THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL APPEAL No.856 of 2008

JUDGMENT:

Second appeal filed by the complainant impugning the acquittal judgment of the first appellate Court (II Additional Metropolitan Sessions Judge, Hyderabad) dated 026.03.2008 in Crl.A.No.314 of 2007 on the appeal filed by the accused, by reversing the trial Court's (IV Additional Chief Metropolitan Magistrate, Hyderabad) conviction judgment, dated 29.08.2007 in C.C.No.1054 of 2003 against the accused, for the offence punishable under Section 138 of the Negotiable Instruments Act (for brevity 'the N.I.Act').

2. The facts of the case before the trial Court are that the accused being a tenant of the complainant borrowed a sum of Rs.1,00,000/- from the complainant with a promise to repay the same within a short period and issued post-dated cheques bearing Nos.764731, dated 26.05.2003 for Rs.50,000/-, 472828 dated 06.06.2003 for Rs.15,000/-, 472829 dated 16.06.2003 for Rs.15,000/- and 472830 for Rs.20,000/- (Exs.P.1 to P.4 respectively) drawn on A.P.Mahesh Cooperative Bank Limited, Himayathnagar branch and Kachiguda branch, thereafter in the month of June, 2003, for the accused requested him not to present the cheques on respective dates and assured the complainant that he would make arrangements in the month of July,2003 for encashment of cheques, in the last week of July and first week of August, 2003, the complainant presented cheques for collection, but the same were returned as unpaid due to 'Account closed' by the accused by cheque return memos (Exs.P.5,7 to 9), leave about the Ex.P.6 and P.10 letter of advice, thereupon, he got issued a statutory legal notice dated 18.08.2003 (Ex.P.11), postal receipt (Ex.P.12) and certificate of posting (Ex.P.13) to accused informing the dishonour of cheques, the accused though received notice, failed to repay the amount nor issued any reply, Ex.P.14

is postal acknowledgment and Ex.P.16 is bank passbook of complainant's wife , hence, the complainant is constrained to file a complaint against the accused and the trial Court after going through the evidence on record, held that the complainant could prove his case and found the accused guilty and convicted and sentenced to undergo imprisonment for a period of six months and to pay a fine of Rs.5,000/- with default sentence of Simple Imprisonment for a period of one month, by setting off the remand period, if any.

3. Thus, impugning the said trial Court's conviction judgment, the accused when preferred the appeal covered by Crl.A.No.314 of 2007 with contentions propounded in his defence as grounds of appeal, ultimately the II Additional Metropolitan Sessions Judge, Hyderabad, in the first appeal judgment dated 26.03.2008 set aside the trial Court's conviction judgment and acquitted the accused holding that the trial Court totally missed appreciation of the evidence and appears to have been proceeded on the assumptions that the accused has to prove his defence beyond reasonable doubt instead of establishing preponderance of probabilities and the finding of guilt and consequential convicting and sentence passed by the trial Court does not stand to the scrutiny of the facts of the case and the law governing the subject.

4. It is impugning the first appellate Court's judgment, the complainant preferred the second appeal before this Court with contentions in the grounds of appeal that the first appellate Court's reversal judgment acquitting the accused by setting aside the conviction judgment of the trial Court is contrary to law, weight of evidence and probabilities of the case, that the learned first appellate Court erred in reversing the judgment of conviction recorded by the trial Court without giving any reasons to the findings arrived at by the trial Court, that the appellate Court failed to appreciate the plea taken by the accused that he handed over the cheques Exs.P.1 to P.4 in question towards the payment

of rent and also for the Security for the payment of rent is falsified in view of his own admission in Cross-examination that "Its true to say that I have no documents to show I have paid the rents to the complainant by way of cheques.", that the appellate Court erred in making the observation that there was no need or necessity either for complainant or for the accused to issue(four) post-dated cheques marked as Exs.P.1 to P.4 of total sum of Rs.1,00,000/- instead of issuing single cheque for entire amount but the learned appellate Court failed to appreciate that Ex.P.1 to P.4 are of different dates in span of one month and ought to have held that the accused gave four different cheques to the complainant at his convenience, that the appellate Court seriously erred in observing that if really the complainant is disputing the closure of account, ought to have cross-examined D.W.1 with reference the documents marked as Exs.D.8 and D.9, that the appellate Court failed to appreciate that it is the case of the complainant as stated in complaint and again in the evidence affidavit filed in trial Court that the accused has intentionally and knowingly issued the cheques of 'account closed', as such it makes no difference even in case, the accused has also surrendered the unused leaves of cheque book, since the accused is not disputing the cheques Exs.P.1 to P.4 which are cheques belongs to his account which are already closed. It is also not disputed by the accused that the Ex.P.1 to P.4 are not issued by him to the complainant, that the learned Appellate Court erred in observing that it is the case of the accused that he was the tenant of the complainant from 1995 to 2003 and during the year 1996-1999 he handed over the cheque leaves marked as Exs.P.1 to P.4 with his signature by writing only the amount towards security is highly probable, natural and can be acted upon, since the accused/D.W.1 in his cross-examination has admitted that he has no document to show that he paid rents to the complainant by way of cheques, and also that there is no amounts mentioned in rent receipt marked as Ex.D.1 and the amounts mentioned in cheques Exs.P.1 to P.4, thus, the findings of the appellate Court are inconsistent with the evidence of accused/D.W.1 and Ex.D.1 house rent receipt, that the appellate Court erred in observing that the complainant ought to have examined his wife to prove the withdrawal and payment of Rs.1,00,000/- to the accused through the complainant, since the accused did not dispute the evidence of P.W.1 and Ex.P.15 statement of account of complainant's wife account, on this aspect as such the complainant need not examine his wife as additional witness to substantiate his evidence, that the appellate Court failed to appreciate that the amount lent by the complainant to the accused is a handloan and nothing to do with his business dealings, that the learned appellate Court came to the conclusion on conjectures and surmises and did not give any reasons upon the findings arrived at by the trial Court and thereby erred in disturbing the findings of the trial Court without giving any reason and the evidence on record, that the appellate Court failed to appreciate the evidence of P.W.1/complainant who is aged about 69 years (Senior Citizen of India) whose evidence is highly probable and natural, hence, to allow the appeal by setting aside the acquittal judgment of the first appellate Court and confirming the conviction judgment of the trial Court.

5 . The learned counsel for the appellant-complainant reiterated said contentions during course of hearing.

6. Whereas, it is the contention of the learned counsel for the accused-1st respondent that the first appellate Court having the experience of men and matters by re-appreciation of the entire evidence within its power including both the oral and documentary evidence on record came to right conclusion in setting aside the erroneous finding of the trial Court even no offence is made out against the accused under Section 138 of the N.I. Act to convict and thereby for this Court while sitting in appeal there is nothing to interfere. Hence, to dismiss the appeal.

7. Perused the material on record. For sake of convenience, the

parties hereinafter are referred to as they are arrayed in the trial Court.

8. Now the points that arise for consideration are:

(1). Whether there is any legally enforceable debt for which the accused issued the cheques in favour of the complainant covered by Exs.P.1 to P.4 if so, first appellate Court's acquittal judgment is liable to be set aside confirming the trial Court's conviction judgment, with what observations?

(2). To what result?

<u>Point No</u>.1:

9-(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.<u>01-04-1989</u> and the N.I.Act was further amended by Act,2002 (55 of 2002) which came into force w.e.f.<u>06-02-2003</u> incorporating new sections 143 to 147 in this Chapter XVII and further some of the existing provisions not only of the Chapter XVII but also of other Chapters amended to overcome the defects and drawbacks in dealing with the matters relating to dishonour of cheques.

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

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

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

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

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

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

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

(v) As per Section 146(new section) the production of **the Bank's**

slip or Memo with official mark denoting that the cheque has been dishonoured **is prima facie evidence** for the Court to presume the fact of dishonour of such cheque unless such fact is disproved by the accused.

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

9-(E). 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.

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

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

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

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

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

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

11. From 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 and from drawing of presumptions and inferences if any, how far rebutted by accused concerned:

11-A. Undisputedly, the Exs.P.1 to P.4-four cheques one for Rs.50,000/- bearing No.764731 dated 26.05.2003, Exs.P.2 to P.4 bearing Nos.472828, 472829 and 472830 respectively on 06.06.2003, 16.06.2003 and 26.06.2003 for the respective amounts of Rs.15,000/-,Rs.15,000/- and 20,000/- routed from the account of the accused that were issued in favour of the complainant by the accused though it is the defence of the accused that he used to issue cheques to the complainant for payment of rents as he was on business tours for most of time and issued several blank signed cheques during the years 1996 and 1997 and Exs.P.1 to P.4 are such cheques in misuse. Ex.D.1 is the house rent receipt for Rs.1100/- as rent for the month of December, 1995. Even that is taken into consideration under Ex.D.1 of monthly rent from the premises of the complainant in the occupation of the accused as a tenant was Rs.1100/- per month only. If it is to issue any cheque while on tours to repay the rents of the premises, it must be for the specified months at Rs.1100/- per month which could be odd amounts and by no stretch of imagination that is correlating to Exs. P.1 to P.4 cheques of Rs.50,000/-,Rs.15,000,-, Rs.15,000/- and Rs.20,000/- total for Rs.1,00,000/-. The case of the complainant in the complaint as well as his evidence as P.W.1 consistently was that the accused was staying in his premises as a tenant and in the 2nd week of May, 2003, the accused requested the complainant to provide financial assistance of Rs.1,00,000/- because of the acquaintance as a tenant which he lent and the accused issued four post-dated cheques Exs.P.1 to P.4 for the respective debts supra of the months May and June for different respective amounts to make the payments by the date of respective post-dated cheques and that the accused requested the complainant not to present on the respective dates the cheques and wait till July,2003 to arrange amounts which he obliged and later presented the cheques that is Ex.P.1 in the last week of July and Exs.P.2 and P.4 in the first week of August, 2003 that were returned for the account and the accused closed. The defence of the accused was that the Ex.P.1 to P.4 cheques were issued in the year 1996-1997 towards part payment of rents as referred supra if it is towards part payment of rents for the rent is only Rs.1100/- per month as per the Ex.D.1 that nowhere correlates. It is important to note that after the Ex.P.1 to P.4 cheques presented returned dishonoured covered by Exs.P.5 to P.10 cheque return memos with letter of advice, the complainant cause issued to the accused of statutory notice under Ex.P.11 dated 18.08.2003 within one month from the date of information of tenant under Section 138(b) and (c) demanding the accused to pay within 15 days covered by Ex.P.12, leave about the certificate of posting notice under Ex.P.13. Further, the complainant filed regarding to Rs.1,00,000/- amounts drawn from the account of his wife covered by Ex.P.15 statement of account of his wife and Ex.P.16 passbook. The accused having acknowledged the receipt of the notice demanded to pay informing the cheques' dishonour having not paid did not even choose to repay, had there been any truth in his version of Exs.P.1 to P.4 cheques were issued in the year 1996-97 towards part payments of the rents as a tenant of the premises of the complainant by the accused. The non-issuance of reply also enhanced the credibility to the case of the complainant and draws inference against the accused to the effect that but for no defence he could have replied and the defence set out is untrue as had it been having received the notice he could have stated the same as held by the Apex Court in Rangappa (supra) and by this Court in Chapala Hanumaiah(supra). In the cross-examination of P.W.1 by the accused, P.W.1 stated that the accused is a tenant for more than 6 years in the first floor of his premises whereas he is residing in the ground floor, he is an income tax assessee maintaining accounts for his advertizing business as a proprietary concern, and got bank account with Panjab National Bank and he knows that any amount more than Rs.20,000/-should be paid through cheque. He deposed that only twice he lent the amount to the accused by cash and he can produce his bank statement showing the balance in the month of May, 2003 and he could produce his Income Tax Returns of the years 2002-03, 2003-04, that the accused approached him for the lending in the 2nd week of May, 2003 though he cannot give exact date and the accused issued the cheques to Goverdhan, through whom it was lent and he was told by Goverdhan, that he got issued legal notice through advocate Jaishwal and he can produce the evidence to show even having Rs.1,00,000/- amount in the 2nd week of May, 2003 that was lent to the accused and his promise to repay within one month. It is on his asking the accused to bring post-dated cheques for Rs.1,00,000/- to lend the amount and the accused received the amount and issued the four post-dated cheques of different dates at his convenience and he does not remember whether anybody else was present at the time of the transaction and it is the accused requested him to present the cheques in the month of July, 2003 and accordingly, he presented one cheque at the end of July,2003 that was returned dishonoured equally later the other three cheques and he informed the accused about the dishonour by demanding to repay. He denied the suggestion that the accused is not served with any notice and Ex.P.14 acknowledgment is a fabricated one and Ex.P.13 certificate of posting is a managed one. He deposed that the first cheque presented at Himayath Nagar bank and the other cheques presented in August, 2003 at Kachiguda branch and denied the suggestion that there was no such loan transaction and the accused never issued the cheues. He deposed that he cannot say whether his name, amount in figures and words and date are different in handwriting in the cheques. He deposed that the Ex.P.1 cheque issued by the accused in the name of his proprietary concern, Raj Stone Industries and denied the suggestion that the accused did not issue any of the cheques for any liability and blank cheques obtained from the accused as a landlord are created and his accounts no way reflect the said lending thereby not produced to prove it. He deposed that he did not remember in which month of the year 2003 the accused vacated the premises. He deposed that the accused used to visit Gujarath on his business work and denied the suggestion of accused was in Ahmadabad during May, 2003. In the further chief examination exhibited bank account statement and passbook of his wife saying as per the entry in the statement of account and passbook, dated 12.05.2003, there was withdrawal of Rs.1,00,000/- and again on 13.05.2003 withdrawal of Rs.2,00,000/- and it is from that amount he lent to the accused said

Rs.1,00,000/- covered by the cheques and the amount was not shown by him in his Income Tax Returns. He deposed that his wife is also an income tax assessee and submitting the Income Tax Returns by maintaining the accounts. He denied the suggestion of Ex.P.16 is also a created one. Even on perusal of Ex.P.1 to P.4 cheques, the signature of the drawer shows written by same person with different pens so far as the Exs. P.1 and 2 when compared to Exs.P.3 and P.4 and the contents filled were also by different writings and not of by the same person so far as Exs. P.1 and P.2 concerned, when compared to Exs.P.3 and P.4. In the evidence of the accused as D.W.1, he deposed that he was a tenant under the complainant since 1995 to 2003 and he issued blank cheques in the years 1996-1997 and Exs.P.1 to P.4 four cheques are some of which and he did not borrow amount of Rs.1,00,000/-, and did not issue the cheques for the same. He deposed that he closed his bank account with A.P.Mahesh Bank, Himayath Nagar on 04.06.1999 and also of A.P.Mahesh Bank, Kachiguda on 07.09.1999. In the cross-examination, he deposed that he was doing salt business in Malakpet and he and his brothers are residing in Hyderabad and one at Mumbai and it takes twenty seven hours to go to Ahmedabad from Hyderabad and he did not file any proof to show his mother fell ill during that period there and admitted that the Ex.D.6 and D.7 railway tickets dated 29.03.2003 and 31.07.2003 do not bear name of a passenger and denied the suggestion of those were procured for the false defence. He deposed that he has no documents to show that he paid rents to complainant through cheques and he admitted that the complainant is doing advertising business and he does not know whether the complainant is doing three or more businesses under different names and styles. He denied the suggestion of having obtained Rs.1,00,000/-(lent) in May, 2003 from the complainant and issued Exs.P.1 to P.4 post-dated cheques for its repayment and having approached through others seeking time for payment, failed to pay and thus liable for the consequences. From this evidence, when the trial Court rightly came to the conclusion in holding that the cheues having routed from the account of the accused admittedly with his signatures and for saying the blank cheques issued in 1996-97 towards rents to the complainant that were misused, he did not issue any such reply having received legal notice and he did not even chose to collect the blank cheques if issued for rents unfilled by payment of the amount by asking to return and if at all for rent, it is not even his defence that he cause filled the cheque and issued to repay advance rents but for saying as if blank cheques and to pay the rents, there is no meaning in giving of blank cheques not even a case of a single cheque given while entering the premises as security. As per the law once the cheque routed from the account of accused stated issued in blank in favour of the complainant, the presumptions under Sections 118 and 139 of the N.I.Act when applied as held in Rangappa (supra) in putting burden on accused under the reverse onus clause statutorily, there is nothing in discharge of the burden by the accused and coupled with the same non-giving a reply to the statutory notice and keeping one in leaving the blank cheques, if said version is true in improbablizing said version with no truth therein, but for set up for the defence sake. There is thus nothing for the lower appellate Court to reverse the said finding of the trial Court's guilt of accused including to hold having concluded of the cheque admittedly issued by the accused to complainant, routed from his account in claiming blank, burden is on him to rebut the presumptions, however, as raised the defence of blank cheuqes misused, a perusal of the Exs. P.1 to P.4 cheques show different handwritings when compared with the signature of the payee with others to substantiate the version of blank cheques theory in setting aside the conviction. The said conclusion of the lower appellate Court is unsustainable as different cheqeus post-dated issued by the accused may bear different persons' writing in filling the contents but there is nothing from the cross-examination of P.W.1 in this regard as to who filled when filled and how filled at least by suggestion to cause explain to the theory of blank cheques that too, not to believe them for no reply to the statutory notice. As had there been any truth, he could have replied. Thus, the lower appellate Court's reversal judgment is unsustainable and thereby to be set aside. Accordingly, Point No.1 is answered.

12. In the result, the Criminal Appeal is allowed by setting aside the acquittal judgment of the lower appellate Court in Crl.A.314 of 2007 on the file of the II Additional Metropolitan Sessions Judge, Hyderabad, by restraining and confirming the conviction judgment of the trial Court in C.C.No.1054 of 2003. However, the sentence of 6 months imprisonment and fine of Rs.5,000/- with default sentence of one month imposed by the trial Court is modified following the expression of the Apex Court in ***SOMNATH SARKA VS. UTPAL BASU MALLICK***[11] that the Act not contemplated grant of compensation but envisages imposition of fine not exceeding twice the amount of dishonoured cheque and out of said fine amount, the complainant be compensated under Section 357 Cr.P.C. and that *'unlike for other forms of crime, the punishment here (insofar as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque."*

13. Having regard to the above and from the submission by the appellant/complainant of the endeavour is to recover the amount of compensation from out of fine or otherwise, rather than sentencing the accused to jail, the accused is sentenced to undergo Simple Imprisonment till rising of the day and to pay a fine of Rs.1,25,000/- of which Rs.25,000/- shall go to the Government and the balance amount of Rs.1,00,000/- the cheque value, for which the complainant is entitled towards compensation and the accused is directed to pay or deposit the

same within one month from the date of receipt of copy of this Judgment. 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.

14. Needless to say the fine amount already paid as per the trial Court's judgment if not withdrawn, from the reversal judgment of the lower appellate Court can be sought for adjustment to pay the balance and if he fail to pay, the trial Court can levy and enforce under Section 421 of the Cr.P.C. and recovery the same from the accused with default sentence of three months Simple Imprisonment for its recovery and to pay out of it, the compensation to the complainant and to remit the balance to the State.

15. Consequently, miscellaneous petitions, if any, pending in this Criminal Appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 23-01-2015

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[1] AIR 2003 SC 2035

[2] (2006)3 SCC 30

[3] (2009) 2 SCC 513

[4] AIR 2010 SC 1898

[5] AIR 2008 SC 1325

[6] AIR 2001 SC 3897

[7] AIR 1999 SC 1008

[8] AIR 2002 SC 182

[9] AIR 2008 SC 2898

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

[11] (2014 (1) ALT Crl.145