THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL APPEAL No.395 of 2008

JUDGMENT:

The appellant-complainant seek to assail the judgment of acquittal dated 25.06.2007 passed by the learned X Additional Chief Metropolitan Magistrate, Secunderabad, in C.C.No.1684 of 2003 filed by the said complainant under Section 138 of the Negotiable Instruments Act(for brevity, 'the Act').

2. The case of the complainant was that accused Smt.R.Meenakshi W/o late R.Venkataramana, borrowed an amount of Rs.90,000/- from him on 15.09.2003 and issued the cheque(Ex.P.1) bearing No.057223 on even date drawn on A.P.State Co-operative Bank, Boudha Nagar, Secunderabad and . The amount was arranged to the accused due to friendly terms between both the parties. However, the accused failed to repay the amount. The complainant presented the above said cheque for encashment on 26.09.2003 through his banker M/s. Dena Bank, Jamai Osmania Branch but the said cheque was dishonored on the ground of "insufficient funds" vide Ex.P.2 cheque return memo dated 26.09.2003, Ex.P.3 letter addressed by the complainant to Dena Bank, dated 27.09.2003 and Ex.P.4 counterfoil of deposit slip, dated 25.09.2003, that the complainant therefore issued Ex.P.5 statutory legal notice, dated 15.10.2003 and it was returned to the complainant with the Ex.P.7 endorsement "unclaimed" by the accused, on that the complainant filed a complaint and after taken cognizance by the trial Court the accused appeared before the Court pursuant to the summons and after supply of case copies under Section 207 of Code of Criminal Procedure(for brevity,' the Cr.P.C.'), when questioned on substance of accusation under Section 251 of the Cr.P.C. she pleaded not guilty.

3. On behalf of the complainant during the course of trial himself examined as P.W.1 and got Ex.P.1 to P.8 marked-supra.

4. After the evidence on the side of the complainant was completed, the accused was examined under Section 313 of Cr.P.C. She denied all the incriminating material. The accused was examined as D.W.1 and cause examined D.W.2 and got marked Exs.D.1 to D.7 viz., Ex.D.1 undertaking, dated 20.01.2003, Ex.D.2 counterfoil in proof of issuance of Cheque No.447137,dt.03.07.2003 for Rs.45,000/-, Ex.D.3 Cheque No.447110, dt. 03.07.2003 for Rs.49,500/- issued in favour of M/s Shub Deep Chits, on behalf of P.W.1,Ex.D.4 original passbook of A/c.No.7656, Ex.D.5 statement of account from 01.09.2002 to 16.06.2004 issued by the A.P.State Co-operative Bank Limited, Ex.D.6 Statement of Account from 01.07.2003 to 01.10.2003 and Ex.D.7 letter confirming receipt of Rs.49,500/- from the accused against the chit of the complainant.

5. Appreciating the evidence, both oral and documentary, the Court below was of the view that the complainant could not prove the case.

6. The learned counsel for the appellant-complainant in support of the grounds of appeal submits that when there is nothing to say the debt how not legally enforceable and once proved the debt and sending of notice to correct address which is suffice to say service of notice for she got managed to return and also the presumptions in regard to service and legally enforceable debt to rebut by the accused that thereby, the Court below went wrong in dismissing the complaint with no basis and hence to allow the appeal by setting aside the acquittal and to convict the accused as per the law.

7. The learned counsel for the 1st respondent-accused, on the other hand, submits in support of the written arguments submitted in detail that the accused never issued Ex.P.1 cheque for any borrowal but for obtained as security in connection with the earlier lending and pursuant to her late husband's undertaking for the borrowal by him before his death to pay that was so even paid and also issued another cheque that was

encashed by M/s. Shub Deep Chit Funds Private Limited(for short, 'the chit fund') to which even the complainant was subscriber and not the accused or her husband and for no legally enforceable debt or other liability, the trial Court is right. The other contentions are the statutory notice said to have been sent by the complainant under Ex.P.5 has not at all been received by the accused and the address mentioned in the notice is incorrect and there is no sufficient service of notice on the accused and in the absence of sufficient service of statutory notice, there are no merits in the appeal. 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 for consideration are:-

1. Whether there is no service or deemed service for accrual of cause of action to the complainant after statutory waiting to file case within time as per Section 138 proviso(b) and Section 142(b) of the N.I.Act, if so, the accused issued the cheques in favour of the complainant for discharge of legally enforceable debt and liable for the offence under Section 138 of the N.I.Act and whether the trial Court's acquittal judgment is unsustainable if so with what observations?

2. To what relief?

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). 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.

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 **Chapala Hanumaiah Vs. Kavari 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-(A). 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:

The accused admits her signature on the Ex.P.1 cheque and the same was routed from her account in the Andhra Pradesh State Co-operative bank Ltd., Secunderabad (for short, 'the APSCBL') but for saying it was almost a closed account not in use or operation and the complainant also knows the same at the time of obtaining. The accused did not admit the cheque as issued by her for borrowal of any amount much less voluntarily for any amount due but for obtained by the complainant as security and played fraud on her by misusing the same. Out of the evidence of the complainant as PW.1 with reference to Ex.P.1 to P.8 Supra, Ex.P.7 is the unclaimed postal cover. Even as per the expression of the Apex Court C.C. **Alavi Haji v. Palapetty Muhammed**[11] once there is payment within 15 days after receipt of case summons from any deficiency in complainant's statutory notice that is sufficient payment for non-survival of complaint but thereafter cannot take the defence of non-service. In fact as per Ex.P.7 it is unclaimed postal cover and the unclaimed tantamount to refusal and there is nothing to show the address is not correct much less managed for return by the complainant to avoid service on accused and inviting reply being conscious of reply will disclose any facts different to his version.

Now coming to decide whether there is any legally enforceable debt or other liability; PW.1 deposed in his cross examination by accused that he studied 8th class and residing at regimental bazaar and doing business in photo frames and lamination by sitting in the shop of his uncle and for past ten years he has also been getting works on contract. He deposed that he is acquainted with the accused and her husband being residents of the same locality and her husband was meeting in local festivals. He deposed that there is no document for the lending to the accused and there was even previous lending to her late husband-a railway employee. He deposed that he does not remember that he received Rs.3,000/- from bank account of husband of accused by cheque, however admitted of received cash by presenting the cheque to the account of husband of accused on 9-12-2000 and also Rs.500/- in January,2001 by cheque. He denied the suggestion of he was assisting the accused and her husband in withdrawal of cash from the bank account. He deposed that he has no knowledge about husband of accused was suffering from cancer from the past 2 to 3 years before his death he admitted that husband of the accused returned Rs.45,000/- that was reflected in the bond confronted to him which was in August,2003 that they paid the amount by cheque that was encashed by him. He denied the suggestion of during the year 1995 and 1996 he was working in the cycle stand of the husband of the accused and he used to stay as paying guest in the house of accused for studies purpose. He also denied the suggestion that the trust reposed on him by the accused and her husband was misused by him and the blank cheque obtained from the accused as security for the document dated 20.1.2003 was filled and misused after death of the husband of the accused to have wrongful gain. In the further cross examination, he denied the suggestion of accused was not in need of money by alleged date of Ex.P.1 cheque on 15.09.2003 as there was a bank balance in the account of accused of Rs.2,90,796-23 in the SB Account at State Bank of Hyderabad, Himayath Nagar. He deposed about a chit in Subhdeep Chit Funds Private Limited, in the name of the complainant, however in saying, it was husband of the accused obtained the chit amount and for which the accused issued SBH cheque, dated 05-07-2003 for Rs.49,500/- to the said chit fund company that was standing in his name and denied suggestion that he deceived husband of accused by name R.Venkataramana for stood as a surety to the said chit amount obtained in his name and said Venkataramana was paying installments and thereform the accused issued cheque for Rs.49,500/- supra towards instalments and personally handed over the same to the Chit Fund Company. He admits that Ex.P.8 is the bank account of the complainant with Deena Bank and except the above account, he does not have any other account in the bank. He admitted that Ex.P.8 bank account of complainant contains only seven months transactions i.e. from March,2003. He admits about the cash of Rs.45,000/- credited into his Deena Bank Account after withdrawing the amount against the bearer cheque given by the accused. He also deposed that the bearer cheque was given by the accused and he has admittedly withdrawn the amount from her bank on 03.07.2003 and deposited the cash in his account on 03.07.2003. He has not deposited any amount in the 7 months period of the account, except reflecting Rs.45,000/- supra including to say he was getting any amount much less of Rs.30,000/- p.m. income from photo frame works. He denied the suggestion of he does not have any means or income and thereby his bank account does not reflect even single deposit by him and he is conveniently saying as the chit for Rs.1,00,000/- with Shubdeep chits standing in his name as if for the benefit of husband of accused to avoid income tax because he is of a railway employee though there is no bar for a railway employee participating in the chit and to pay the amount. He admits that the chit amount transaction is not reflected in his complaint. He also admitted that by the date of Ex.P1 cheque on 15.09.2003 his bank account balance is Rs.18,228/- only. Thus, he does not have any means of Rs.90,000/- for saying the accused borrowed Rs.90,000/- from him and issued Ex.P.1 cheque. When the above evidence clearly shows the complainant got only balance of Rs.18,000/- in his account in Deena Bank, Secunderabad as on date of Ex.P.1 cheque said to have been issued by the accused for Rs.90,000/- for alleged borrowal on 15.09.2003 for the suggestion by the accused denied of it is a blank cheque misused by filling after death of husband of accused for the same earlier obtained as security, it is for the complainant to establish how he got means to lend such a huge amount, that too, when he is doing only photo frame business that too, by sitting in the shop of his uncle for not having any shop of him and not even having any amount in his S.B. account by deposit or withdrawal but the cheque amount received from the accused of Rs.45,000/-. It is from this, coming to the evidence of the accused as D.W.1, it is the her same version as in the cross-examination of P.W.1 supra in her chief affidavit of misuse of the cheque by subsequently filling of the blank cheque earlier obtained as security by complaint in the lifetime of husband of accused who died of cancer and there is no any borrowal and she did not issue the cheque for any debt or other liability. The accused-D.W.1 in her cross-examination by the complainant stated that she knows the complainant from 1995 and she used to run Secunderabad Railway Station cycle stand on contract and after death of her husband she cleared the debt of Rs.45,000/- to the complainant pursuant to Ex.D.1 agreement of her husband and it is at the time of agreement the cheque was obtained as security and denied the suggestion of the two cheques for Rs.45,000/- and Rs.49,500/- issued to the complainant by the accused towards discharge of debts. In fact, the complaint is also silent as to the so called cheque of Rs.45,000/- by the accused to complainant and Rs.49,500/- given by the accused at the instance of the complainant in the name of Sukdeep Chit Fund, for earlier borrowings between the accused and complainant for the so called lending in Ex.P.1 cheque of Rs.90,000/-. She denied the suggestion that her husband was fallen due to the said chit company of Rs.49,500/- and therefrom they issued the cheque. In fact, the complainant admitted that the chit was standing in his name and husband of the accused was guarantor along with the two others Murthy and Rao. She denied the suggestion that for the legal notice issued by the chit fund company to all the 4 persons including her husband, her husband paid that Rs.49,500/- towards his share. In fact, it was the cheque issued by the accused as referred supra. She deposed that the Ex.D.1 was written by her in her handwriting. It is for that according to her Rs.45,000/- covered by cheque already issued to the complainant and paid the amount as he communicated the same admittedly that was credited to his S.B. Account with Dena Bank and but for that amount there was no other amount credited to his account admittedly, much less any deposits or withdrawals other than out of that Rs.45,000/-. She deposed that she did not issue any legal notice to the complainant for return of the blank cheque for her saying Ex.P.1 obtained by the complainant is a blank cheque and it is misused by him. She adds that she was orally demanding him. She denied the suggestion that avoid the liability of the Rs.90,000/- due under Ex.P.1 cheque to complainant she set up the false defence. D.W.2 is one V.Viswanath, Manager in NMDC, resident of Chikkadapally, Hyderabad, who deposed that he stood as one of the guarantors undertaken by the husband of the accused, dated 20.01.2003 for Rs.45,000/- being uncle of the accused and also knows the complainant, the accused and husband of the accused and after execution of Ex.P.1 cheque, the complainant demanded a blank cheque as security from the accused and from the joint account of accused and her husband with AP Co-operative Bank limited which is non-operative account by intimating the fact to the complainant, the accused handed over the blank cheque for the persistent demands of complainant and though the complainant promised to return the blank cheque after he received Rs.45,000/- under Ex.D.1 letter of undertaking and even subsequently cause issued cheque dated 03.07.2003 for Rs.45,000/- to the complainant but he failed to return saying only after withdrawal of the amount, he could return and even after withdrawal again demanded the cheque in the name of Shubdeep chit fund for Rs.49,500/- even that was issued by the accused in the name of chit fund company at the instance of complainant; he failed to return the blank cheque covered by Ex.P.1 and the accused did not borrow any amount, much less on 15.09.2003 of Rs.90,000/- much less issued the cheque on that date and for that amount; but for the blank cheque obtained by the complainant to return after payment failed to return was missed. He deposed that when there is a bank balance in SBH, Hyderabad of the accused as on 15.09.2003 of Rs.2,49,256-23 paise the alleged borrowal under Ex.P.1 on 15.09.2003 is false and Ex.P.6 said bank account statement is in proof of the fact. In the cross-examination, he deposed that the accused is wife of his brother-in-law and in the Ex.D.1 letter of husband of accused to the complainant he stood as 2nd witness and he does not know whether the husband of accused borrowed any amounts from the complainant earlier and he did not advise to address letter to the bank for stop payment or to issuu notice to complainant for return of cheque after payment of Rs.45,000/- by the accused for the Ex.D.1 letter amount and the accused also did not obtain any letter from the complainant for not to fill or present the cheque as accused promised to return on 19.09.2003. He deposed that he does not know the husband of accused was the beneficiary of the chit with Shubdeep Chits obtained in the name of the complainant. He denied the suggestion of deposing falsehood or the accused borrowed and issued the Ex.P1 cheque for Rs.90,000/- or the cheque is nothing to do with the chit fund transaction or Ex.D.1.

13. A perusal of Ex.D.1 contents show, it was executed only by the husband of accused in the name of the complainant on the stamp paper worth of hundred rupees, dated 20.01.2003 that now and then earlier from the complainant, he borrowed amounts which mounted to Rs.45,000/- and the same could be liquidated by 01.07.2003 and if he could not, his wife would bear the responsibility to discharge. Undisputedly for the said Rs.45,000/- covered by the Ex.D.1 letter accused paid by the cheque and the same was encashed by the complainant on 03.07.2003. When the said letter on stamp paper was dated 20.01.2003 obtained by the

complainant from husband of accused for the so called amount time to time totalling of Rs.45,000/-, is it believable to say on 15.09.2003 the complainant again lent Rs.90,000/- that too having received from the accused two cheques under Exs.D.2 and D.3 one for Rs.45,000/- covered by Ex.D.1 amount due and the other in the name of Shubdeep chits at the instance of the complainant and the same were withdrawn from the account of accused and that is also from Ex.D.5 and 6 bank statements of the account of the accused and of the complainant respectively and Ex.D.7 is the letter confirming receipt of amount from the accused by the complainant of Rs.49,500/- for the chit fund company cheque issued. Further, if so, is it believable of without obtaining any letter and simply by taking cheque he lent Rs.90,000/-. In fact, as per the Ex.P.8, when the account of the complainant is only with a balance of Rs.18,000/- as on 15.09.2003 but for the Ex.D.2 cheque amount of Rs.45,000/-, dated 03.07.2003 cheque collected to the account of complainant, there was no any bank balance worth of means. Is it believable of he lent Rs.90,000/- without showing any means that too even for the alleged earlier lending covered by Ex.D.1 to the husband of accused by the complainant when D.1 speaks it is not one time payment but now and then small payments that total mounted to that amount in obtaining the undertaking letter and in also saying for the chit obtained from him for Shubdeep chits to which the husband of accused was guarantor in his saying there are other guarantors also to the 4 beneficiaries and the Ex.D.1 cheque of Rs.45,000/- is towards amount due by the husband of accused. When that is the case, chit for Rs.1,00,000/- joined and there were four beneficiaries including as 1/4th beneficiary was the husband of accused, for which also obtained Ex.D.3 cheque from the accused directly in the name of chit fund company in the absence of showing means of complainant, it is highly improbable to believe that he lent Rs.90,000/- under Ex.P.1 cheque to the accused on 15.09.2003 that too, Ex.D.5 bank account of accused with APSCB shows therefrom no any transactions. Further the bank account of the accused with SBH shows, she was having in her bank account of Rs.2,45,246/- as on 15.09.2003 and that includes after withdrawal of Rs.12000/- and Rs.45,550/- on that day by her out of balance of Rs.3,02,796/-. Thus, it is not believable of she was in dire need of money by then and borrowed Rs.90,000/- from the complainant despite having huge amount with her and the complainant lent the amount and obtained cheque with no any scrap of paper. In the wake of above facts, that too, there were no any previous transactions between the accused and the complainant, but for small lending mounted to Rs.45,000/- on interest basis, for which he admittedly obtained the Ex.D.1 letter in the lifetime of husband of accused from him and for that Ex.D.2 cheque obtained from the accused and encashed after death of husband of accused besides cheque in the name of chit fund company of Rs.49,500/-. It is therefrom, the trial Court was right in saying the accused could by preponderance of probability, make out the defence of Ex.P.1 cheque was a blank cheque that was later cause filled that the same probablising of he obtained as security from the accused, for husband of accused, covered by Ex.D.1 letter for Rs.45,000/-; with a promise to return after its liquidation and even under Ex.D.2 counterfoil proof of issuance of Cheque No.447137,dated 03.07.2003 and the same paid, however, the blank cheque was not returned. There is nothing even to show in support of the suggestion to the accused-D.W.1 by the complainant of the subject matter Ex.D.1 cheque was with the handwriting of the accused of the contents at the same time. The trial Court also observed that a look of the cheque within its power by comparison no way correlates the suggestion. It was not even cause sent to expert for comparison of the entire writings and its age and with same pen and by same person to probablise that version. Thus, for this Court while sitting in appeal against the acquittal judgment, there is nothing to interfere much less to reverse the same. Accordingly, Point No.1 is answered.

<u>Point No.2</u>:

14. In the result, Criminal Appeal is dismissed by confirming the acquittal judgment, dated 25.06.2007 passed by the learned X Additional Chief Metropolitan Magistrate, Secunderabad, in C.C.No.1684 of 2003. Consequently, miscellaneous petitions, if any, pending in this 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] (2007) 6 SCC 555