THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL APPEAL No.1435 of 2005

JUDGMENT:

The appellants-complainants by names Mandava Venkataratnam and Mandava Srinivas seek to assail the judgment of acquittal dated 18.07.2005 passed by the learned Additional Judicial Magistrate of First Class, Avanigadda, in a private complaint case C.C.No.156 of 2000 filed by said complainant against the accused persons [(Lakshmi Srinivasa Milks Private Limited (for short, 'entity') represented by its Managing Director(A.1), V.V.R.K.Prasad, Managing Director, Lakshmi Srinivasa Milks Private Limited(A.2), V.V.Rama Devi W/o V.V.R.K.Prasad, Director(A.3)] for an offence under Section 138 of the Negotiable Instruments Act (for brevity 'the Act').

2. The brief facts of the case are that the 1st complainant is the father of the 2nd complainant. The A.2 V.V.R.K.Prasad, who is the nearest relative of the complainants, on his individual capacity borrowed an amount of Rs.50,000/- +Rs.50,000/- on 13.04.1996, Rs.50,000/- + Rs.50,000/- on 25.06.1996 and Rs.90,000/- on 11.10.1996 from the 1st complainant by way of Demand Drafts and also borrowed from the 2nd complainant an amount of Rs.1,00,000/- on 06.08.1996 by way of Demand Drafts drawn at Indian bank, Movva and in total from both the complainants an amount of Rs.3,90,000/- on his personal capacity, for improving business of A.1- company and promised to repay the same with interest at 24% p.a. and for several demands, the A.2 issued Ex.P.4 cheque bearing No.CE/97 No.302179,dt.03.03.2000 for an amount of Rs.7,72,533/- for discharge of the debt in the name of the complainants in the capacity of Managing Director and the same was also signed by his wife-A.3 who is one of the Directors. When the complainants presented the cheque, same was returned dishonoured for 'funds insufficient'

covered by Ex.P.5-memo. Then the complainant issued Ex.P.13 notice dated 20.04.2000 by registered post and also by Ex.P.11 certificate of posting demanding to repay the amount, the A.2 not received the notice under registered post but received the notice under certificate of posting, and issued Ex.P.9 reply dated 16.05.2000 but failed to repay the loan and from non-payment within 15 days after service of notice under Section 138(b) of the Act from the accrual of cause of action, within one month under Section 142(b) of the Act, the complainants filed the complaint case against the A.1 to A.3. The accused persons were appeared before the Court pursuant to the post cognizance summons and after supply of case copies under Section 207 of the Code of Criminal Procedure (for brevity, "The Cr.P.C.") when questioned on substance of accusation under Section 251 of Cr.P.C., they pleaded not guilty.

3. On behalf of the complainants during the course of trial,1st complainant examined himself as P.W.1 and 2nd complainant as P.W.2 besides they cause examined P.W.3 Vemulapalli Surendra and P.W.4 Kondapi Lakshmi Narasimha Rao and got marked Exs.P.1to P.16 which include Ex.P.4, 5,9,11 and 13 supra and also the including Ex.P.1 letter dated 26.07.1999, Ex.P.2 empty registered envelop cover sent by A.2, Ex.P.3 letter dated 03.03.2000, Exs.P.6 to 8 returned registered post notices sent to the accused,Ex.P.10 postal cover, Ex.P.12 letter dated 29.12.1999 written by A.3 to P.W.3, Ex.P.14 Attested photostat copy of voucher, Ex.P.15 photostat copy of ledger and Ex.P.16 attested photostat copy of local delivery; and on behalf of the accused, A.2 as D.W.1 and A.3 as D.W.2 are examined and they got marked Exs.D.1 attested photostat copy of Demand Draft for Rs.1,26,252/-, Ex.D.2 attested photostat copy of Demand Draft for Rs.70,140/-, Ex.D.3 attested photostat copy of Demand Draft for Rs.40,080/-, Ex.D.4 to D.12 attested photostat copies of Demand Draft/Pay Orders obtained by D.W.1, Ex.D.13 certified

copy of form No.32 and Ex.D.14 protest petition in C.C.No.27 of 2000.

4. After closure of evidence, the accused were examined under Section 313 of the Cr.P.C. who denied truth the incriminating material put to them and stated no defence.

5. Appreciating the evidence, both oral and documentary, the Court below ultimately held that the complainant could not prove guilt of the accused persons for the offence under Section 138 of the N.I.Act and thereby not found guilty.

6. It is attacking said findings, the present appeal is filed by the complainants with the contentions in the grounds of appeal that the acquittal judgment of the trial Court is contrary to law, that the trial Court failed to see that the accused persons failed to rebut the statutory presumption under Section 118 of the N.I.Act, that the trial Court erred in saying that there is material alteration in Ex.P.12 letter dated 29.12.1999 and it does not save the limitation, that the trial court failed to see that the accused persons failed to produce the accounts and books relating to the share capital contribution to prove that the payments made under Exs.D.1 to D.12 supra were not towards share capital, but towards discharge the admitted liability to pay the debt as alleged by them, that the trial Court failed to see that admittedly the payments under Exs.D.1 to D.3 (Demand Drafts) were not to the complainants and linking up payments towards discharge of loan owed to the complainants is far-fetched and the trial Court committed serious illegality in believing the explanation on the sole interested testimony of the accused which remained uncorroborated, that the trial Court committed serious illegality in ignoring the material (documentary) evidence under Exs.P.1, 3 and 12 (letters, dt.26.07.1999, dt.03.03.2000 and 29.12.1999) on the ground that there is no allegation in the complaint and failed to see that evidence need not be pleaded and further the rule relating to the civil pleadings is not absolute and further it

has no application to criminal proceedings and that too, when said documents were proved, that the trial Court erred in saying that the complainants did not deny the contents of Ex.P.9 reply notice dated 16.05.2000 in the complaint and introduced a new theory of share capital, that the trial Court erred in doubting the Ex.P.4 cheque on the basis of the stamps particularly when the signatures are proved and there is no explanation from the signatories why different stamps are used, that the trial Court erred in saying that there is inconsistency regarding the handing over of Ex.P.4 and also discrepancy in the evidence of P.W.1 and that the complainant introduced Exs.P.1,P.3 and P.12(letters, dt.26.07.1999, dt.03.03.2000 and 29.12.1999) without mentioning about Ex.P.13 (legal notice) and failed to see that none of them have effect of shifting the onus of proof to the complainants, that trial Court gravely erred in dismissing the complaint on the ground that the cheque was issued in the name of the company whereas, the cheque is issued on behalf of the company and failed to see that the cheque can be issued and consideration can be paid by any third party and the liability is cast on all persons responsible for issuance and dishonour of cheque and even discharge of third party loan is also a valid consideration for such issuance, thereby sought for setting aside the acquittal judgment and allow the appeal finding the accused persons guilty. Learned counsel for the appellants reiterated the same during the course of hearing.

7. The learned counsel appearing for the respondents 1 to 3-accused persons, on the other hand, submits that for this Court while sitting in appeal there is nothing to interfere with the judgment of the trial Court, hence to dismiss the appeal.

8. Perused the material on record. The parties are hereinafter referred to as they are arrayed in trial Court for the sake of convenience.

9. Now the points that arise for consideration are:

(1). Whether the accused persons did not issue the cheque in favour of the complainant for discharge of legally enforceable debt to make liable for the offence under Section 138 of the NI Act and if issued, the trial Court's acquittal judgment is unsustainable and with what observations?

(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 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].

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 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.

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

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

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

11-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".

11-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].

11-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.

11-D**.** It was also observed in para-15 that the accused appear to be aware of the fact that the cheque was with the complainant, 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 in **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.

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

The Ex.P.4 is the cheque bearing No.302179 for Rs.7,72,533/-. There is no dispute from the accused that the cheque is routed from the account of the accused and their entity. A.1 entity is with the name and style of Lakshmi Srinivasa Milks Private Limited. Merely because Ex.P.1 letter appears to be typed with the rubber stamps of the said entity that cannot be said Ex.P.4 is fabricated, that too when it is not the case of the accused that the cheque is not routed from their account maintained with the bank. Once the cheque is routed from their account, it is for the accused to explain how their cheque with their signatures or without signatures, as the case may be, even if they want to say their signatures are forged, how that the cheque leaf from their account with cheque book facility came to the custody of the complainants', that too, the relation between the accused persons 2 and 3 with the complainants' and the A.2 is Managing Director and A.1 is one of the Directors of the A.1 entity is also not in dispute. There were transactions of borrowal from the complainants' by the A.2 in the giving of cheque in the account maintained by the accused persons with their signatures in favour of the complainants' when established therefrom. So far as the version of the accused that the Ex.P.4 cheque was stolen and it was a blank cheque without their signatures or it was stolen along with cash of Rs.1,60,000/- and the letter heads of A.1 entity from the premises of A.1 entity or to that effect, the A.3 allegedly filed a private complaint case before Sindhunur Judicial Magistrate of First Class in Karnataka State but there is no any record filed and it states so called complaint case was even ended in dismissal that is not even filed. It is unknown why they allowed it for dismissal without taking steps for restoration or by filing revision or appeal if at all that version is true; no credence even to be attached even in the certified copy of any private complaint for its dismissal filed in the absence of filing what made to keep quiet all through if the alleged Ex.P.4 cheque unless they issued voluntarily in favour of the complainants for the alleged stealing and they kept quiet without even notice and without even report to police with proof and without even asking the bank for stopping payment not to honour by mentioning facts immediately within no lapse of time of notice of so called theft. This substantiates the case of the complainant to say that it is the accused that issued Ex.P.4 cheque in favour of the complainants. Then to consider is whether there is any legally enforceable debt or other liability for the cheque amount. On perusal of Ex.P.4 cheque shows the writings of the names of the payees and the amount in words and letters and the pen used by the drawers, Managing Director A.2 and the Director A.3 of A.1 entity with rubber stamps to that effect and small size different letter font for the Managing director and a big size different font of the Director rubber stamp respectively show the pen used is one and the same. No doubt in the date column of day portion of the '0' before '3' as well as in month part before the month '3' and in the year part after '2' out of three zeros the first '0' are overwritten showing as the cheque issued on 03.03.2000. The accused persons did not choose to send the signatures on the Ex.P.4 cheque to the expert, if it is not with their signatures even to believe their above referred version of the stolen blank cheques of them without any writings or signatures of them. Even on comparison of the signature on Ex.A.2 in the cheque Ex.P.4 with signature of him in Ex.P.3 letter are tallying. Ex.P.3 letter is also dated 03.03.2000 that is the date of the cheque in the Ex.P.3 letter on the printed letterhead of entity passed on by addressing to the two complainants by A.2 show that it was addressed to both the complainants though naming the first complaint that A.2 was sending through Surendra the cheque(Ex.P.4) for Rs.7,72,533/- (in words) in favour of both the complainants by mentioning the cheque bearing No.203179 dated 03.03.2000 drawn on the Lakshmi Vilas Branch Limited, Raichur, which is totally tallying with Ex.P.4 address by paying towards repayment of the principle amount which he borrowed on different dates in the year 1996 in the six occasions mentioning of Demand Drafts particulars, bank of which it is drawn and on the dates and for the amount total of Rs.3,90,000/- correlating with the complainant particulars together with interest against the loan by calculated interest at 24% p.a. from respective dates upto end of February,2000 of Rs.3,82,533/- for the total of Rs.7,72,533/- and it is also mentioned expressing sorry for the delayed repayment though several times earlier promised to repay. Thus, Ex.P.3 letter itself even in all the amounts covered by the Demand Drafts of the year 1996 by the time of Ex.P.4 cheques issued on 03.03.2000 tantamounts to acknowledgment of the time barred debt including from the very contents of the Ex.P.3 letter of even date on 03.03.2000 within the meaning and purview of the Section 25 of the Indian Contract Act to say that the debt and the liability is referred in Ex.P.3 letter for which Ex.P.4 cheque issued by the accused persons in favour of the complainant is legally enforceable one in support and strengthening the presumption in favour of the complainants under Section 139 of the N.I.Act as also laid down by the Apex Court in the Rangappa(supra). Ex.P.1 is also on the letterhead of A.1 entity with signature of A.2 dated 26.07.1999 addressing to the first complainant by expressing regards saying the repayment commitment for the amounts borrowed from April to October, 1996 of Rs.3,90,000/- could not be but with interest as promised and he was going to pay back by December, 1999 with a request to accept the same. Thus, Ex.P.1 is also acknowledgment of time barred debt even otherwise for any of the amounts referred in Ex.P.3 were beyond three years by the time of Ex.P.1 letter was executed. The A.2 who signed Ex.P.3 and P.1 respectively did not even choose to dispute by sending said signatures to handwriting Expert for comparison. A close perusal within the power of the Court under Section 73 of the Indian Evidence Act clearly reveals with the signature on the Ex.P.4 cheque of A.2 and the signature on Ex.P.1 letter and the signature on Ex.P.3 letter are of one and the same person to say it is the A.2 and the contention that the blank cheque lost without signatures or writings, fabricated by the complainants is disproving from the above evidence and material placed by the complainant that too, the Ex.P.1 letter signed and addressed by A.2 to the first complainant referred supra was sent through registered post on the printed address on cover of the A.1 entity typing the address of 1st complainant and there is Sindhanur stamp of the registered post and the postal stamp dated 27.07.1999 correlating to Ex.P.1 letter dated 26.07.1999 and the registered letter acknowledgment due with stamp of the Sindhanur post office is registered letter No.328 dated 22.07.1999 in substantiating the case of the complainant and belying the defence of the accused coupled with it Ex.P.12 is another letter of A.2 which is not typed one like Exs.P.1 and P.3 supra but written one; the signature of A.2 and the signature is also tallying with the Exs.P.1,P.3 and P.4 signatures of him and Ex.P.12 is dated 29.12.1999 addressing to one Surendra stating the amount due to Vasu i.e. 2nd complainant, to repay could not be secured and at any cost he was going to repay by January,25th of 2000 and he is in difficulties to secure the amount and thereby requested said Surendra to persuade the complainants and convenience for payment by 25.01.2000. this letter is correlating when compared to Ex.P.1 dated 26.07.1999 addressed by A.2 requesting the first complainant to wait till end of December,1999 as from this the Ex.P.12 addressed to Surendra saying money could not be secured and hence to persuade the complainants to give time to pay. It is if considered the Ex.P.3 with reference to Exs.P.1 and P.12, the Ex.P.2 dated 03.03.2000 and Ex.P.4 cheque on even date the signatures of A.2 and A.3 with stamp of A.1 entity and the letter on the letterhead of A.1 entity with a signature on A.2 addressed to the complainants saying he is sending the Ex.P.4 cheque to V.Surendra who was referred in Ex.P.12 supra. From the Exs.P.1 to P.4 and P.12(supra) case of the complainants is being substantiated and the defence of accused are belying and it is the Ex.P.4 cheque when presented returned dishonoured under Ex.P.5 cheque return memo and statutory notice under Ex.P.13 dated 20.04.2000 sent to the three accused with registered post receipts to the said address on the printed letterhead of the A.1 entity and the address covered by Exs.P.1 to 3 supra, however, those were returned unserved with endorsement the addressees were continuously found absent in the address. Exs.P.6 to P.8 are the said returned registered covers. Once the notices were duly sent to the correct address and the same were returned as continuously absent and not for any incorrect address, there is presumption of due service under Section 27 of the General Clauses Act and also under Section 114 of the Indian Evidence Act and as held by the Apex Court in **C.C.Alavi Haji Vs. Palapetty Muhammed**[11]. The accused cannot take shelter much less to dispute the statutory notice as they did not even pay after service of summons in the criminal case from their appearance with a request to compound. The Ex.P.13 notice issued by the complainants to the accused persons 1 to 3 refers the amount due to the complainants borrowed by the A.2 as Managing Director of A.1 entity to which the A.3 is also Director, within her knowledge of the borrowal of the amounts, covered by Rs.3,90,000/- under the Demand Drafts respectively and the same are correlating to Ex.P.3 letter of A.2 mentioning the said amounts due and in saying for the said amounts with interest due, Ex.P.4 cheque was issued for Rs.7,72,533/- and the same when presented returned dishonoured, hence to repay within 15 days, else to take legal recourse. The Ex.P.11 is the certificate of posting besides registered post of Ex.P.13 notice cause issued by the accused persons to the advocate of complainants and the reply under Ex.P.9 sent through Ex.P.10 cover(envelope) was dated 16.05.2000 which reads that the reply is issued on behalf of the A.1 entity and its Managing Director-A.2 and the Director-A.3 of Sindhanur that A.2 is not Managing Director of the A.1-entity as contended in the Ex.A.13 notice to A.3 is the Managing Director of A.1 entity, that A.2 as estimated entire amount through Demand Drafts in the name of various persons as suggested by the complainant for what the A.2 borrowed the amounts for complainant in his individual capacity and thereby A.1 entity and A.3 as Managing Director of it even personally not liable and known to them liable to repay as demanded in the notice cause issued falsely. It is also averred that the

A.2 and A.3 much less on behalf of A.1 entity never issued the Ex.P.4 cheque and they are not liable for its dishonour. It is further averred that A.2 returned the amount due to the complainants which he borrowed individually through Demand Drafts dated 10 and 11th February, 1998 and the statutory notice issued is false and frivolous, hence to drop. Importantly, the accused persons in the Ex.P.9 reply notice supra did not state that the cheque is not routed from their account and the signatures on the cheque are not that of them and the account is not related to them and if from their account routed, how it came to the custody of complainants. The theory propounded subsequently as if the signed was unsigned cheque of them lost or as if stolen by any of the complainants with alleged letterheads of them was not there in the reply that also belied the subsequently introduced defence version of the accused and enhanced the case of the complainant further, besides what is discussed supra. The signature of A.2 and A.3 on Ex.P.4 even tallying with the signatures on the Ex.P.13 answer to the questioning. Furthermore, one more important aspect is that the addressee of Ex.P.12 Surendra which is the letter dated 29.12.1999 addressed by A.2 to said Surendra came into the witness box and deposed in favour of the complainant as P.W.3 that also belies the said version of the accused and enhanced the case of the complainants. Three more documents of the complainants are covered by Exs.P.14 to P.16 which are no doubt, the photostat copies of the vouchers and ledgers and attested copy of delivery of the amounts that were borrowed by the accused of Rs.3,90,000/- that in fact acknowledged in Ex.P.3 by the A.2 saying through the P.W.2 surendra who was referred in the letter of A.2 in Ex.P.12 supra, in sending the Ex.P.4 cheque that is proved from the evidence of P.Ws. 1 and 2-complainants as well as through the P.W.3. The defence of accused therefrom remained is by their coming into witness box with reference to Exs.D.1 to D.12 of which the Ex.D1 is dated 10.02.1998 for Rs.1,26,252/- to the 1st complainant-

P.W.1's Pay Order, Ex.D.2 on even date to one M.Veerabhadra Rao, for Rs.70,140/- through pay order, Exs.D.3 for Rs.40,080/- on even date to 2nd complainant- Mandava Srinivas by Pay Order. Ex.D.4 to one S.Sridevi for Rs.20,000/- on even date through Pay Order and Ex.D.5 to one V.Srinivas on even date for Rs.20,000/-, Ex.D.6 to one M.L.Neelakantam or so on even date for Rs.20,000/-, Ex.D.7 to one Vanajakshamma on even date for Rs.30,000/- and Ex.D.8 to V.Jhonsilaxmi for Rs.15,000/- on even date, Ex.D.9 to V.Bujjibabu of Rs.55,000/- on even date, Ex.D.10 to one V.Nagenshwara Rao on even date for Rs.35,000/-, Ex.D.11 to one L.Sheshagiri Rao for Rs.25,529/- on even date, Ex.D.12 to S.Balaramakrishna but for three among Exs.D.1 to D.12 are in the name of other persons. The plea of accused of discharged therefrom in the year 1998 itself is untrue and cannot be believed. More particularly from what is referred supra as to for three others are in the name of different persons and once it is the specific version of the complainants in the cross-examination of P.Ws. 1 and 2 in showing it is the amounts for the shares sold of the respective persons that were paid by the A.1 entity and not in discharge of the debt due, to say if it is not, the accused are the best persons to produce the material which they did not. Even, amounts are three pay orders covered among Exs.D.1 to D.12 only in favour of the complainants, nowhere relating to the debt due and the version in the Ex.P.9 reply notice is as if all the 12 Demand Drafts amounts are paid to the complainant. Furthermore, had it been true, all the Exs.D.1 to D.12 so called Demand Drafts dated 11.02.1998 represents for the borrowal of the amounts by the complainant to the accused of the year 1996, it is unknown what made the accused particularly A.2 in writing Ex.P.1 letter to the complainants sent by registered post under Ex.D.2 envelop of Rs.3,90,000/- is due to the borrowals 1996 and wait for time till end of December,1999 without even whisper of the Demand Drafts among Exs.D.1 to D.3, if anything relates to discharge of anything; equally from

Exs.P.12 letter dated 29.12.1999 addressed by the P.W.3 because P.W.3 in seeking further time to request him go and convince the complainants. Equally the very Ex.P.3 letter of A.2 addressed to the complainants dated 03.03.2000 with reference to Ex.P.12 letter supra in saying sending the cheque for the total amount of Rs.3,90,000/- due with interest accrued upto end of February, 2000, the Ex.P.4 cheque. All these cumulatively established the Ex.P.4 cheque covered debt or other liability due to the complainants from the accused persons and it is no way time barred. Thus, it is proved that the accused persons issued the Ex.P.4 cheque for the amounts due which is legally enforceable in favour of the complainants and having issued the cheque and liable to pay when the cheque presented dishonoured and even for the notice but for giving reply to evade failed to pay and thereby from the cause of action accrued they are liable as laid down by the Apex Court in Rangappa (supra) and also from the recent expression of the Apex Court in **Indian Bank Association Vs. Union of India**[12]**.** Despite it, the trial Court observed that as if there is inconsistency regarding handing over of Ex.P.4 cheque to P.Ws. 1 and 2 by P.W.3 and its sending by the accused persons to P.W.3 from the evidence of P.Ws. 1 to 3 and even after receiving the share amounts from A.1 entity covered by Exs.D.1 to D.12 and the complainants introduced Exs.P.1 to P.3 and 12 letters as if for the first time during trial that could have been made a mention in the statutory notice. The statutory notice as contemplated by Section 138(b) and (c) of the N.I.Act is only meant to intimate the dishonour of the cheque and to enable payment within 15 days and not for any other purpose. It need not contain all the details. As discussed supra, the Ex.P.1,P.3,P.12 coupled with the evidence of P.Ws. 1 to 3 establishes cogently and clearly of the debt due from the accused persons for which Ex.P.4 cheque issued by them for the legally enforceable debt, for the amounts due since acknowledged the time barred debts those are thus legally enforceable. The trial Court, thus, went wrong in so observing by ignoring the same as if there are suspicious circumstances badly damaged the case of the complainant and as if by accepting Exs.D.1 to D.12, accused could rebut the presumptions available against them. Accordingly, Point No.1 is answered.

13.In the result, the Criminal Appeal is allowed by setting aside the acquittal judgment of the trial Court in C.C.No.156 of 2000, dated 13.07.2005 on the file of the Additional Judicial Magistrate of First Class, Avanigadda, impugned herein. The accused is found guilty for the offence under Section 138 of the N.I.Act.

14.For appearance and hearing on sentence of the accused, post on 30.01.2015.

Dr. B. SIVA SANKARA RAO, J

Date: 23-01-2015

Vvr.

15. On 30.01.2015 when the matter is called, for the accused was absent posted to 06.02.2015 and then to 13.02.2015.

Date: 13.02.2015:

16. Despite opportunity given, the accused failed to appear in person for hearing the sentence. Heard the learned counsel for the accused-respondent regarding sentence so also the learned counsel for the complainants-appellants who stated that their endeavour is for recovery of the amount and not to see that accused be put in jail. Following the expression of the Apex Court in ***SOMNATH SARKA Vs. UTPAL BASU MALLICK***[13] 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 under go a jail term, there is little available as remedy for the holder of the cheque."*

17. By taking into consideration, all these facts as Ex.P.4 cheque for Rs.7,72,533/- the accused while sentencing to undergo substantial sentence of one day till rising of the day by giving set off the period under Section 428 Cr.P.C. and also sentencing to pay a file of Rs.8,00,000/- of which Rs.25,000/- shall go to the State and the balance amount of Rs.7,75,000/- which the complainant is entitled towards compensation and the accused is directed to pay or deposit the same within four weeks from the date of receipt of copy of this Judgment, failing which, the learned Magistrate is directed to recover the fine amount under Section 431 read with Section 421 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 Section 53 (6) IPC.

Dr. B. SIVA SANKARA RAO, J

Date: 13.02.2015

Vvr/PNV.

[1] AIR 2003 SC 2035

[2] (2006)3 SCC 30

[3] (2009) 2 SCC 513

[4] AIR 2010 SC 1898

[5] AIR 2008 SC 1325

[6] AIR 2001 SC 3897

[7] AIR 1999 SC 1008

[8] AIR 2002 SC 182

[9] AIR 2008 SC 2898

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

[11] 2007(6) SCC 555

[12] 2014(5) SCC 590

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