PW1 and exhibited Exs.P1 to P10 supra, and cause examined the Bank Manager of Central Bank of India as PW2 and Senior Assistant in State Bank of India as PW3 and also exhibited through them the account statement pertaining to the account of the accused with the banker and the letter showing the details of cheque returned. After examining the accused under Section 313 Cr.P.C., for the incriminating evidence available against him and on recording his answers and after examining the defence evidence adduced by the accused through D.Ws.1 and 2 of commercial tax officer and Deputy Tahsildar. Pursuant of Ex.C1 authorisation respectively by also exhibiting Exs.D1 to D10 viz., D-Form and A form submitted by one Rajkumarbabu with challan No.974 dated 16.10.2000 and rental agreement executed between the accused and said Rajkumarbabu (brother-in-law of the accused) for lease of the premises in the year 2000 and the registration certificate with relevant entry in the name of the tenant Rajkumarbabu for rice mill covered by Exs.D4 and D5, letter issued by Balaji traders of Rajkumar babu informing that they intend to stop the business by March 2002, statement of Rajkumar babu in this regard, Form-B certificates. Ex.D10 is the authorization to DW1 to depose like Ex.C1 supra to DW2 and also after hearing both sides, the trial Court found the accused guilty for the offence under Section 138 of NI Act and sentenced him to undergo 6 months simple imprisonment and to pay a fine of Rs.5,000/- with default sentence of one month simple imprisonment and also awarded compensation of Rs.5,00,000/- to the complainant by judgment dated 01.04.2008. It is impugning the same when the accused preferred Criminal Appeal No.80 of 2008 before X Additional District & Sessions Judge (FTC), of Guntur, at Narasaraopet, the learned Judge by judgment dated 10.12.2008 reversed the conviction judgment by acquitting the accused and it is impugning the same as stated supra, the present Crl.A.No.344 of 2009 is filed. The contentions in the grounds of appeal are that the first Appellate Court reversing of the conviction judgment of the trial Court is contrary to law, weight of evidence, probabilities of the case and should not have reversed the conviction judgment by interfering with, even supported by reasons for conviction and thus went wrong in not drawing the presumptions by proper appreciation of law and also went wrong in saying the accused discharged the burden or the complainant failed to discharge the burden; having failed to see that said Rajkumarbabu is no other than the brother-in-law of accused-K.Subbarao and thereby sought for setting aside the 1st Appellate Court's acquittal judgment and to uphold the conviction judgment of the trial Court by allowing the present Criminal Appeal.

2. Similarly, Criminal Appeal No.358 of 2009 is maintained against the acquittal judgment dated 10.12.2008 in Criminal Appeal No.81 of 2008 by the X Additional District & Sessions Judge (FTC), of Guntur, at Narasaraopet, by reversing the conviction judgment of the trial Court (I Additional Munsif Magistrate, Narasaraopet) dated 01.04.2008 in the C.C.No.333 of 2004, filed as a private complaint case for the offence under Section 138 of Negotiable Instruments Act by the complainant viz., Nagasarapu Subbaraya Guptha, against the accused K.Subbarao, proprietor of Dhanalakshmi Rice and Flour mill, Pasarapadu Village of Kurnool District. It was based on Ex.P1 cheque bearing No.653138, dated 02.12.2003 drawn on State Bank of India, Nandyala for Rs.6,00,000/- since presented for collection through ING Vysya Bank Ltd., Narasaraopeta returned dishonoured for having insufficient funds *vide* Ex.P2. Ex.P3 is the unserved registered notice, Ex.P4 is the office copy of registered notice. Ex.P5 is the postal receipt. Ex.P6 is the counter foil. Ex.P7 is the account copy. The said

case was filed as per the private complaint and after taking sworn statement of the complainant, the learned I Additional Munsif Magistrate, Narasaraopet taken cognizance of the offence against the accused, who appeared as per summons, pleaded not guilty, subjected to trial. In the course of the trial, the complainant was examined as PW1 and exhibited Exs.P1 to P7 and cause examined the Bank Managers of the drawer bank and collecting bank as PWs.2 and 3. After examining the accused under Section 313 Cr.P.C. for the incriminating evidence available against him and on recording his answers, reentered defence examining DWs1 and 2 and exhibiting Exs.D1 to D11 and Ex.C1 which are the self same documents referred supra in the Crl.A.No.344 of 2009. It is after hearing both sides from above evidence on record the trial Court found the accused guilty for the offence under Section 138 of NI Act and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.5,000/- with default sentence of one month simple imprisonment and also awarded compensation of Rs.6,00,000/- to the complainant by judgment dated 01.04.2008. It is impugning the same when the accused preferred Criminal Appeal No.81 of 2008 before the X Additional District & Sessions Judge (FTC), of Guntur, at Narasaraopet, the learned Judge by judgment dated 10.12.2008 reversed the conviction judgment by acquitting the accused and it is impugning the same as stated supra, the present Crl.A.No.358 of 2009 is filed. The contentions in the grounds of appeal are that the first Appellate Court reversing of the conviction judgment of the trial Court is contrary to law, weight of evidence, probabilities of the case and should not have reversed the conviction judgment by interfering with, even supported by reasons for conviction and thus went wrong in not drawing the presumptions by proper appreciation of law and also went wrong in saying the accused discharged the burden or the complainant failed to discharge the burden; having failed to see that said Rajkumarbabu is no other than the brother-in-law of the accused K.Subbarao and thereby sought for setting aside the 1st Appellate Court acquittal judgment and to uphold the conviction judgment of the trial Court by allowing the present Criminal Appeal.

3. Thus, both the appeals are filed against the respective acquittal judgments of the 1st Appellate Court reversing the conviction judgment of the trial Court by impugning the correctness of the 1st Appellate Court judgments respectively as detailed supra.

4. The learned counsel for the appellant/complainant in the respective cases reiterated the contentions in the grounds of appeal and sought to restore trial Courts conviction judgments, but for any modification of sentence, setting aside the 1st Appellate Court's acquittal judgments by allowing the appeals.

6. Whereas it is the contention of the counsel for respondent/accused in both the appeals that the trial Court did not appreciate the evidence which probabilises the defence of the accused of blank cheques misused and also from the factum of the accused transferred by executing lease agreement of the rice mill business in favour of Rajkumarbabu who was running the business from the year 2000 as per the record and when no rice mill business of accused running, there is no basis for saying the accused issued the cheques for the alleged paddy purchase in the year 2001, so also as to what made to wait for the amount due without demands for nearly two years till the so-called cheques issued in 2003 and their version is at one way, accused issued the cheque for the paddy purchase and

another way, sold the paddy to Rajkumarbabu from which even there is no basis to link the accused and sought for dismissal of the appeals saying the 1st appellate Court was right in reversing the trial Court's conviction judgments and for this Court while sitting in appeal against, there is nothing to interfere.

7. In both the appeals, the accused was the Subbarao and the complainants in the respective cases are different persons with claim that the accused issued the cheques for the credit purchase of paddy through Subbarao for the amounts due. The trial Court to convict the accused drawn presumptions under Sections 118 and 139 of NI Act and placed reliance upon expression of the Apex Court in **K.N.BEENA v. MUNIYAPPAN**[1]**,** whereas the 1st Appellate Court by following the Apex Court expression in **KRISHNA JANARDHAN BHAT v. DATTATRAYA G. HEGDE**[2] reversed the trial Court's judgment. It is the submission of the counsel for the appellants by bringing to the notice of the Court that the three judge expression of the Apex Court in **RANGAPPA v. MOHAN**[3] holding that the expression in **KRISHNA JANARDHAN BHAT's** case (supra) of no presumption of cheque issued for legally enforceable debt is not correct though in other aspects, the findings therein hold good in saying the burden is on the accused under reverse onus clause to rebut the presumptions, once not disputed the issuance of the cheque to draw the presumptions of issued the same in the legally enforceable debt and for the amounts and in the name of the payee it bears.

8. As accused is common and even complainants are different their case is that they sold the paddy to accused on credit, both the cases

are taken up together to decide. Heard. Perused entire material on record. For the sake of convenience the parties are being referred as accused and complainants respectively as arrayed before the trial Court.

9. Now the points that arise for consideration are:

(1) Whether the accused did not issue the respective 2 cheques in favour of the complainants respectively against the paddy purchases of respective dues for discharge of said debts to make liable for the offence under Section 138 of the NI Act, and if so, the first appellate Court's acquittal judgments respectively reversing the trial Court`s respective conviction judgments are unsustainable and requires interference by this Court, while sitting in appeal, in re-appreciation of the evidence on record with reference to the facts and as per law?

(2) To what result?

In re. Point No.1:

10-(A). 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.

10-(B). The object and intention of these penal provisions of 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[4] & INDIAN BANK ASSOCIATION & OTHERS v. UNION OF INDIA AND OTHERS[5].**

10-(C). To fulfil 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.

10-(D). Further the provision for issuing notice within fifteen days (amended as thirty days by the amended Act, 55 of 2002, w.e.f.06-02-2003) 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.

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

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

10-(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-(H). **In Suman Sethi v. Ajay K. Churiwal and Another**[6], it was held of the legislative intent as is evident from Section 138 of the Act that, if for the dishonoured cheque demand is not met within 15 days of the receipt of the notice, the drawer is liable for conviction. If the cheque amount is paid within above period or before the complaint is filed, the legal liability under Section 138 ceases to be operative and for the recovery of other demands such as compensation, costs, interest etc. separate proceedings would lie. If in a notice any other sum is indicated in addition to the amount covered by the cheque that does not invalidate the notice.

11-A. **In K.N.Beena v. Muniyappan & Another**[7] at paragraph 7, it was observed: In this case admittedly the accused has led no evidence except some formal evidence. The High Court appears to have proceeded on the basis that the denial of averments in his reply dated 21.5.1993 were sufficient to shift the burden of proof on to the complainant to prove that the cheque was issued for a debt or liability.

This is an entirely erroneous approach. The accused had to prove in the trial, by leading cogent evidence, that there was no debt or liability. The accused not having led any evidence could not be said to have discharged the burden of proving that the cheque was not issued for a debt or liability.

11-AA. No doubt, this approach of accused has to lead cogent evidence during trial in rebutting the presumptions and in proof of his defence, is explained by Apex Court in **Narayan Menon V. State of Kerala**[8] as follows:

11-B. The Apex Court in **Narayan Menon** (supra) 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".

11-C. There are presumptions (besides the general presumptions under the Indian Evidence Act) specially provided in respect of a negotiable instrument under Section 118 clauses (a) to (g) of the Act and for the dishonour of cheque relating to criminal liability under 139 and apparently a legal fiction though strictly not as per the Explanation to Section 138-of the Act, for the purpose of this section, “debt or other liability” means a legally enforceable debt or other liability.

> Section 118: Presumptions as to negotiable instruments - Until the contrary is proved, the following presumptions shall be made:
> Clause (a) of consideration - that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. (b) to (g)----"
>
> Section 139: Presumption in favour of holder - 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. Presumptions both under Sections 118(a) and 139 of the Act are rebuttable in nature.

What would be the effect of the expressions ‘May Presume’, ‘Shall Presume’ and ‘Conclusive Proof’ has been considered by the Apex Court in **Union of India (UOI) v. Pramod Gupta (D) by L.Rs. and Ors**.[9], in the following terms: It is true that the legislature used two different phraseologies "shall be presumed" and "may be presumed" in ------ but the same would not mean that the words "shall presume" would be conclusive. The meaning of the expressions "may presume" and "shall presume" have been explained in Section 4 of the Evidence Act, 1872 from a perusal whereof it would be evident that whenever it is directed that the court shall presume a fact it shall regard such fact as proved unless disproved. In terms of the said provision, thus, the expression "shall presume" cannot be held to be synonymous with "conclusive proof. In terms of Section 4 of the Evidence Act, whenever it is provided by the Act that the Court shall presume a fact, **it shall regard such fact as proved unless and until it is disproved.**

The Apex Court in the later expression in **KUMAR EXPORTS PVT. LTD. V. SHARMA CARPETS**[10] held in this regard that- presumptions that applied among clauses (a) to (g) of Section 118 also, like the presumption under Section 139 of the Act, as per Section 4 of the Evidence Act, are the rebuttable presumptions for which the burden is on the accused. However, to rebut the presumptions 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 as laid down in Narayan Menon (supra) and **Krishna Janardhan Bhat v. Dattatraya G. Hegde**[11].

11-D. Further, as per the expression of the Apex Court in **RANGAPPA vs. MOHAN**[12] **(3-Judges Bench)** paras-9 to 15 referring to **GOA PLASTS** (supra), **KRISHNA JANARDHAN BHAT** (supra) 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**[13] 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**[14] 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**[15] 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[16] 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.

11-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, furthermore 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 in **Chapala Hanumaiah Vs. Kavuri Venkateshwarlu**[17] 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-E**.** If at all, there is any payment including part payment or adjustment to be considered for deduction while enforcing the amount covered by the dishonoured cheque for its consequences, the burden is on the accused as per settled law to prove said discharge or adjustment. In this regard, in **M/s. Thekkan and Company vs. M. Anitha[18],** it was held by the Kerala High Court that nothing precludes the Court under Section 138 of the Act for taking into account prior payments made before the presentation of the cheque or before receipt of notice in deciding whether the amount due under the cheque has been fully paid, if not for continuing the prosecution. In another expression of same High Court in **R. Gopikuttan Pillai vs. Sankara Narayanan Nair**[19] also it was held that accused is bound to prove payment of entire amount within 15 days of receipt of notice and any part payment made before or after notice cannot absolve liability from the criminal prosecution under Section 138 of N.I. Act and thereby the trial Court went wrong in acquitting the accused for part payment made and not of the entire due under the cheque.

11-F**.** From the above propositions, coming to the liability of the accused, owner of the business done by him in the name and style of Dhanalakshmi Rice and Flour mill (a proprietary concern), not in dispute, but for to say even from the defence evidence of he leased out the rice mill business of him under an unregistered lease agreement to one Rajkumarbabu and through DW1 and DW2 it is proved of the running of the rice mill business on lease permitted by licence in the name of said Rajkumarbabu in the year, 2000 and showing said lease running of rice mill business was also stopped by him in the year 2002 to say the ownership of rice mill business never parted with by the accused but for leased out for hardly two years to said Rajkumarbabu, his brother-in-law even from the said defence evidence only for running of the business on lease. Whether it is an improbability to say said defence belies the case of complainant is to be discussed hereunder.

12. Before coming to decide from above legal position by its application to the facts of the cases on hand detailed supra, as to how far it is disproved the case of the complainant and how far the presumptions in favour of the complainant as per the reverse onus clause with burden on accused to rebut, that could be rebutted and how far the plea of non-liability that could be made out by the accused concerned, coming to sufficiency of service of notice:

12-A.(i). The Supreme Court held **Dalmia Cements**[20] ***& Uniplast India***[21] that when the notice returned as unclaimed or refused or house locked or not available in the house or such other endorsement denoting non-availability of Drawer, a presumption U/s. 27-General Clauses Act of due service can be drawn on facts from proof of notice sent to correct address which presumption can however be rebuttable.

(ii) The Supreme Court in **Bhaskaran Vs Sankaran**[22] laid down that a notice refused to accept or unclaimed by the addressee can be presumed to have been served on him. Sec.27 General Clauses Act and ***Maxwell's*** interpretation of statutes and **Block's Law dictionary**- were referred to note the difference between notice received, notice give or send. From the wording of Sec.138 N.I.Act, it was held that when a notice is returned by the sendee as unclaimed, such date is the commencing date to reckon the period contemplated by Sec.138 (c) N.I.Act.

(iii) The Supreme Court later even in **V. Raja Kumari v. P. Subbarama Naidu**[23] held that, when evidence was adduced by the complainant to show that accused while remaining at the address managed to get an endorsement through postal authorities as if he not available at the address then under those circumstances, it amounts to sufficient service.

(iv) The Supreme Court later even in **D.V.Shivappa Vs. Nanda Belliappa**[24] laid down that (a) after notice is issued and served no controversy arose; (b) if notice refused by addressee it may be deemed to have been served and also there is no dispute; however, coming to the third situation whether notice could not be served on the addressee for want of other reasons such as not availability or addressee remaining door locked on account of his having gone elsewhere.

If in each such case the law is understood to mean that if there is no service of notice, it would completely defeat the very purpose of the Act.

As it is easy for an unscrupulous and dishonest drawer of a cheque to make himself scarce for sometime after issuing the cheque so that the requisite statutory notice can never be served upon him and consequently he can never be prosecuted.

There is good authority to support the proposition that once the complaint, issued notice to the drawer of the cheque, if there is any fake endorsement made on it regarding his non-availability to avoid prosecution, because the payee is bound to issue notice to him within a period of 30 days of receipt of information of cheque remained unpaid, after presented.

It must be borne in mind that Court should not adopt an interpretation which helps a dishonest evader and clips an honest payee as that would defeat the very legislative measure.

(v) In the later expression of the Apex Court in **C.C.ALAVI HAJI Vs. PALAPETTY MUHAMMED** – Appeal (crl.) No.767 of 2007: dt.18/05/2007 by CJI. K.G.BALAKRISHNAN, R.V.RAVEENDRAN J. & D.K.JAIN J. – in answering a reference to non referring of Sec.114 Evidence Act in the in K. Bhaskaran & Vinod Shivappa cases and any need of specific averment in complaint to draw the deemed service of correctness of address and of avoidance, it was held that:

"10. It is, thus, trite to say that where the payee dispatches the notice by registered post with correct address of the drawer of the cheque, the principle incorporated in Section 27 of the G.C. Act would be attracted; the requirement of Clause (b) of proviso to Section 138 of the Act stands complied with and cause of action to file a complaint arises on the expiry of the period prescribed in Clause (c) of the said proviso for payment by the drawer of the cheque. Nevertheless, it would be without prejudice to the right of the drawer to show that he had no knowledge that the notice was brought to his address.

Section 114 of the Indian Evidence Act, 1872 reads as follows: Court may presume existence of certain facts - The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations - The Court may presume (f) that the common course of business has been followed in particular cases.

According to Section 114 of the Indian Evidence Act, 1872 read with illustration (f) there under, when it appears to the Court that the common course of business renders it probable that a thing would happen, the Court may draw presumption that the thing would have happened, unless there are circumstances in a particular case to show that the common course of business was not followed. Thus, Section 114 enables the Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Consequently, the court can presume that the common course of business has been followed in particular cases. When applied to communications sent by post, Section 114 enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. But the presumption that is raised under Section 27 of the G.C. Act is a far stronger presumption.

Further, while Section 114 of Evidence Act refers to a general presumption, Section 27 refers to a specific presumption. For the sake of ready reference, Section 27 of G.C. Act is extracted below:

Meaning of service by post - Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression - serve\or either of the expressions\give\or\send\or any other expression is used, then, unless a different intention appears, the service shall be deemed to ------

Section 27 gives rise to a presumption that service of notice has been affected when it is sent to the correct address by registered post.

In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement refused or not available in the house or house locked or shop closed or addressee not in station, due service has to be presumed. [Vide Jagdish Singh Vs. Natthu Singh; State of M.P. Vs. Hiralal & Ors. and V.Raja Kumari Vs. P. Subbarama Naidu]. It is, therefore, manifest that in view of the presumption available under Section 27 of the Act, it is not necessary to aver in the complaint under Section 138 of the Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved.

Insofar as the question of disclosure of necessary particulars with regard to the issue of notice in terms of proviso (b) of Section 138 of the Act, in order to enable the Court to draw presumption or inference either under Section 27 of the G.C. Act or Section 114 of the Evidence Act, is concerned, there is no material difference between the two provisions. In our opinion, therefore, when the notice is sent by registered post by correctly addressing the drawer of the cheque, the mandatory requirement of issue of notice in terms of Clause (b) of proviso to Section 138 of the Act stands complied with. It is needless to emphasise that the complaint must contain basic facts regarding the mode and manner of the issuance of notice to the drawer of the cheque. It is well settled that at the time of taking cognizance of the complaint under Section 138 of the Act, the Court is required to be prima facie satisfied that a case under the said Section is made out and the afore noted mandatory statutory procedural requirements have been complied with. It is then for the drawer to rebut the presumption about the service of notice and show that he had no knowledge that the notice was brought to his address or that the address mentioned on the cover was incorrect or that the letter was never tendered or that the report of the postman was incorrect. In our opinion, this interpretation of the provision would effectuate the object and purpose for which proviso to Section 138 was enacted, namely, to avoid unnecessary hardship to an honest drawer of a cheque and to provide him an opportunity to make amends.

As noticed above, the entire purpose of requiring a notice is to give an opportunity to the drawer to pay the cheque amount within 15 days of service of notice and thereby free himself from the penal consequences of Section 138. In Vinod Shivappa (supra), this Court observed:

One can also conceive of cases where a well intentioned drawer may have inadvertently missed to make necessary arrangements for reasons beyond his control, even though he genuinely intended to honour the cheque drawn by him. The law treats such lapses induced by inadvertence or negligence to be pardonable, provided the drawer after notice makes amends and pays the amount within the prescribed period. It is for this reason that Clause (c) of proviso to Section 138 provides that the section shall not apply unless the drawer of the cheque fails to make the payment within 15 days of the receipt of the said notice. To repeat, the proviso is meant to protect honest drawers whose cheques may have been dishonoured for the fault of others, or who may have genuinely wanted to fulfil their promise but on account of inadvertence or negligence failed to make necessary arrangements for the payment of the cheque. The proviso is not meant to protect unscrupulous drawers who never intended to honour the cheques issued by them, it being a part of their modus operandi to cheat unsuspecting persons.

It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the G.C. Act and Section 114 of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in Bhaskaran`s case (supra), if the giving of notice in the context of Clause (b) of the proviso was the same as the receipt of notice a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of Section 138 of the Act.

In the instant case, the averment made in the complaint in this regard is: Though the complainant issued lawyer`s notice intimating the dishonour of cheque and demanded payment on 4.8.2001, the same was returned on 10.8.2001 saying that the accused was out of station. True, there was no averment to the effect that the notice was sent at the correct address of the drawer of the cheque by registered post acknowledgement due. But the returned envelope was annexed to the complaint and it thus, formed a part of the complaint which showed that the notice was sent by registered post acknowledgement due to the correct address and was returned with an endorsement that the addressee was abroad. We are of the view that on facts in hand the requirements of Section 138 of the Act had been sufficiently complied with and the decision of the High Court does not call for interference.

In the final analysis, with the clarification indicated hereinabove, we reiterate the view expressed by this Court in **K. BHASKARAN AND VINOD SHIVAPPA** (supra)".

13. It is important to note that Ex.P1 cheque (i) in C.C.No.443 of 2004 in the name of G. Suryanarayana complainant-PW1, dated 02.12.2003 was for Rs.5,00,000/- cheque bearing No.653139, with signature of the accused as drawer for Dhanalakshmi Rice and Flour Mill K.Subbarao proprietor and, (ii) similarly in C.C.No.333 of 2004 in the name of N. Subbaraya Guptha of even date for Rs.6,00,000/- cheque bearing No.653138. The case of the complainant in C.C.No.443 of 2004, G. Suryanarayana in the complaint as well as in his evidence as PW1 was that he sold the paddy to the accused and fell due for the purchases from time to time for Rs.5,00,000/- and the accused issued the Ex.P1 cheque for the said amount on 02.12.2003 from his SBI account, Nandyal. He deposed that he supplied huge quantity of paddy to the accused, and the accused fallen due the said amount. In the cross-examination of PW1, he deposed besides the

above facts that, it is the accused K.Subbarao along with said B.Subbarao came to him and ***purchased the paddy of 160 bags at Rs.620/- per bag.*** He promised to pay within 15 days which was in the year 2001 June/July. The first appellate Court observed that there is no meaning if that is the case to wait for more than 2½ years till the date of so-called issuing of Ex.P1 cheque on 02.12.2003 for alleged sale of paddy in June/July, 2001 if at all the said credit purchase to pay within 15 days without even giving any notice admittedly all through. Here besides no evidence filed, no proof filed, the said B.Subbarao not even examined in this regard and there must be some material to say that paddy was being transported from the place of complainant to the destination of the accused rice mill at Nandyal of another District and there is no proof filed by either side. The complaint as well as legal notice of the complainant also silent in this regard and PW1 deposed that he did not file any way-bills regarding the transport of paddy from Narasaraopeta to Nandyal. ***The other version of PW1 is B.Subbarao assured to cause pay the amount through the accused***. PW1 deposed that he does not know whether the accused leased out the rice mill to Rajkumarbabu of Balaji traders for running the business. He denied the suggestion of B.Subbarao and Rajkumarbabu colluded because of difference with accused to Rajkumarbabu and the blank cheques distributed in the name of several persons. In fact, there is no other suggestion from accused as to how the blank cheques of him available with complainant or B.Subbarao or Rajkumarbabu if any but for his giving. It is not even defence of accused as to how his blank signed cheques go to custody of Rajkumarbabu, no other than his brother-in-law and it is highly improbablising the defence suggestion, but for to say, a false version set up unable to get over his signatures on the cheques in question that are routed from his bank account undisputedly. There is no any defence of blank cheques given as security, much less for such saying even as to details of when and in what purpose and context. Further there is no reply to legal notices unclaimed as the legal notice issued after the dishonour of the cheque as concluded supra cause managed to return and from the deemed service of notice the non-giving of reply gives the adverse inference against the said defence of accused. Therefrom also it strengthens the case of the respective complainants. The accused did not even send the cheques to expert through Court, if at all those cheques not of his signature, apart from no dispute on signatures of the cheques belong to him. PW1 deposed that there is no documentary evidence to show paddy sold to accused. The other suggestion is accused did not issue the cheques and those are created by verifying his signatures. This suggestion also runs contra to blank cheques theory and even to so say, how his cheque book blank unsigned leaves go to them. Thus, it is also highly improbable for what is discussed supra. The other suggestion is that there is ink difference in the cheques in the name portion column and signature. Undisputedly accused even to say so, as concluded supra, did not choose to send the cheques by disputing signatures by providing other admitted and specimen signatures of contemporary relevance to expert through Court for opinion by comparison and to lead evidence therefrom also. PW2 Dasari Santha Rao, Branch Manager, Central Bank of India, Narasaraopet branch, deposed in proof of accused maintained the accounts in the name of Dhanalakshmi Rice and Flour Mill and Ex.P1 cheque relates to the account of the accused and the cheque when presented by complainant through State Bank of India, Nandyal branch for collection, the same was dishonoured for insufficient funds in the account of the accused and the account is live.

In the evidence, he deposed that if the balance in the account is ‘0’ as on the date of the cheque presented for collection, the account is stopped and not closed as party can deposit money at any time of the live account. He also deposed about service charges credited to the account for the cheque received for collection and the amount of the cheque not credited and not honoured. From PW3 evidence, there is no dispute in this regard of the cheque leaves are from account of accused with his signatures. PW2 is the banker of the complainant also deposed in this regard of the cheque when presented by the complainant for collection forwarded with covering letter to the drawer’s banker that was returned dishonoured and intimated. The evidence of PWs.1 to 3 in C.C.Nos.333 of 2004 with reference to Ex.P1 cheque for Rs.6,00,000/- dated 02.12.2003 (same date) on same line being referred later. The accused did not produce any accounts of his business and did not say the complainants were not dealing in paddy and did not even say, not such amount due but for less or the blank cheques issued to Subbarao who distributed by cause filled one in his name and the other in the name of the complainants and did not even explain under what circumstances his blank cheques went to the custody of the complainants, but for to say by PWs.1 and 2 evidence as well as Section 313 Cr.P.C. examination of when he sustained fracture of his leg and transferred rice mill business in the name of Rajkumarbabu, he obtained his signatures. There is no basis for it to say and there is no medical record of fracture and hospitalization and that too for what necessity to sign at the instance of Rajkumarbabu several cheque leaves kept in blank. Having brought on record from evidence that the said Rajkumarbabu is no other than the brother-in-law of the accused and thereby said version no way absolves the liability of the accused who is the person to explain even under Section 106 Evidence Act as to what other circumstances that made to part his signed cheques to complainant or any other person. He did not even file any counter foil of the cheques to say if given to any other person much less in blank to said Rajkumar Babu. Said Rajkumar Babu not even cause examined as defence witness. If there are any differences with Rajkumar babu, accused could not have kept quiet. Any prudent person could issue notice to return the cheques or police complaint or atleast letter to bank to stop payment and that is not even the case of the accused. The accused also did not choose to come to witness box. The Ex.D1 to D11 and Ex.C1 and evidence of DWs.1 and 2 is of so called lease of business of the rice mill for an year or so to Rajkumar Babu and for nothing more.

14. Similarly, in C.C.No.333 of 2004, the complainant was Nagasarapu Subbaraya Guptha-P.W.1 deposed that he supplied ***1,000 bags of paddy*** worth Rs.6,00,000/- in a tenure of five years to the cost for the rice mill business and the amount due was Rs.6,00,000/- for which he issued Ex.P1 cheque dated 02.12.2003 drawn on SBI, Nandyal that was presented dishonoured. In the cross-examination of PW1 deposed that he is running broker office as proprietor besides cultivating his 18 acres of land. He deposed that he has no documents regarding the supply of paddy to the accused and he cannot say the lorry number and name of the driver through which paddy was transported. He deposed that he purchased paddy from the farmers whose names he cannot give and he did not maintain any accounts and does not have any cash or credit vouchers of any bills in the name of the accused. For the paddy supplied during June/July 2001 in ***47 lorries, the way-bills are with the accused and there is***

no proof with him. He deposed that paddy sold was at Rs.621/- per bag. He deposed that millers used to come and purchase paddy and accordingly accused came on ***29.07.2001*** and purchased the paddy on credit basis which are not covered by any vouchers or receipts and the miller has to pay the market cess and the record will be available in market committee and it is for that, the cheque was issued on 02.12.2003 and that there were no credit vouchers obtained. He denied the suggestion of the accused never came from Nandyal, much less purchased paddy from complainant and he met with accident and was limping and was unable to run rice mill, he leased out the Rice Mill to Rajkumarbabu from August 2001. PW1 deposed that the paddy supplied to Balaji traders of Pasarapadu. Rajkumarbabu is no other than the brother-in-law of the accused. He deposed that earlier to the presenting of the cheque, there were demands and the accused was promising to pay. It clearly speaks accused who purchased the paddy in whatever name and issued the cheque for balance due and is thereby liable for the legally enforceable debt. The only suggestion is that when the accused met with accident and was in unconscious stage, the complainant got the signed cheques through Balaji traders and having colluded with him. PW1 categorically deposed that the accused issued cheques after the contents written by son of the accused and denied the suggestion that son of the accused not filled the contents or Dhanalakshmi Rice and Flour Mill business not in existence by the date of cheques issued. This suggestion of accused is contrary to what is discussed supra and theory of blank cheques and even the present theory of so called blank cheques obtained while he was in unconscious state after sustained fracture of his leg, the complainant came and obtained through Rajkumarbabu i.e., brother-in-law of the accused of Balaji traders. He did not file medical record of he was in unconscious state for any period, apart from not possible to sign at that stage in so clearly. Even from the evidence in C.C.No.333 of 2004 of PW1 cross-examination, there could be nothing. Apart from it, there is no worth defence evidence of the accused in particular in this case, much less any document in defence regarding discharge of the burden under the reverse onus charge for cheques issued from his account and proved for paddy purchased amounts fallen due; even to rebut said evidence by preponderance of probabilities.

15. It is important to say at cost of repetition that said, Balaji traders, proprietor- Rajkumarbabu not even examined on behalf of the accused if at all to say what was the business he carried. No accounts even filed by accused regarding any rent paid to him by Balaji traders. No doubt as contended by the counsel for the accused that there are no records or accounts filed by the complainant. But importantly when the cheques are according to the version of the accused blank cheques with his signatures and there is no cogent explanation how those are with the complainants and in the absence of his any explanation worth to consider much less to rebut the positive evidence of complainants coupled with the presumptions also available under Section 118 of Negotiable Instruments Act of the cheques issued are for the amounts mentioned and in the name of the payee and on the respective date bears on it as duly issued and the burden is on the accused to rebut, which he could not. His version of while he was hospitalized in the unconscious state, the signature obtained on blank cheques in collusion with Rajkumarbabu by B.Subbarao or by the other version of complainant also colluded together is improbabilising to believe, that too, when there is no record of hospitalization. It is a clear case in the

cross-examination of PW1 one of the cases discussed supra of the contents of the cheques were filled by the son of accused and thereafter the accused duly signed and issued the cheques respectively in the name of the two complainants of the even date. When that could not be rebutted by the accused, so also by sending to handwriting expert, if not his signatures and not the writings of his son; thus once the presumption available under Section 118 of the Negotiable Instruments Act for the burden on accused to rebut from the theory of blank cheques improbable to believe from said defence suggestion. Thus, merely because Rajkumarbabu obtained a lease agreement from the accused and obtained licence pursuant to it to run business in milling of paddy and rice in the name of Balaji traders, even from said evidence of DW1 and 2 with reference to Exs.D1 to D11 and C1, and it is not for non-trading rice mill business that too only from September/October, 2000 to March, 2002 for rice mill running only what the case of the complainants of the accused purchased paddy in June/July, 2001 respectively and for the amounts fallen due after more than two years issued the cheques, there is nothing to belie. Even the defence of accused as per the Apex Court's expression in **Narayan Menon V. State of Kerala**[25] though accused need not disprove entire case of prosecution/complainant, but for probabilising for his defence version for which he need not even come to witness box, if shows from the cross-examination of complainant witnesses and by confronting with any documents to probabilise his defence version that is suffice, but in the two cases on hand there is nothing even by preponderance of probabilities.

16. Here when there is totally lacking any probable defence and the mere execution of lease agreement unregistered in favour of

Rajkumarbabu by accused in August, 2000 for leasing the rice mill premises or paddy business no way belie the transaction of accused purchased paddy from the complainants that too when the signatures not in dispute and there is nothing in dispute from what is elicited in the cross-examination by accused of the complainants respectively, of son of the accused filled the contents of the cheques and later the accused signed. Further the defence version shows accused having knowledge of the empty cheques obtained, if true, could not kept quiet as no prudent man would keep quiet without notice or criminal complaint for return of the so-called blank cheques allegedly obtained, much less while he was in unconscious stage, the question of his knowing does not arise.

17. Further a perusal of pattern of signatures show so natural and not of outcome of obtaining while in unconscious state or against his will. In fact the observations of the first Appellate Court as can be seen mainly based on the Apex Court expressed in **KRISHNA JANARDHAN BHAT's** (supra) of no presumption available of the cheque issued is for legally enforceable debt but for debt or other liability even to draw under Section 139 of Negotiable Instruments Act, it is as discussed supra, the said expression in **KRISHNA JANARDHAN BHAT's** (supra) to that extent is held not good law by the three judge's bench expression in **RANGAPPA's** case (supra) of the presumption applicable is not only of cheque issued for that debt or other liability under Section 139 of the Act, but also of the same is for legally enforceable debt or other liability as per Section 139 r/w the explanation to Section 138 of the Act.

18. Thus, under the reverse onus clause putting the burden on accused to rebut the presumptions available against as per the law,

nothing could be rebutted by the accused in these cases and therefrom the trial Court was right in its finding of the cheques issued by the accused are for legally enforceable debts that could not be rebutted by the accused from the burden on him under the reverse onus clause. Though what the trial court relied upon by **Beena's** case (supra) of accused has to establish by coming into witness box with cogent evidence of defence, not fully correct as what is explained later by the expression supra of sufficiency of probable defence of the accused, that can be made out without even coming to witness box by examining any witness or by cross-examination of the complainant and the witnesses, there is no probable defence raised by the accused in these cases muchless rebutting the presumptions available in favour of the complainants and against him in both the cases and from the evidence of B. Subbarao discussed supra, his non-examination in two cases where the complainants deposed of through B.Subbarao they sold the paddy to the accused nowhere fatal much less to enhance the defence version. Accordingly, point No.1 is answered.

Point No. 2:

19. In the result, both the appeals are allowed by setting aside the first Appellate Court's acquittal judgments, and by confirming the trial Courts conviction judgments, however by modifying the sentence following the Apex Court's expression in **SOMNATH SARKA V. UTPAL BASU MALIK**, that the NI Act did not contemplate grant of compensation separately but imposition of fine upto double the amount of cheque amount and sentence of imprisonment is more a means to ensure payment of the money. Thus,

i) In Criminal Appeal 344 of 2009 (C.C.No.443 of 2004) the sentence of six months simple imprisonment with fine of

Rs.5,000/- and compensation of Rs.5,00,000/- (which is contrary to law) is modified to sentence of imprisonment till raising of the day and to pay a fine of Rs.5,10,000/- of which Rs.10,000/- goes to the State and Rs.5,00,000/- towards compensation for the cheque amount in favour of the complainant ;

ii) In Criminal Appeal No.358 of 2009 (C.C.No.333 of 2004) the sentence of six months simple imprisonment with fine of Rs.5,000/- and compensation of Rs.6,00,000/- (which is contrary to law) is modified to sentence of imprisonment till raising of the day and to pay a fine of Rs.6,15,000/- of which Rs.15,000/- goes to the State and Rs.6,00,000/- towards compensation for the cheque amount in favour of the complainant.

20. The accused is entitled to set off the period undergone in both the cases and his sentence of imprisonment shall run concurrently in both the cases i.e., till rising of the day. It is hereby directed the learned Magistrate to secure the presence of the accused by warrant to undergo the sentence (if not the period undergone to set off) of imprisonment till raising of the day in open Court and also to cause recover the fine amount under Section 421 Cr.P.C. (r/w 431 Cr.P.C.) by issuing warrant and levying the fine with default sentence of three months SI in each case as per Sections 65-68 r/w 53(6) IPC. There is no more order as to costs or compensation in the appeals.

Miscellaneous petitions, if any pending in these appeals, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

23rd January, 2015

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[1] (2001) 8 SCC 458

[2] AIR 2008 SC 1325

[3] AIR 2010 SC 1898

[4] AIR 2003 SC 2035

[5] WP (Civil) No.18 of 2013 Supreme Court (DB) Judgment dated 21.04.2014.

[6] [2000] 2 SCC 380

[7] (2001) 8 SCC 458

[8] (2006)3 SCC 30

[9] [(2005) 12 SCC 1]

[10] (2009) 2 SCC 513

[11] AIR 2008 SC 1325

[12] AIR 2010 SC 1898

[13] AIR 2001 SC 3897

[14] AIR 1999 SC 1008

[15] AIR 2002 SC 182

[16] AIR 2008 SC 2898

[17] 1971 (1) An.W.R. 65

[18] 2004 Crl.L.J. 58

[19] 2004 (1) BC 34

[20] AIR 2001 S.C. 676=(1)ALD(Crl)-389=(1)ALT(Crl)-213

[21] AIR 2001-SC-2625=SCC (Crl.) 955=(5) ALT(Crl.)171(SC).

[22] 1999 SC-3762=(7)SCC-510-(22)relied on 1981(2) SCC-535&1992(1)SCC-647.

[23] (2004) 8 SCC 774

[24] 2006 AIR SCW 2757

[25] (2006)3 SCC 30