

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION Nos. 4124, 4126 of 2015,

13907, 13921, 14051 and 15795 of 2013

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COMMON ORDER :

These are the two sets of six quash petitions to quash the Calendar Case proceedings, six in number covered by these petitions, leave about another quash petition in Crl.P.No.3774 of 2015 also said to have been pending before another Bench.

2. The six quash petitions besides another one pending before another Bench in Crl.P.No.3774 of 2015 are between lending party M/s.Kotak Mahindra Bank Ltd., (company) under the Companies Act, 1956, represented by its authorized signatory, N.Murali Krishna, the complainant, respectively in all cases for the offences punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act') for dishonour of respective cheques, maintained against the entity (company) M/s. Nusun Genetic Research Limited, under the Companies Act, represented by its Managing Director, P.Vidyasagar as A1 and said P.Vidyasagar personally as A2 and other two directors viz., P.Chandravathi and P.Vamsi Krishna as A3 and A4, respectively.
3. The four accused supra of C.C.No.315 of 2015 on the file of III Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, maintained the quash petition in Crl.P.No.4124 of 2015 to quash the proceedings of C.C. taken cognizance by the learned Magistrate for the dishonour of two cheques bearing Nos.000503 and 000504, respectively, dated 31.07.2014 and 31.08.2014.
4. Crl.P.No.4126 of 2015 is also filed by the self-same accused against self-same complainant(supra) to quash the proceedings in C.C.No.314 of 2015 on the file of III Additional Chief Metropolitan Magistrate, Nampally,

Hyderabad, for dishonour of cheque bearing No.000502 dated 30.06.2014.

5. It is also the submission that another Crl.P.No.3774 of 2015 filed to quash the proceedings in C.C.No.314 of 2015 on the file of III Additional Chief Metropolitan Magistrate (supra) by the self-same accused against the self-same complainant is for dishonour of another cheque bearing No.000505 dated 30.09.2014.
6. Before coming to the other four quash petitions, the three cheque cases(supra) are outcome of the cheques(supra) issued for the consideration covered by one time settlement between the complainant bank and the accused(supra). The one time settlement under joint compromise memo filed was in settlement of the claim in O.A.No.895 of 2013 before the Debts Recovery Tribunal, Hyderabad, for recovery of Rs.5,37,14,613.75ps. due as on date 23.09.2013 along with interest at 24% p.a. thereafter till realization against the entity, its Managing Director and the two Directors supra who are respondents therein including in relation to the debt for the cheques earlier issued were dishonoured covered by the two cheque dishonour cases in C.C.Nos.213 and 448 of 2013 sought for questioning Crl.P.Nos.13921, 13907 and 14051 of 2013 are in relation to C.C.No.213 of 2013 on the file of XXIV Special Magistrate Court, Erranmanjil, Hyderabad now pending as C.C.No.195 of 2015 before the III Special Magistrate, Erramanjil and the Crl.P.No.15795 of 2013 is in relation to C.C.No.448 of 2013 pending on the file of XX Additional Chief Metropolitan Magistrate, Hyderabad, between the same complainant and same accused, respectively(supra). It is not the said C.C.Nos.213 and 448 of 2013 covered by the four quash petitions (supra) referred to compound but for the O.A. claim supra for one time settlement having found what was fallen due of nearly Rs.6,00,39,171.98 as on 31.03.2014 by the 1st defendant entity. The settlement terms speak that the amount to pay is arrived at for Rs.5,00,00,000/- with subsequent interest from the date of settlement at 10% p.a. till realization viz., Rs.25,00,000/- to be paid at the time of execution of this agreement and has been received vide D.D.No.254276 dated 08.04.2014 (it is part

discharge of the pending two C.C.Nos.213 and 448 of 2013 supra also. Needless to say, as per the expression of the Apex Court in **Rajneesh Aggarwal v. Amit J.Bhalla**, particularly at the last but one para insofar as cheque dishonour cases for the criminal offence under Section 138 of the Negotiable Instruments Act concerned, once the offence is committed, any payment made subsequent thereto will not absolve the accused of the liability of criminal offence, though in the matter of awarding of sentence, it may have some effect on the Court trying the offence. The one time settlement dated 31.03.2014 covered by the later agreement supported by part payment dated 08.04.2014 of Rs.25,00,000/- out of Rs.5,00,00,000/- further speaks that the balance amount is payable from next last day of every month viz., 30.04.2014. It is for those future payments assurance of recovery the four post dated cheques bearing Nos.502 to 505 respectively, dated 30.06.2014, 31.07.2014, 31.08.2014 and 30.09.2014 drawn on Bank of Baroda, Banjara Hills, Hyderabad, for each Rs.1,18,75,000/- were obtained to remit to the current account number 8711193905 maintained with the complainant bank of Somajiguda branch and the further conditions of directions for honour the cheques and also a condition that notwithstanding any request or communication from 1st defendant, the complainant/applicant with the OA. is entitled to present the post-dated cheques at any time on or after the date of cheques, but within the statutory validity period without any reference, communication or notice to the defendants. It is not only that the condition No.(4) of the settlement agreement which is highly relevant herein speaks that if the 1st defendant entity fails to pay by respective due dates the four installments and consequent to it fails to honour any of the four post dated cheques (supra), notwithstanding anything to the contrary, the applicant bank shall be entitled to recover the total outstanding amount with further interest at the rate of 2% per month compounded on a monthly basis from the date of recall notice dated 15.02.2013 from the defendants as if no settlement had taken place between the parties in terms of this joint memorandum. If it is as if no settlement to recover the original dues, where is the legally enforceable debt or other liability under the four post dated cheques to

enforce independently, that too for the original amounts there were two cheques obtained and for its dishonour already in the year, 2013 two criminal complaint cases filed, pending and those not even withdrawn, further more the four post dated cheques are for assurance of installments to recover payable w.e.f.30.04.2014 to 30.09.2014, whereas the four post dated cheques are not of all for respective installment dates, but with subsequent dates of first one dated 30.06.2014 and so on for other three.

7. It is important there from also to say that the present two quash petitions i.e., Crl.P.Nos.4124 and 4126 of 2015 besides the other not pending before this Court in Crl.P.No.3774 of 2015 are in relation to the four post-dated cheques presented bearing Nos.502 to 505 supra are the cheques issued as per the one time settlement agreement supra dated 16.04.2014. It is also important to note that the agreement is signed by the complainant bank authorized signatory and A1 entity represented by Chairman-cum-Managing Director, P.Vidyasagar/A2 and one of A3 or A4. Undisputedly, the cheques issued are by A1 entity, represented by its Managing Director, P.Vidyasagar/A2 and also P.Chandravathi, wife of A2. Undisputedly, the terms of the compromise as a settlement for earlier debt covered by O.A. and for the amount covered by earlier two cheque cases covered by four quash petitions in Crl.P.Nos.13907, 13921, 14051 and 15795 of 2013 (supra).
8. For the dishonour of the four post-dated cheques issued referring to one time settlement, undisputedly the criminal cases are filed and now the same are seeking to quash on several grounds including on the ground of not supported by consideration for the cheques within the meaning of debt or other liability as per the explanation to Section 138 of the Act, to mean, it should be a legally enforceable debt or other liability.
9. Be it as it may, before coming to the sustainability of the quash petitions in the factual back ground or not, coming to the other four quash petitions i.e., Crl.P.Nos.13907, 13921, 14051 and 15795 of 2013, which are

outcome of only two C.C.Nos.195 of 2015(old No.213 of 2013) on the file of III Special Magistrate, Erramanjil and C.C.No.448 of 2013 pending on the file of XX Additional Chief Metropolitan Magistrate, Hyderabad. Those are for the two cheques covered by original lending amount which is also the subject matter of O.A.(supra) and thus the subject matter of the one time settlement supra. The quash petitions filed to quash the said C.C.Nos.195 of 2015(old No.213 of 2013) and C.C.No.448 of 2013 are on the grounds by the self-same four accused being the entity, its Managing Director and the two Directors maintained by the same complainant bank for the cheques bearing Nos.13152 for Rs.4,55,40,991-55ps. and another cheque bearing No.053066 for Rs.5,00,00,000/-, on the facts as to while admitting the giving of the cheques and also for the lending but for saying it is given the cheques only to serve as collateral purpose/security and the amount for which the cheques received is not even in consideration to the loan amount as the two cheques obtained were for highly excessive amounts even over and above to the sanctioned loan limit. The other contention is that, A1 entity represented by A2 Managing Director alone issued the two cheques having signed as drawer and not by A3 and A4 like in respect of the four cheques obtained as a security that too subsequent to the one time settlement vide cheque numbers 502 to 505.

10. Undisputedly, the respective complaints covered by two cases C.C.No.213 of 2013 and 448 of 2013 contain only a vague allegation that the two Directors A3 and A4 of A1 entity are also responsible for day to day affairs and they got knowledge about the lending and giving of the two cheques by A1 entity signed by A2. What is the Law settled within the meaning of Section 141 of the Act is not making an allegation vaguely or by saying responsible for day to day affairs; but for to say specifically and to show how any of the particular director is responsible for day to day affairs and in what manner. Thus, in the absence of such factual foundation with specific plea the prosecution against the Directors shall not be sustained even by virtue of the legal fiction and statutory liability under Section 141 of the Act vide decision in **Narendra Urangi v.**

M/s.Greenmint India Agritech Pvt. Ltd. It is also for the reason once a person is not a drawer of the cheque, in the absence of showing specifically as to how responsible for day to day affairs to make statutorily liable under Section 141 of the Act, the persons other than drawer cannot be made liable vide **M/s. Aparna A.Shah v. Sheth Developers Pvt.Ltd.** It is what more averred in besides not drawer if at all is A3 being wife of A2-Managing Director of A1 entity is also one of the guarantors to the loan. Same is different for civil liability, from any criminal liability to prosecute without satisfying the statutory requirements of Section 141 of the Act. Therefore, Crl.P.No.13921 of 2013 in C.C.No.213 of 2013, so far as against A4 is unsustainable, equally Crl.P.No.13907 of 2013 so far as A3 to allow and to quash so far as A3 and A4 in C.C.No.213 of 2013 concerned.

11. However, so far as Crl.P.No.14051 of 2013 in C.C.No.213 of 2013 concerned, when undisputedly the cheques are rooted from the account of A1-entity, signed by A2 being its Managing Director also statutorily liable being drawer and by virtue of his status also he is responsible for day to day affairs including as drawing of the cheque to pay within the meaning of the statutory liability under Section 141 of the Act, the cheque issued as a collateral security if so not within the meaning of legally enforceable debt, is a matter to be adjudicated before the trial Court by facing trial by adducing evidence. Thereby, the Crl.P.No.14051 of 2013 is liable to be dismissed against A1 and A2 of C.C.No.213 of 2013 renumbered as C.C.No.195 of 2015 concerned.
12. Coming to Crl.P.No.15795 of 2013 in C.C.No.448 of 2013, which quash petition is filed by the four accused, so far as same also while quashing the proceedings so far as A3 and A4 concerned from what is discussed supra, the criminal petition against A1 and A2 is liable to be dismissed.
13. From this back ground, coming back to the quash petitions in Crl.P.Nos.4124 and 4126 of 2015, leave about similarly situated position

of quash petition in Crl.P.No.3774 of 2015 not before this Court to answer anything further without hearing and perusal but for from the say; four cheques bearing Nos.502 to 505 were issued as an assurance for realization of one time settlement amount and the memorandum of understanding or one time settlement terms are basis for it, which are discussed in the previous paras in detail, with no need to repeat but for cursorily to the relevance again. In fact, a perusal of the terms more particularly, from para-2 clauses (b), (c)-sub-clause(ii) and (d) concerned, more particularly from dates of payments fixed as due is w.e.f. 30.04.2014 and not with reference to the four post-dated cheques of which the first cheque bearing No.502 is even dated 30.06.2014 and the discharge starts by installments not from that post-dated cheque date, but from earlier to it. It is clear there from that the four post-dated cheques given are not directly for discharge of the one time settlement debt but as security in the event of failure of discharge on due dates to recover, as the payment as per the stipulation of the one time settlement to be adhered is w.e.f. 30.04.2014 and not from the first post-dated cheque dated 30.06.2014. Apart from this crucial aspect, the clause (4) of the one time settlement agreement also reproduced above further says in the event of non-payment to the schedule of payment to be adhered and from presenting cheque and dishonour of cheques by not keeping the amounts by alive the account for presenting on respective due dates of the four post dated cheques, the bank/complainant is entitled to recover the amounts with interest for the total outstanding from the legal notice dated 15.02.2013. It is thus as part of the agreement, to give go-bye to one time settlement and enforce the original debt thereof when one time settlement is contingent and the cheques to be enforced is also contingent from non-payment of the time schedule, the cheques cannot be said for discharge of a legally enforceable debt or other liability, but for as security if at all that is also made clear from clause (4) for the settlement if committed breach and cheques not honoured to recover for civil remedy to proceed for the original amount and not reserved any further criminal liability. Leave it as it is about this crucial aspect doubts on maintainability of the

cheque cases covered by quash petitions in Crl.P.Nos.4124 and 4126 of 2015 leave about the Crl.P.No.3774 of 2015.

14. The other important aspect is whether there is any legally enforceable debt or other liability for enforcing cheque numbers 502 to 505 (supra). It is important to mention the scope of Sections 138 and 142 of the Negotiable Instruments Act, as follows:

138. Dishonour of cheque for insufficiency, etc., of funds in the account. — 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, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for ¹⁹ [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque,²⁰ [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.]

142 Cognizance of offences. —Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:²⁴ [Provided that the

cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.]
COMMENTS

(i) Consequent upon the failure of the drawer to pay the money within the period of 15 days as envisaged under clause (c) of the proviso to section 138, the liability of the drawer for being prosecuted for the offence he has committed, arises, and the period of one month for filing the complaint under section 142 is to be reckoned accordingly; Sadanandan Bhadran v. Madhavan Sunil Kumar, AIR 1998 SC 3043.

(ii) A manager or any other person authorised by the company can represent it during the course of legal proceedings before the court and file a complaint; Salar Solvent Extractions Ltd. v. South India Viscose Ltd., (1994) 3 Crimes 295 (Mad).

(iii) The Magistrate while taking cognizance has to look into the question whether the ingredients of an offence have been made out or not; M/s. Pearey Lal Rajendra Kumar Pvt. Ltd. v. State of Rajasthan, (1994) 3 Crimes 308 (Raj).

(iv) The cause of action for filing complaint would arise after the completion of 15 days from the date the drawer receives the notice and fails to pay the amount within that period; V.N. Samant v. M/s. K.G.N. Traders, (1994) 3 Crimes 725 (Karn).

(v) The payee cannot lodge a complaint after the completion of one month from the date on which the cause of action arose as there is a bar under clause (b) of section 142; V.N. Samant v. M/s. K.G.N. Traders, (1994) 3 Crimes 725 (Karn).

(vi) So long as the period of notice does not expire there can be no cause of action with the payee to make the drawer liable criminally; T.K. Khungar v. Sanjay Ghai, (1994) 3 Crimes 802 (P & H).

(vii) It is well settled that it is not necessary for the Magistrate to specifically state that he is taking cognizance of the offence. If he takes steps as provided under section 200, of the Code of Criminal Procedure then it necessarily means that he has taken cognizance of the offence; R. Rajendra Reddy v. M/s. Sujaya Feeds, (1994) 3 Crimes 692 (Karn).

(viii) The complainant must allege in his complaint that the cheque was dishonoured due to want of sufficient amount in the account, even if the payment was stopped; Ballakrishna Pillai v. Abdullakutty, (1994) 2 Crimes 327 (Ker).

(ix) Once a cause of action has arisen, the limitation will begun to run and it could not be stopped by presenting the cheque again so as to have a fresh cause of action and fresh limitation; M/s. Chahal Engineering and Construction Ltd. v. M/s. Verma Plywood Co., (1994) 1 Crimes 845 (P & H).

(x) The criminal prosecution has to be launched within one month of the expiry of 15 days' period from the issuance of notice as provided by section 142(b) of the Act; M/s. Chahal Engineering and Construction Ltd. v. M/s. Verma Plywood Co., (1994) 1 Crimes 845 (P & H).

(xi) When the cheque stood issued in favour of a company, a complaint under

section 138 of the Act can be filed by its Manager, Partner, Director or any person authorised by the company; M/s. Ruby Leather Exports v. K. Venu, (1994) 1 Crimes 820 (Mad).

(xii) There is no ambiguity in clause (a) of section 142 of the Act, which prohibits or excludes complaints being initiated by Power of Attorney, agents of the payee or the holder in due course. A Power of Attorney, will be competent to initiate a private complaint by stepping into the shoes of the payee or the holder in due course; M/s. Ruby Leather Exports v. K. Venu, (1994) 1 Crimes 820 (Mad).

15. From the above, coming to the legal position from the expressions relied on by both sides on behalf of quash petitioners, they placed reliance on the expression of the Apex Court in **Lalit Kumar Sharma v. State of U.P.**, wherein the facts were that the second cheque issued in pursuance of compromise between the parties in lieu of original cheque returned dishonoured on the question whether dishonour of a second cheque creates a new liability of facts? It was observed in answering the same by the Apex Court saying when the company took loan and issued two cheques in favour of complainant and on presentation returned dishonoured and a private complaint is filed for the offence under Section 138 of the Act against the company and its person responsible for the affairs pending the private complaint there was an agreement entered into between the parties with regard to the cheque covered by private complaint and pursuant to the agreement the first complaint was withdrawn, for the second cheque as a withdraw of the first complaint issued for that liability when presented dishonoured second complaint held a bar. It is also further observed in paras 5 to 8 on facts, appellants were not signatories and not drawers of the cheques to make them liable in the absence of statutory liability. Further held appellant No.1 became a Director subsequent to the debt and thereby cannot be made liable and appellant No.2 is concerned even director, later resigned i.e., earlier to the cheques in question dishonoured. Apart from that, it was observed in para-6 onwards that an agreement was entered into between the parties in terms whereof it was agreed that, if a first cheque for Rs.5,20,000/- issued, the complaint petition would be withdrawn and there from cheque is issued on 29.07.2000 which was also on presentation returned

dishonoured with the remark 'insufficient fund'. The agreement entered between Ashish Narula and the company that the liability in question was his persona one, allegedly affirmed an affidavit and executed indemnity bond and complainant however, filed another complaint with regard to the subsequent cheque issued returned dishonoured. When impugned by petition of the summons issued and ended in dismissal before trial Court and equally in revision and when the matter came before the High Court on the issue of maintainability of the second complaint referring to Section 138 of the Act, it is observed from paras 11 to 15 that in respect of the first cheques dated 30.11.1999 and 10.12.1999, the appellants were not proceeded against and it is furthermore not in dispute that although a purported compromise was entered into by and between Ashish Narula, Manish Arora, on the one hand, and the complainant, on the other, as a result whereof the said cheque for a sum of Rs. 5,02,050/- was issued and bounced and the complaint petition had not been withdrawn and in the first complaint petition they were found guilty for the offence under Section 138 of the Act, held second complaint is a bar; though there are the ingredients of presentation of a cheque and dishonour of cheque and issuance of notice and accrual of cause of action arisen and concluded by holding of no legally enforceable debt or other liability within the meaning of explanation (2) of Section 138 of the Act in saying the second cheque issued did not create new liability and even the compromise did not fructify, same cannot be said to have been issued towards payment of debt or other liability to enforce. No doubt, in this judgment from its reading, there was another question arisen, as to if the compromise fructified and cheque subsequently issued, is it a fresh cause of action and not a bar under Section 300 Cr.P.C. Referring to Lalit Kumar Sharma, a Single Judge Bench of this Court in **Venu Bende v. the State of A.P.** observed, when sought for quashing of the dishonour of cheque case taken cognizance by the Magistrate, moved the High Court by the accused, at paras 6 and 7 that since the accused in the earlier complaint was convicted by the trial Court, the Hon'ble Supreme Court took the view that it cannot be said that there is a legally enforceable debt for the

second cheque issued out of compromise whereas in the facts on hand, it is distinguishable in saying there is a breach of agreement by accused after complainant has withdrawn his earlier complaint and because of earlier complaint has withdrawn and not an acquittal after trial, it cannot be said that there is no any legally enforceable debt or any other liability. In the case of **Venu Bende** (supra), bar of Section 300 Cr.P.C. alone came for consideration in deciding that issue and that is not be all and end all as to what is the legally enforceable debt or any other liability and of it is existing or not.

16. Here importantly, besides the terms of the one time settlement speak the payment schedule when due and not for the payment schedule due the cheques issued of respective dates but in the event of non-adhering to the payment schedule, to recover; leave about the earlier two complaint cases not even withdrawn as still pending and continuing and what the remedy reserved by para-4 of the memorandum of understanding is in the event of non-adhering to payment schedule and dishonour of cheques, not reserved any criminal liability, leave about whether a waiver operates as estoppel to enforce against the accused even such a reserve of a criminal liability to take away the statutory right not a germane here to go into with reference to Section 115 of the Evidence Act; once the one time settlement is arrived and recovery process is envisaged and one time settlement itself stipulates if payment not made as stipulated to go back and recover the original amount and for the original amounts covered by the cheques already prosecution is pending and sustainable as answered supra; it is for the one time settlement that was committed breach even for the civil remedy is elsewhere. Leave about the civil liability as per Section 131 r/w 117 of the Act to recover the amount with interest @18% p.a. so far as criminal liability concerned within the meaning of Section 138 of the Act it can be clearly said that there is no any legally enforceable debt or other liability for want of independent or fresh consideration as what is required is not only of giving of cheque from the

account maintained by the accused/drawer and its presentation within validity time and its dishonour and giving of statutory notice within the statutory time and from service or deemed service after statutory waiting from accrual of cause of action under Section 142 of the Act and filing of complaint within the time stipulated or by application for extension of time if at all extended to take cognizance with reference to Section 190 Cr.P.C. r/w 142 and 138 of the Negotiable Instruments Act; but what is further prerequisite from **Sangeetaben Mahendrabhai Patel v. State of Gujarat** there must be legally enforceable debt or other liability; when that is also the crux here and when there is no independent debt or liability and so far as the existing one concerned already the cheque dishonour cases are pending not even withdrawn thereby suffice to say the prosecution so far as criminal complaint covered by C.C.Nos.314 (renumbered as C.C.No.171 of 2015 on the file of XI Special Magistrate covered by Crl.P.No.4126 of 2015) and 315 of 2013 (renumbered as 170 of 2015 on the file of XI Special Magistrate covered by Crl.P.No.4124 of 2015), the quash petitions are to be allowed by quashing the proceedings. When there is no legally enforceable debt or other liability, the prosecution won't survive (a case of time barred debt) is the expression in **Gerard Kollian v. M/s.Wies Electronics**.

17. No doubt, the learned counsel for the complainant relying upon the learned Single Judge expression in **Venu Bende(supra)** and of the Apex Court in **Lalit Kumar Sharma(supra)** and made his effort by elaborate argument saying the expression in **Lalit Kumar Sharma(supra)** is of no application for not a case of ending in acquittal or conviction of the first case for the bar to the second case within its meaning under Section 300 Cr.P.C., leave about Section 26 of the General Clauses Act. The learned counsel placed reliance on the expression of the A.P.High Court in **City Automobiles v. J.K.Industries Limited**, where it was held for thirty cheques complaints filed when impugned as not sustainable but for single complaint or independent complaints, same is held sustainable for no legal bar referring to the ingredients required to be satisfied under Section

138 of the Act and the expression therein thus confined to that only and is for nothing beyond, as to the expression of legally enforceable debt or other liability within the explanation of Section 138 of the Act.

18. The other decision placed reliance is of **Kershi Pirozsha Bhagvagar v. State of Gujarat**, there the issue arisen for consideration is for dishonour of every cheque it will give rise to distinct offence for being triable and punishable under Section 138 of the Act by considering the scope of Section 138 of the Act. In fact, the scope of explanation (2) of Section 138 of the Act of existence or not of a legally enforceable debt or other liability did not arise for consideration therein specifically.
19. The other submission by the learned counsel is these are the disputed questions to be agitated before trial Court to decide as to whether there is a legally enforceable debt or other liability or not, for which once cheque is rooted from the account of the accused, admittedly issued when not in dispute and from presumptions under Sections 139 and 118 of the Act apply, the matter has to be left to be decided by the trial Court and not a fit case to quash the proceedings for allowing the accused to discharge the burden before the trial Court. For that placed reliance upon the Apex Court's three judges Bench expression, on burden of accused under reverse onus clause in **Rangappa v. Mohan**. Here, as discussed supra, when the facts are clear and not in complication and when the clear facts on hand no way complicates to the conclusion that there is no legally enforceable debt or other liability, within explanation of 138 of the Act, the contention cannot be accepted to leave it to the wisdom of the trial Court, when any continuation of the proceedings when not sustainable no way sub-serves the ends of justice and it is not the spirit of law to put the accused unnecessary ordeal to face trial with no purpose, apart from that tantamounts to abuse of purpose for which the Court's power under Section 482 Cr.P.C. is not meant and there is nothing to abdicate the responsibility of this Court in this matter from what is discussed and concluded supra.

20. Further more in this context, this Court is constrained to refer for more clarity of the position of law the expression of the Apex Court in **M/s.Indus Airways Pvt. Ltd v. M/s.Magnum Aviation Pvt. Ltd.**; wherein it was held referring to the expressions of several High Courts in **M/s.Swastik Coaters Pvt. Ltd. v. M/s. Deepak Brothers, Shanku Concretes Pvt. Ltd v. State of Gujarat, Balaji Sea goods Exports (India) Ltd v. Mac Industries Ltd. and supply House, represented by Managing Partner v. Ullas, Proprietor Bright Agencies and another,** that once cheque is issued for supply of goods or to perform an act once there is a breach of the same, it can be said that there is no legally enforceable debt or other liability even cheque presented returned dishonoured and all other ingredients of Section 138 of the Act even satisfied, the prosecution under Section 138 of the Act, no way sustainable. The stress here from the expression, though in relation to different facts, as what is requirement to be satisfied under Section 138 of the Act is not mere giving of cheque admitting for a particular amount from the account of the drawer with signature of the drawer and its dishonour within the statutory time when presented for insufficient funds or the like and giving of statutory notice and non-payment and from accrual of cause of action filing of complaint taking cognizance but also the pre-requisite saying of existence of legally enforceable debt or other liability. No doubt as per **Rangappa** (supra) there is a presumption under Section 139 of the Act in relation to legally enforceable debt or other liability and the burden is on the accused to rebut the presumption once cheque issued admitted from his account is not in dispute equally by invoking presumption under Sections (a) to (f) of Section 118 of the Act. As it is clear from the factual matrix supra the cheque issued is not for any legally enforceable debt or any other liability but for as security for the so called one time settlement under which already borrowed amount covered by two cheques issued and criminal prosecutions pending and those not even withdrawn by virtue of one time settlement apart from there is a stipulation for payment of amounts and not only that the cheques also obtained and the stipulation is not to the dates of the post-dated cheques to commence but even prior to

the date of post dated cheques on its face and apart from it for non-payment and dishonour of cheques even subsequently presented on the date mentioned of the post dated cheques the remedy provided is to give a go-bye to the terms and proceed for the original amount when such is the case when the very settlement is no way in subsistence from not adhering to it and any cheques issued pursuant to it to enforce while going back to the settlement that too when earlier prosecution is pending though strictly not within the scope of Section 300 Cr.P.C. which is directly within the meaning of no legally enforceable debt or other liability for not to apply the presumption from the undisputed facts for no other independent debt or other liability.

21. The other point raised no doubt by the learned counsel for the complainant in opposing quashing of proceedings is by virtue of novation of contract there is a subsequent liability within the meaning of legally enforceable debt. It is not the case that earlier prosecution is withdrawn or is now chosen to withdraw even compoundable within the meaning of Section 147 of the Act by compounding, thus the question of novation of contract for criminal liability does not arise but for if at all for the civil liability, that is also even admittedly committed breach, by non-payment to enforce the civil liability as per para-4 of the very memorandum of understanding-cum-one time settlement provides a remedy, leave about no independent consideration to the novation.

22. This Court keeps on record the appreciation for the assistance rendered by the learned counsel for the complainant, by name, Sri K.R.Raman.

23. Accordingly and in the result,

- x. The CrI.P.Nos.4124 and 4126 of 2015 are allowed and the proceedings relating to C.C.Nos.314 and 315 of 2015, respectively, on the file of III Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, are

quashed.

- ii. The CrI.P.Nos.13907 and 13921 are allowed, and the proceedings relating to C.C.No.195 of 2015 pending before the III Special Magistrate, Erramanjil, Hyderabad (old C.C.No.213 of 2013 on the file of XXIV Special Magistrate Court, Erranmanjil, Hyderabad) are quashed so far as A3 and A4.
- iii. The CrI.P.No.15795 of 2013 is partly allowed insofar as A3 and A4 by quashing the proceedings against them in C.C.No.448 of 2013 pending on the file of XX Additional Chief Metropolitan Magistrate, Hyderabad and dismissed against A1 and A2.
- iv. The CrI.P.No.14051 of 2013 is dismissed so far as A1 and A2.

24. Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:10-12-2015

pab

L.R.copy to be marked-Yes

***HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**
CRIMINAL PETITION Nos. 4124, 4126 of 2015,
13907, 13921, 14051 and 15795 of 2013

% 10-12-2015

Crl.P.No.4124 of 2015:

#Nusun Genetic Research Ltd and others

....Petitioners

Vs.

\$ The State of Telangana and another

.... Respondents

!Counsel for the Petitioners: Sri B.Krishna Mohan

Counsel for Respondent No.1: Learned Public Prosecutor (Telangana)

Counsel for Respondent No.2: Sri Amarchand & Mangal Das

<Gist :

>Head Note:

? Cases referred:

¹ (2001)1 SCC 631

² 2015(3) LS 239

³ 2013 CrI.J 3743

⁴ (2008)5 SCC 638

⁵ 2013(1) ALT(Cri) 62

⁶ 2012 (7) SCC 621

⁷ 2015(3) ALT(CrI.) 421

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

**CRIMINAL PETITION Nos. 4124, 4126 of 2015,
13907, 13921, 14051 and 15795 of 2013**

-

CrI.P.No.4124 of 2015:

#Nusun Genetic Research Ltd and others

....Petitioners

Vs.

\$ The State of Telangana and another

.... Respondents

DATE OF ORDER PRONOUNCED: 10-12-2015

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? Yes/No

2. Whether the copies of judgment may be
marked to Law Reporters/Journals? Yes/No

3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? Yes/No