

*HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

+CRIMINAL APPEAL NO.772 of 2008

% Dated 13.02.2015

Between:

Dr.Battula Parameswara Reddy ..appellant

and

\$ 1. Charity International Trust,

Chittoor town rep. by its Secretary

C.Karunakara Babu(died) and

Others Respondents

! Counsel for the petitioner : Sri Cheedella Venkatraman

^ Counsel for respondents : Sri G.Rama Rao,

Sri G.Anandam

Sri G.Vasudeva Rao

< GIST : ---

>HEAD NOTE : ---

? Cases referred: :

1. AIR 2003 SC 2035
2. [2000] 2 SCC 380
3. (2001) 8 SCC 458
4. (2006)3 SCC 30
5. [(2005) 12 SCC 1]
6. (2009) 2 SCC 513
7. AIR 2008 SC 1325
8. AIR 2010 SC 1898
9. AIR 2001 SC 3897
10. AIR 1999 SC 1008
11. AIR 2002 SC 182
12. AIR 2008 SC 2898
13. 1971 (1) An.W.R. 65
14. 2004 CrI.L.J. 58
15. 2004 (1) BC 34
16. Appeal(crl.)664 of 2002, dated 20/09/2005
17. Laws Madras 2012-8-32,dated 07.08.2012
18. 2008(5) SCC 449
19. (2014) 10 SCC 373
20. (2000) 1 SCC 1

21. (2012) 5 SCC 661

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22. 2014(10) SCC 373

THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL APPEAL No.772 OF 2008

JUDGMENT:

The appellant-complainant Dr. B.Parameswara Reddy seeks to assail the acquittal judgment against the accused persons 1 to 7(A1 to A7) dated 03.01.2008 passed by the learned Additional Junior Civil Judge-cum-Judicial Magistrate of First Class, Ponnur, in the private complaint case C.C.No.14 of 2001 for the offence punishable under Section 138 of the Negotiable Instruments Act (for brevity 'the Act').

2. The case of the complainant was that, the complainant who was one of the trustees of A.1-trust viz., Charity International Trust(for short, 'the CIT'), Chittoor town represented by its Secretary(by then C.Karunakar Babu since died) advanced money to the Trust as hand loans repayable with interest, that as the trust was not functioning in proper lines and went in financial crisis, complainant resigned from the trustship and demanded the CIT for repayment of the amount with interest and service charges for which the Board of Trustees settled by agreement dated 09.09.1996 (under Ex.P17 dated 25.09.1996) to repay the dues to the complainant and issued two post-dated cheques for Rs.20,00,000/- and the same when presented returned dishonoured and the Trustees again entered a fresh agreement and issued two other post-dated cheques on 01.02.1997 and they were once again bounced for which the complainant filed C.C.110 of 1997 and the calendar and judgment of it covered by Ex.P.2, and there was a settlement and agreement with A.3-Dr.G.A. Jayaram Naidu(Vice-Chairman of the CIT) and Ex.P3 cheque dated 01.10.2000 was pursuant to it drawn by the accused persons 3 and 4 by names Dr.G.A. Jayaram Naidu(Vice-Chairman) and C.Karunakar Babu(Secretary) since died pending appeal, with Ex.P.4 covering letter

dated 09.09.2000 and the same once again bounced vide Ex.P5 and P6 memo of presentation and dishonour intimation respectively dated 13.10.2000 and 26.10.2000 for which the complainant got Ex.P7 legal notice dt.30.10.2000 issued to the 16 trustees including A.2 to A.7 and the accused having received the same including by Ex.P10 and P12 acknowledgments, only A.6 Dr. S.Subba Rao (Treasurer of the CIT) and another Venkataswamy issued Ex.P.8 reply dated 16.11.2000 and A.2 sent letters Ex.P.9, P11, P19 and also Ex.P13 letter with Photostat copy of legal notice sent by A.6

Dr. Subba Rao to A.2, A.3 also sent letters Ex.P.16 dated 25.09.1996, P.18 dated 01.02.1997, P.20, dated 22.02.1999, P.21, dated 28.07.1999, P.22, dated 25.06.2000 and G.Kunda (Managing Director of the CIT) sent letter Ex.P.14 dated 10.09.1996, the resolutions passed by the CIT, dated 13.04.1998 are Ex.P15 besides P.23 and P.24(resolutions) and the reply given by other accused is denying liability and without payment. Therefrom, the complainant filed the private complaint case.

3. The Court after recording sworn statement of complainant, taken cognizance and the accused persons appeared before the Court pursuant to the summons and after supply of case copies under Section 207 of the Code of Criminal Procedure (for brevity, "The CrPC."), when questioned on substance of accusation under Section 251 CrPC., they pleaded not guilty.

4. On behalf of the complainant during the course of trial, complainant was examined as P.W.1 and got examined V.Leela Prasad as P.W.2 and cause marked Exs.P.1 to P.24 which include those referred supra.

5. After the evidence on the side of the complainant was complete, the accused were examined under Section 313 of CrPC for which they denied the incriminating material put to them. On behalf of the accused persons, the Chairman of the CIT-A.2(Dr.T.Prakash Rao), was examined

as D.W.1 and got marked Exs. D.1 to D.3 certified copy of the registered trust deed dated 27.12.1995 and the 6th and 9th supplementary deeds.

6. Appreciating the evidence, both oral and documentary, the trial Court held the accused as not guilty and acquitted with the observations that, as per complainant an amount of Rs.10,00,000/- paid on 09.05.1996 to Charity International, Khatmand, Nepal and one G.Kunda is the authorized signatory received the amount from him, whereas, A.1 is the CIT, Chittoor town of Andhra Pradesh and complainant did not produce any evidence to show both are one and the same much less mentioned in the complaint or chief affidavit or statutory notice about the details of the amount under Ex.P1 paid to A.1-CIT towards membership or loan and it can be said A.1-CIT did not receive any amount under Ex.P.1 from complainant, that Ex.P.1 is an unstamped document and complainant did not even mention execution of Ex.P.1 in the complaint which is an important fact supposed to be and in the chief affidavit also not stated in whose presence the amount paid to A.1-CIT, as per P.W.1 one Kunda-authorized signatory for Charity International, Katmandu, received the amount from him and failed to examine that person to prove Ex.P1 transaction and Ex.P.1 also silent regarding rate of interest and service charges, to say Ex.P1 is not proved and not admissible being insufficiently stamped document and evidence of P.W. 2 is no way helpful to prove the case for P.W.2-one of the founder members of A.1-CIT failed to give material particulars of the money advanced by P.W.1 to A.1-CIT. The Ex.P3 cheque was given by A.3 and A.4 as Chairman and Secretary of the CIT in discharge of the debt due to him and in Ex.P3, it was not mentioned as issued on behalf of A.1-CIT but the authorized signatory issued the same on behalf of the Charity International, without mention of Charity International, Khatmandu or A.1-Trust(CIT) Chittoor; that as per Exs.D.1 to D.3, it is the treasurer of the A.1-CIT i.e. A.2-D.W.1 that has to maintain account and issue cheques with his signature and along with that of Chairman and Secretary and in Ex.P.3 cheque his signature is not

there but of Chairman and Secretary of the A.1-CIT. It was also observed that proof of service of notice on A.1-CIT not filed to maintain the complaint, the complainant also failed to array the other ten members of the CIT to whom notice given as co-accused and P.W.2 and G.Kunda authorized signatories of Ex.P.1 were not arrayed regarding their roles in the CIT. Unless specific averment is made against the members of the CIT, they cannot be made liable viz., so far as A.2, A.5 to A.7 as only A.3 and A.4 signed Ex.P.3 cheque on behalf of the A.1-CIT and the statutory notice issued also is silent regarding specific amount and interest said to have been advanced to A.1-CIT and complainant failed to prove the cheque was issued in discharge of legally enforceable debt without which the presumption under Section 139 of the N.I. Act cannot be drawn to say the complainant able to prove guilt of the accused persons. Impugning the same, present appeal is filed.

7. The contentions in the grounds of appeal as well as the submissions of the learned counsel appearing for the appellant are that: the lower Court's acquittal judgment is contrary to law, weight of evidence and probabilities of the case, that the lower Court failed to see that when there is nothing to say the debt how not legally enforceable and once proved the debt and issuing of cheque for the same by A.3 and A.4 on behalf of the A1-CIT for which all the accused being liable and in the cross-examination of P.W.1 there was a suggestion that they have paid Rs.11,00,000/- out of the total amount due to the complainant which admission was ignored by the trial Court and that all the accused have actively involved in the affairs of the A.1-CIT to be made liable and once A.1-CIT issued the cheques, they cannot say Charity International, Khatmandu with which they are no way related and the Ex.P.17 settlement agreement, dated 25.09.1996 also establishes liability of the accused persons and non-giving of reply to the statutory notice is one of the considerations against their defence and the CIT resolution itself directed the A.3 and A.4 to settle the amounts from which the cheques

were issued to bind the CIT and its members and also the presumptions in regard to the cheque issued was for the legally enforceable debt to rebut by accused, that the trial Court went wrong in dismissing the case with no basis and hence to allow the appeal by setting aside the acquittal judgment of the lower Court and to convict the accused persons according to law.

8. The learned counsel appearing for the respondents-accused on the other hand, represents that the complainant filed the case falsely and there are no merits of the appeal, hence to dismiss the appeal confirming the lower Court's acquittal judgment supported by reasons for nothing to interfere.

9. Now the points that arise for consideration are:

(1). Whether there is a borrowal of amount by A.1-Trust and if so, the Ex.P3 cheque issued by A.3 and A.4 is on behalf of the A.1-Trust and the other accused are also active members of the Trust in charge of day to day affairs to make liable any of the accused for the offence under Section 138 of the NI Act and if so, the lower Court's acquittal judgment, is unsustainable to set-aside and with what findings?

(2). *To what result?*

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**^[1].

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

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

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

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

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

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

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

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). 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.

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**^[2], 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 Vs. Muniyappan & Another**^[3] 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**^[4].

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) vs. Pramod Gupta (D) by L.Rs.**^[5], 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 its later expression in **KUMAR EXPORTS PVT. LTD. vs. SHARMA CARPETS**^[6] 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 vs. Dattatraya G. Hegde**^[7].

11-D. Further, as per the expression of the Apex Court in **RANGAPPA vs. MOHAN**^[8] (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**^[9] 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**^[10] 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**^[11] 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**^[12] 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-E. 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**^[13] 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-F. 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**^[14], 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**^[15] 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-G. Coming to the validity of the case filed by Complainant against the accused 1 to 7 of whom besides A.1 as the legal entity, who among them represent the Trust a legal entity also responsible personally concerned:

11-G(i). Section 141 of the Act is an instance of specific provision that in case an offence under Section 138 is committed by the entity defined under said section, the criminal liability for dishonour of a cheque will extend to the officers of the entity. As a matter of fact, Section 141 contains conditions which have to be satisfied before the liability can be extended. Inasmuch as, the provision creates a criminal liability, the conditions have to be strictly complied with. In

other words, the persons who had nothing to do with the matter need not be roped in. An entity being a juristic person, all its deeds and functions are the result of acts of others. Therefore, the officers of the company, who are responsible for the acts done in its name are sought to be made personally liable for the acts which result in criminal action being taken against the entity. In other words, it makes every person, who, at the time of commission of offence, was in-charge of and responsible for the conduct of business of the entity, as well as the entity, liable for the offence. It is true that the proviso to sub-section enables certain persons to prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent commission of the offence. The liability under Section 141 of the N.I. Act is sought to be fastened vicariously on a person connected with the company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability.

11-G(ii). In this regard, in **S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla** ^[16] (3 Judges Bench) held in answering to the questions posed in the Reference as under:

“(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office, they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section(2) of Section 141. The Reference has been answered.”

11-G(iii). In **Abraham Memorial Educational Trust Vs. C.Suresh Babu**^[17], the single judge expression of the Madras High Court speaks particularly from paras-31 to 33 that as held by the Apex Court with reference to Section 141 of the N.I.Act in **Ramanlal Bhayee Lal Patel Vs. State of Gujarat**^[18] comes within the ambit of association of individuals, for a Trust, if two conditions required of the combination of individuals should have been on their volition and for a common purpose to hold that a Trust having two or more trustees is undoubtedly a company under the purview of Sections 138 to 142 of the N.I. Act.

11(G)(iv). The proviso to sub-sections of the Section 141 of the Act enables certain persons to prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent commission of the offence. The liability under Section 141 of the N.I.Act is sought to be fastened vicariously on a person connected with the company, the principal accused being the company itself. Further, the Apex Court, three Judge Bench in the latest expression in **Anil Gupta Vs. Star India Private Limited**^[19] held on the scope of Section 138 and 141 of the Act in paras 8 and 9 and referring to the earlier propositions of law including of the two judge Bench in **Aneetha Hada Vs. India Accrelic Limited**^[20] and three Judge bench expression in **Aneetha Hada Vs. God Father Travels Private Limited(case-2)**^[21] partly over-ruling **Anil Hada**(supra) and by affirming paras 12 and 13 that *"when the drawer of the cheque who falls within the ambit of Section 138 of the Act is a human being or a body corporate or even firm, prosecution proceedings can be initiated against such drawer. In this context the phrase "as well as" used in Sub -section (1) of Section 141 of the Act has some importance. The said phrase would embroil the persons mentioned in the first category within the tentacles of the offence on a par with the offending company. Similarly the words 'shall also" in Sub -section (2) are capable of bringing the third category persons additionally within the dragnet of the offence on an equal par. The effect of reading Section 141 is that when the company is the drawer of the cheque such company is the principal offender under Section 138 of the Act and the remaining persons are made*

offenders by virtue of the legal fiction created by the legislature as per the section. Hence the actual offence should have been committed by the company, and then alone the other two categories of persons can also become liable for the offence. If the offence was committed by a company it can be punished only if the company is prosecuted. But instead of prosecuting the company if a payee opts to prosecute only the persons falling within the second or third category the payee can succeed in the case only if he succeeds in showing that the offence was actually committed by the company. In such a prosecution the accused can show that the company has not committed the offence, though such company is not made an accused, and hence the prosecuted accused is not liable to be punished. The provisions do not contain a condition that prosecution of the company is sine qua non for prosecution of the other persons who fall within the second and the third categories mentioned above. No doubt a finding that the offence was committed by the company is sine qua non for convicting those other persons. But if a company is not prosecuted due to any legal snag or otherwise, the other prosecuted persons cannot, on that score alone, escape from the penal liability created through the legal fiction envisaged in Section 141 of the Act."

In view of the above any neglect on the part of any Director, Manager, Secretary or other officer of the Company, such Director, Manager, Secretary or other officer shall also be liable to be proceeded additionally within the dragnet of the offence on equal par. Hence, actual offence could have been committed by the Company, the other two categories of persons can also become liable.

12. From above legal position, coming to decide on the facts from oral, circumstantial and documentary evidence, how far it is proved the case of the complainant against any of the accused and from drawing of presumptions and inferences if any, how far rebutted by respective accused concerned:

12-A. Ex.P.3 cheque dated 01.10.2000 is with the signatures of A.3 and A.4(Vice Chairman and Secretary of A.1 Trust- the CIT, the registered office at Chittoor and having also established as a limb of it Kharmandu Medical College at Khatmandu. Ex.P.4 is the covering letter dated 09.09.2000 with which the cheque was issued by referring the facts covered by Ex.P.2. Ex.P.1 is the

receipt dated 09.05.1996. The receipt is undisputedly marked that was issued and passed by A.1-entity to the complainant and at the time of its marking there was no objection regarding stamp duty and penalty and Court did not even consider any requirement by passing any order while marking for a receipt the maximum stamp duty and penalty is Rs.3-00 though the stamp required is rupee one and otherwise penalty is ten times more under Section 35-e of the Indian Stamp Act. Once the document is duly marked without objection regarding to the stamp duty to impound and collect with penalty, it is not open to raise any objection after its marking in this regard as per the settled law. Thus, the trial Court's finding as if it is inadmissible even after its marking without its objection on any stamp duty and penalty required for impounding, is unsustainable. Once it is admissible as concluded supra, it substantiates the amount borrowed from the complainant by the A.1-entity. Even ignoring Ex.P.1 receipt for time being, there is nothing to ignore Ex.P.9 and P.11 letters of A.2 and Ex.P.16 letter of A.3 and Ex.P.17 settlement agreement dated 25.09.1996 apart from the A.3 letter dated 01.02.1997 and subsequently of the resolution passed by A.1-CIT under Ex.P.15 dated 13.04.1998. Irrespective of Exs.D.1 to D.3 show signature of the treasurer also with Chairman/Vice-Chairman in the absence of Chairman and Secretary for signing on the cheque and to issue on behalf of the CIT, when the resolution empowers including covered by Ex.P.15 apart from P.23 and P.24 and letters under Exs.P.20 to 22 of A.3 in the year 1999 and 2000 and of A.2 under Ex.P.19 in the year 1999 in support of issuing the cheque Ex.P.3 by A.3 and A.4 in settlement of the amounts and in the absence of explanation for the cheques routed from the account of the A.1-entity with signatures of A.3 and A.4 being the Vice Chairman and Secretary of the A.1-entity, they cannot absolve their liability though so far as other accused are concerned, A.2 being the Chairman from his position as Chairman equally liable though not others from what the Apex Court held in **S.M.S. Pharmaceuticals Ltd, Abraham Memorial Educational Trust(supra)** and also the latest three judge Bench expression in **Anil Gupte Vs. Star India Private Limited**^[22] of Madras High Court. In this background, the Ex.P7 is the office copy of the legal notice issued to all accused after dishonour of the cheque and the same was served including on the A.6 from his Ex.P.8 reply and A.2 with his letter along with said notice of A.6 to him forwarded to the complainant to say the knowledge

of the notice and dishonour of the cheque with demand to pay and its failure to pay that constitutes the offence from the cause of action accrued.

12-B. From the above background, the oral and documentary evidence on record shows that Ex.P.3 cheque when presented returned dishonored as per Ex.P.5 cheque return memo, dated 14.10.2000 and the same was intimated under Ex.P.6 memo issued by the Andhra Bank, Ponnur dated 26.10.2000 to the complainant, it is pursuant to which, the complainant cause issued Ex.P.7 statutory notice under section 138(b) of the N.I.Act, dated 31.10.2000 within 15 days of receipt of intimation of the dishonor of the cheque by demanding to pay the cheque amount, else to take legal recourse. The notice was issued to total 16 persons who are stated as the members of the CIT, at Chittoor(A.1 entity). No doubt, the A.1 entity not separately shown in the notice but of the persons representing the entity mentioned in the notice and there is a reference of C.C.No.110 of 1997 for dishonour of cheque mentioned by the complainant on the file of the learned Judicial Magistrate of First Class, Ponnur which is exhibited as Ex.P.2. Ex.P.2 is the said private complaint case mentioned by the complainant herein against the Dr.G.A.Jaya Ram Naidu (A.3) and C.Karunakar Babu who are A.3 and A.4 of the C.C.No.14 of 2001 before the trial Court and R.3 and R.4 to the present appeal. The said Ex.P.2 in C.C.No.110 of 1997 was for dishonor of the three cheques for Rs.20 lakhs of which one is for Rs.10 lakh bearing No.918151 and the other two each for 5 lakhs bearing Nos. 918152 and 918153, first one dated 01.10.1996 and 2nd and 3rd dated 01.11.1996 respectively and 31.12.1996. These are the post-dated cheques of respective debts given by the A.3 and A.4 on behalf of the A.1-CIT and when the same were presented, returned dishonored, the criminal case was filed and N.B.Ws. pending for execution. There was a persuasion from the CIT and its Chairman, Vice Chairman and others to settle outside the Court and in token of which the present Ex.P.3 cheque for Rs.20,60,000/- issued by the A.3 and A.4 herein and another cheque of 3 lakhs by A.3 herein. It is important to say A.4 died pending the appeal. Ex.A.4 also establishes the same. For the Ex.P.7 statutory notice received by all the accused persons including A.3 and A.4 supra, they did not issue any reply but for others under Ex.P.8 dated 16.11.2007 stating that they received the legal notice on 04.11.2000, they are not aware of the Ex.P.2

C.C.No.110 of 1997 proceedings maintained against the A.3 and A.4 for the cheques issued on behalf of the A.1-CIT, that it is a public utility trust running on non-profitable basis and the compromise of the C.C.No.110 of 1997 and giving of Ex.P.3 cheque by A.3 and A.4 is not known to them and appears collusive to support the false claim besides said vice Chairman and Secretary are not authorized signatories of the CIT, that as per by-laws of the Trust only chairman(A.3), Secretary(A.4) as well as treasurer should sign the cheque of the CIT with prior sanction of governing body to bind the CIT. It is further averred in the reply notice that the complainant addressed a letter to A.3 and A.4 dated 22.10.2000 in respect of the Ex.P.3 cheque as if they are personally liable, the complainant also being one of the trustees of the CIT and acted as Director of administration to the Khatmandu Medical College which is under the sponsorship of the A.1 CIT at Chittoor, after the complainant was removed from that post bore grudge against the trustees and denied the acts of mischief in connivance with the A.3 and A.4 and they are not liable under the cheque for any payment. From this reply, it is important to note that all the accused persons herein admitted that the CIT is having its Head Office at Chittoor and the Khatmandu Medical College is a limb of it at Khatmandu, in Nepal, thus in contrary the contention in the cross-examination of P.W.1 by any of the accused as if Khatmandu Medical College is a separate entity and nothing to do with the CIT of Chittoor is untenable. No doubt for 10 lakhs paid by the complainant by receipt dated 09.05.1996 was passed by Dr.Kunda Gowthameshwar Sharma in the letterhead of CI, Khatmandu, Nepal. Once its branch was limb of CIT, Chittoor, it makes no difference of which letterhead either of the Trusts with Chittoor Trust or the Medical college of Khatmandu and addressed letterhead receipt passed, as it went to the benefit of the CIT, Chittoor as Medical College is part of it. Thus having admitted the Ex.P.1 receipt even at the costs in the cross-examination besides not disputed including elicited from P.W.1 cross-examination of he is a Member of the CIT, Chittoor and subscribed 10 lakhs for the membership, they cannot dispute the same.

12-C. As referred supra, it is not for Ex.P.1 10 lakhs amount alone, the Ex.P.3 cheque in the case on hand issued, it is a complainant herein was appointed as Director (Administration) of the Khatmandu Medical College which

is part of the CIT, on remuneration and it is also for remuneration and from his resignation as a member for refund of the amount as part of the arrangement with interest. Three cheques covered by C.C.No.110 of 1997 issued in favour of the complainant by A.3(Dr.G.A.Jaya Ram Naidu) and A.4(C.Karunakar Banu) as the Vice chairman and Secretary of CIT, Chittoor, and it is at their instance that case by settlement outside the Court by cause dismissed for default, the present cheque covered by Ex.P.3 with covering letter Ex.P.2 issued by the said A.3 and A.4 herein in favour of the complainant that is the consideration. Ex.P.3 is dated 01.10.2000 and the three cheques covered by C.C.No.110 of 1997 under Ex.P.2 were dated 01.10.1996 and 31.12.96 and it is during pendency of the criminal case pursuant to Ex.P.2 covering letter, the criminal case since settled because dismissed for default on 14.07.2000. It is to say what the accused contending alternatively of the Ex.P.2 cheque amount claimed is bore by time from date of Ex.P.1 receipt for 10 lakhs if that is part of consideration is also untenable as for that amount and for other amounts three cheques issued for which two cases filed and one at Ponnur and the other at Ongole and it is Ponnur case since settled outside the Court and cause dismissed for default by giving with Ex.P.2 letter of Ex.P.3 cheque claimed is within time with reference to Ex.P.2. Undisputedly , A.3 and A.4 are the Vice Chairman and Secretary of the CIT, Chittoor and what is referred surpa medical college at Khatmandu is a limb of it, though a separate entity, not an individual entity but for part of it. In this background coming to other material on record, the Ex.P.14 is the letter addressed by doctor G. Kunda, Managing Director of Khatmandu Medical College, dated 10.09.1996 acknowledged the letter of the complainant on even date saying 10 months salary due to the complainant as (Director(Administration) of the Medical College) is to be collected from the Head Office, Chittoor (A.1 entity-the CIT) and the journey ticket from Khatmandu to Madras enclosed with the letter and vehicle cannot be sent to Vijayawada and bring back for personal purpose and if taken by him it will be sent to Vijayawada. It is to say the Ex.P.3 cheque is not only for Ex.P.1 amount after resignation as a member of A.1-entity-the CIT, but also for the salary of the services rendered by the complainant in Khatmandu Medical College which is part of A.1 entity-the CIT as Director(Administration). It is because Ex.P.15 resolution, dated 13.04.1998 speaks he was appointed by unanimous resolution

as Director of Administration, T.Karunakar Babu(A.4) as Director of Finance, V.Leela Prasad(P.W.2) as Project Director and T.Prakash Rao(A.2) as Director of Admissions and said resolution was signed by A.2/D.W.1 Dr. T.Prakash Rao. Admittedly, Ex.P.16 is the letter of CIT, Chittoor(A.1-entity) showing the hospital and Medical College Project in Nepal a part of it addressed by A.3 stating that as per the agreement dated 09.09.1996, three cheques were issued which are covered by C.C.No.110 of 1997 of Ponnur Court. As can be seen from Ex.P.2 and the other as brought on record from the evidence subject matter of another criminal case in Ongole Magistrate Court, It is because of presentation and dishonor of cheque, this Ex.P.16 letter is addressed requesting not to proceed with the two cheques and is going to pay the amount with interest for late payments till honouring of the cheques. Ex.P.17 is the settlement agreement dated 29.09.1996 on said evidence of A.3 Dr.G.A.Jaya Ram Naidu of A.1 entity-the CIT on the letter head of A.1 entity-the CIT saying Medical College as a limb of it by acknowledging the facts and referring to agreement dated 09.09.1996 that also referred in Ex.P.16 supra about the three post-dated cheques and that he was authorized by the A.1 entity-the CIT and its trustees to settle the accounts of the complainant and because of insufficient funds in the trust Account of SBI the trust asked him to convey to the complainant not to present the cheques on the dates mentioned(post-dated) to wait for month more. These are also those part of acknowledgment for all purposes to say Ex.P.3 cheque is not at all time barred equally the cheques covered by Ex.P.2 in C.C.No.110 of 199 for which Ex.P.3 cheque was issued as per Ex.P.2 also. It is more particularly from Ex.P.14/P.4 letter dated 10.09.1996 or 09.10.2000, as the case may be, executed by the A.3 Vice Chairman of CIT addressed to the complainant referring to Ex.P.2 pending C.C.No.110 of 1997 in Ponnur Court and Court Advocate Commissioner was appointed to execute arrest warrant against him and A.4 C.Karunakar Babu against whom the case pending as an accused and with an appeal to compromise the matter out of the Court and requested to reduce the rate of interest from 24% as compromised to 12% on the proceeds of the cheques earlier issued (covered by Ex.P.2 and another cheque bounce case) and that fresh post-dated cheque dated 01.10.2000 drawn on SBI, Chittoor bearing No.786388 for Rs.20,60,000/- is issued(which is nothing but Ex.P.3 cheque). For any reason, the cheque is not being honoured

by the CIT which he requested to pay with interest, he is personally indemnifying for the loss to make good hence to withdraw the criminal case. It is pursuant to which the criminal case(C.C.No.110 of 1997) was dismissed for default. As can be seen from the endorsement of Ex.P.2 dismissed for default judgment on 14.07.2000 right from complaint, Ex.P.18 in this context also relevant to refer that it was a letter from A.3 Jaya Ram Naidu of CIT, Chittoor-Vice Chairman to the complainant on 01.02.1997 stating as per the settlement of agreement between A.3 Jaya Ram Naidu and A.4 C.Karunakar Babu, and Dr. Kunda and complainant, the three post-dated cheques issued (covered by Ex.P.2 supra and another criminal case) for the amount due payable and not to present and for want of funds and they are going to keep sufficient funds to present later. Further, Ex.P.19 letter, dated 02.06.1999 of T.Prakash Rao(A.2)-Chairman of the CIT, A.2/D.W.1 herein on the letter head of the CIT showing himself as Chairman and A.3 Dr.G.A.Jaya Ram Naidu as Vice Chairman, A.4 C.Karunakar Babu as Secretary, A.5 Dr.S.Subba Rao as Treasurer, A.5 Hari Gopal as Joint Secretary and A.7 Dr.K.Ramaiah as Executive Director, that after consulting with other members of the Sub Committee authorized to finalizing the change over of management of Khatmandu Medical College, it is authorizing the complainant Dr.B.Parameshwara Reddy to negotiate with any party for investing money in the Khatmandu Medical College that also substantiates the service of complainant for Khatmandu Medical College. Ex.P.21 is another letter from A.3 Dr.G.A. Jaya Ram Naidu to the complainant dated 05.07.1999 regarding the cheques given on behalf of the CIT to the complainant for Rs.20 lakhs due to him and of which he collected some of amounts from Dr.Venkat Swamy and also received some more amount towards salary due to him and for the Maruthi car hire purchase installment to the Nagarjuna Finance, Vijayawada to give accounts by calculation what is due arrived they can maintain sufficient funds in the account to present the cheque. This is also confirms the A.1 entity-the CIT dues to the complainant from time to time by acknowledging also. Thus, the question of the amount covered by Ex.P.3 cheque time barred even otherwise does not arise from the acknowledgment to detail from time to time in writing referring to it all the dues. Ex.P.22 is the letter of said A.3 on the letter head dated 25.06.2000 of the CIT, Chittoor saying referring to C.C.No.110 of 1997 covered by Ex.P.2 supra by

dishonor of two cheques and C.C.No.119 of 97 on the file of learned Magistrate, Ongole for dishonor of one of the cheques filed and to settle the case on the file of the learned Magistrate, Ponnur as paid whole amount of C.C.No. 119 of 19 with a request to submit letter in the Court for settlement. Ex.P.23 is the resolution admitted by the D.W.1 when confronted which is dated Nil showing as per the governing body made a party international at Ashoka hotel, Hyderabad on 31.10.1999 of the members of the CIT were in favour of relinquishing their rights to Sree Ramachandra Educational and Health Trust(for short, 'SREHT'), Chennai and the loan mobilized by the CIT for development of Khatmandu Medical College is according to audit report, the CIT requested to pay SREHT, Chennai to relinquish their rights and mortgaged with Sri SREHT and the CIT will be represented by the complainant herein and the accused persons herein are the Members of the Trust signed from that is what A.2-D.W.1 admitted. Ex.P.24 dated Nil is the resolution of A.1 entity-the CIT and the signatures of all the accused and other Members of the CIT wherein it is resolved of 5% of total amount to be given to CIT by SREHT towards service charges through mediators by names P.C.Reddy and Dr.B.P.Reddy, See Breaze Resort, Chennai. Thus, these documents in one voice establishes the Ex.P.3 cheque issued by the A.3 and A.4 representing the entity, is for the legal entity if not at least the legally enforceable or other liability to recover. Ex.P.9 is letter of A.2-D.W.1 to the complainant on letterhead of CIT Khatmand Medical College mentioned as operated by CIT which is dated 10.11.98 stating CIT has given him cheques for 20 lakhs for settlement as per the agreement that were bounced twice for want of funds and NBW pending against A.3 and A.4 who are the authorized bank account operators and request to settle and save image of CIT and call for emergency General Body Meeting to decide the same besides balance sheet tallying and about took over of Khatmand Medical College, equally the Ex.P.11 another letter, dated 04.01.1999 to A.2/D.W.1 by complainant referring the Ex.P.9 reiterating the same Ex.P.14 referred supra from letter of A.3 of the CIT (A.1-entity) authorized for settlement they are going to give post-dated cheques covered by Ex.P.3 for settlement of the pending criminal case in C.C.No.110 of 1997 covered by Ex.P.2. Further, Ex.P.13 one of the other important letters dated 06.09.2000, addressed by A.2-D.W.1 T.

Prakash Rao on the letterhead of the CIT by mentioned CIT, Chennai and also Khatmandu Medical College by addressed to all the Trustees of the CIT that he received legal notice from advocate of Dr.S.Subba Rao (A.6 herein) alleging that he (A.2-D.W.1) misappropriated the funds of the CIT and thereby he(A.6) cannot continue as a Chairman of the CIT and submit his resignation with effect from that day i.e. 06.09.2000 by requesting all the Trustees to make further arrangements for running the CIT from then onwards. It is one of the copies with copy of notice addressed to the complainant by A.2-D.W.1 T.Prakash Rao also admitted the same. Ex.P.3 cheque was dated 01.10.2000, no doubt, subsequent to his tendering of resignation of 06.09.2000. In fact, the subsequent correspondence referring supra also show the CIT A.1 entity- the CIT Members among the other accused authorized the A.3 G.A.Jaya Ram Naidu-Vice Chairman as the Chairman since Chairman resigned to say he is competent to operate the account and issue cheques. In this regard, coming to the cross-examination of P.W.1 by the accused persons, P.W.1 denied the suggestion that Ex.P.1 receipt is not true and valid. It is true and genuine receipt as referred supra and the suggestion by the accused persons is baseless in disputing the same ignoring umpteen correspondence to substantiate it also discussed supra. The other suggestion is maintainability of the complaint for not giving separate legal notice to the A.1 entity-the CIT. In fact, for all the Directors/Members of the entity with notice about dishonor of the cheques issued is the suggestion baseless as complainant is maintained including against the A.1-entity-the CIT and this suggestion also goes to show the A.1 entity-the CIT responsible for the cheque issued dishonored and thus needless to say concerned as day-to-day affairs personally even deposed that A.3 and A.4 used to operate the account of the CIT. He also deposed that earlier filed a case in C.C.No.110 of 1997(Ex.P.2) against the A.3 and A.4 of the CIT without array of A.1 entity therein. He deposed that Ex.P.3 cheque herein is issued by the A.3 and A.4 herein. He deposed that after 09.09.1996 he received approximately 11 lakhs from A.1 entity-the CIT through them. He deposed that he resigned and the other Members of the Trust continuing. He deposed that he has no documentary evidence to show the CIT agreed to pay interest on the amounts due advanced by them. In fact, the letter referred supra including on behalf of the CIT was by A.3 to pay interest is there thereby said suggestion is

not of any significance as admission of the A.1 entity-the CIT through the Vice Chairman no other than the acting Chairman, is more than binding on the CIT. When that is the case, even there is no specific mention in the notice for dishonour of cheque or in the complaint not of much significance. He deposed that the Khatmand International Trust, Nepal has taken over the Medical College from A.1 Trust-the CIT in the year 2002 and 1/9th share of the profit stands in the name of A.1 Trust-the CIT even after 2002 in the Medical College. He denied the suggestion of A.3 to A.7 are not personally liable for the offence, he also denied the suggestion of A.1 Trust-the CIT has no authority to borrow the money from members. In fact, the evidence of D.W.1 and Exs.D.1 to D.5 shows there is authorization and funds can be borrowed from public to repay with interest. He also denied the suggestion that he extracted money of 11 lakhs from A.3 without legal rights and Ex.P.3 cheque is barred by time and the same is answered already by detailed discussion on the merits of not barred by time and the amounts due thereunder and he denied the suggestion that the complainant accused is failed to harass the accused persons or A.3 and A.4 lost their propriety after established A.1 Trust-the CIT. He deposed that the minutes books of the A.1 entity-the CIT and the account books are with A.3 and Head Office of A.1 entity is located in the house of Dr.G.A.Jaya Ram Naidu, and they are of 14 Members including A.2 to A.7 of A.1 Trust-the CIT by the date of Ex.P.3 cheque.

12-D. In fact, the P.W.2 Leela Prasad, one of the Directors of A.1 entity, also deposed in corroboration to the evidence of P.W.1 with reference to the Ex.A.1 to A.24 including with the cross-examination of him by accused persons in his saying A.1 Trust-the CIT was found due to pay Rs.20,00,000/- to the complainant covered by the cheque and as per the A.1 Trust, the A.1-Trust can borrow money from others and complainant who joined as a member of the Trust-the CIT after sometime resigned and one year after joining of complainant, he(P.W.2) joined as a Member of the A.1 Trust-the CIT and for the admission he paid Rs.4,50,000/- to the Trust and whereas, the complainant paid 10 lakhs or above and A.3 and A.4 were also joined in the A.1 Trust-the CIT three months after P.W.2 joined along with G.Kunda and S.Subba Rao. He deposed that he received the statutory notice sent by the P.W.1 for the cheque

and did not give any reply as the claim is correct and denied the suggestion of deposing falsehood. Even from this, the P.W.2 status as a Member of the Trust is not disputed by the accused persons so also truth of the facts but for a vague suggestion as if he is deposing falsehood, it is also substantiating the A.1 entity-the CIT represented by the A.3 and A.4 that issued for amount due to the complainant Ex.P.3 cheque and entity is liable equally the persons who signed the cheque A.3 and A.4.

12-E. Now coming to A.2/D.W.1 as stated supra, he resigned before the date of Ex.P.3 cheque issued by the A.3 and A.4 on behalf of the A.1 entity-the CIT in favour of the complainant and thereby A.2 cannot be made liable for this transaction that there is a civil liability as Ex.P.3 cheque is acknowledgment of the earlier liability for the amounts due while A.2 was also one of the Members. Coming to A.2 evidence as D.W.1, in his cross-examination by the complainant, he deposed that he did not file any certificate from A.1 Trust-the CIT to show he was relieved from the A.1 Trust and he did not hand over the charge to any one of the A.1 Trust. In fact his letter is very clear of he resigned forthwith and to appoint some others. He deposed that Exs.P.23 and 24 resolutions of A.1-Trust signed by all the trustees including the accused persons themselves as A.2 to A.7 herein also, besides P.W.1-the complainant as Members of the A.1 Trust to negotiate SREHT to take over the Trust and to settle financial crisis of the Trust and that SREHT refused to take over Khatmand Medical College and A.1 Trust are tied respectively with SREHT and Khatmand Charity International Trust, Nepal. He deposed that he does not know Exs.D.1 to D.3-Trust deeds and refused towards deeds authorized to borrow amount from the public by the A.1-Trust to pool up funds on interest basis. He deposed that he cannot say how A.1-Trust cheque book came to possession of A.3 and A.4 to sign and issue the Ex.P.3 cheque if they are not authorized and he did not even enquire with the SBI, Chennai of the competency of the bank to operate the bank account. He deposed that he does not know whether the complainant is entitled for the Ex.P.3 cheque amount against the A.1 Trust and its Members from his adding that he resigned from the A.1 Trust. He admitted about the discussion in the meetings of the A.1 entity and its Members regarding C.C.No.110 of 1997 filed

by the complainant against A.3 and A.4(Ex.P.2) and the complainant was also demanding for the amounts in the meetings. From this evidence also, it is the entity that is liable and from his saying he resigned in September,2000 under Ex.P.13 and Ex.P.3 cheque issued on 01.10.2000 by Vice Chairman-A.3 and also Secretary-A.4 on behalf of the A.1 entity in acknowledgments of the liability, it is the A.1 entity made liable equally A.3 and A.4 to him since the A.4 died A.3 as acting Chairman and earlier Vice Chairman from A.2 resigned as Chairman responsible to the day to day affairs with operation of the bank account and issue of cheques with competency. To say that treasurer is competent with the consent of Chairman and Secretary to issue cheque concerned, there is nothing to show any such modification under Exs.D.4 or D.5 is brought to the notice of complainant or complainant is a signatory, that too, when Ex.D.1 original Trust deed speaks the Chairman or Vice Chairman or Secretary are authorized to issue cheque. Further so far as the responsibility of A.2 is concerned as discussed supra, since resigned before issuing of the cheque though there is a civil liability so far as the cheque dishonor and giving of cheque for that liability concerned, he cannot be made liable for not in-charge of the affairs at the time of accrual of cause of action from dishonor of cheque equally from A.5, A.6 and A.7 though one among them was treasurer even taken from settled defence of treasurer to operate the bank account by them can be made responsible as it is the cheque authorized to issue by the A.3 and A.4. It is their duty to honour and nothing more to show either from the complaint with the specific averments or from the evidence on record but for having knowledge, A.5 to A.7 are responsible for day to day affairs for honouring the cheque. Thus they cannot be made liable but for A.1 entity and A.3 among A.3 to A.4, since A.4 died. Accordingly, Point No.1 is answered.

Point No.2:

13. In the result, the Criminal Appeal is allowed by setting aside the acquittal judgment in C.C.No.14 of 2001 on the file of the learned Additional Junior Civil Judge-cum-Judicial Magistrate of First Class, Ponnur, is set aside and A.1 and A.3 are found guilty as A.4 since died among them A.1-entity-the CIT is not liable for imprisonment but for Vice Chairman-A.3 on behalf of the A.1 entity-the CIT.

14. For appearance and hearing of the A.3 on sentence, post on 06.02.2015.

Dr.JUSTICE B.SIVA SANKARA RAO,J

Date: 23.01.2015.

Vvr

06.02.2015:

15. At request, the appeal is posted to 13.02.2015 for appearance.

13.02.2015 :

16. No representation for respondent. The third accused—Vice Chairman of A.1 entity failed to attend for hearing equally by any ordinary person authorized to represent even entity for hearing on sentence, even taken as heard for the absence with no representation, despite opportunity sought and availed by A.3 for himself as Vice Chairman representing A.1-entity and it is the submission by the learned counsel for the complainant /appellant that it is not the endeavour of the appellant to see that A.3 be sent to jail but for recovery of the amount from the A.1-entity as well as A.3 who among A.3 and A.4 issued the cheque with joint signatures on behalf of A.1- entity also. Thus, for A.4 died, A.3 is sentenced to undergo substantial sentence of imprisonment till rising of the day in Sessions Court, since absent for the trial Court, to issue warrant and secure his presence to undergo in the open Court before it (subject to entitlement of right of set off under Section 428 Cr.P.C. if undergone) and also to pay a fine of Rs.21,00,000/-(Rupees twenty one lakhs only) of which Rs.20,000/- (Rupees twenty thousand only) goes to the State towards compensation and Rs.20,80,000/-(Rupees twenty lakhs eighty thousand only) goes to the complainant as compensation payable by A.1-entity as well as A.3. Failing which, there is a default sentence of three months simple imprisonment against A.3 for himself and on behalf of A.1-entity, besides the trial Court shall levy and recover within one month from the date of this order. It is thereby directed the learned Magistrate to secure the presence of accused on warrant to undergo the sentence in

that open Court and also to cause recover the fine amount under Section 431 read with Section 421 of Cr.P.C. by issuing warrant levying the fine with default sentence of three months Simple Imprisonment as per Sections 65 to 68 read with 53(6) I.P.C. Consequently, miscellaneous petitions, if any, pending in this appeal, shall stand closed.

Dr. JUSTICE B. SIVA SANKARA RAO

Dt.13.02.2015.

Note: L.R.copy to be marked.

B/o. VVR/PNV

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- [1] AIR 2003 SC 2035
 - [2] [2000] 2 SCC 380
 - [3] (2001) 8 SCC 458
 - [4] (2006)3 SCC 30
 - [5] [(2005) 12 SCC 1]
 - [6] (2009) 2 SCC 513
 - [7] AIR 2008 SC 1325
 - [8] AIR 2010 SC 1898
 - [9] AIR 2001 SC 3897
 - [10] AIR 1999 SC 1008
 - [11] AIR 2002 SC 182
 - [12] AIR 2008 SC 2898
 - [13] 1971 (1) An.W.R. 65
 - [14] 2004 Cr.L.J. 58
 - [15] 2004 (1) BC 34
 - [16] Appeal(crl.)664 of 2002, dated 20/09/2005
 - [17] Laws Madras 2012-8-32,dated 07.08.2012
 - [18] 2008(5) SCC 449
 - [19] (2014) 10 SCC 373
 - [20] (2000) 1 SCC 1
 - [21] (2012) 5 SCC 661
 - [22] 2014(10) SCC 373