IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 797 OF 2018

Suresh Nakra s/o Sohanlal Nakra
Age 62 years
Add/at 502, Queensland Appt.
Shastrinagar, Andheri West,
Mumbai 400053. ... Appellant

v/s.

Murugesan Adimoolam & anr.
2nd floor, Shree Ganesh Prem CHS,
Sector 7, Plot no.23,
Airoli, Navi Mumbai 400708. … Respondent

Mr. Suresh Nakra, appellant in person present.
Mr. Ajinkya Udane, Legal Aid advocate for the appellant.

Mr. M.K.Dubey I/b. Anil Dubey for respondent no.1.
Mrs. J.S.Lohakare, APP for the State.

CORAM : DAMA SESHADRI NAIDU, J.

8th July 2019.

ORAL JUDGMENT

Complainant Suresh Nakra is the appellant. He initially filed a case under Section 138 of the Negotiable Instrument Act 1881 ("the NI Act") against Murugessan, the sole respondent. Suresh maintained that Murugessan issued a cheque for Rs.9,50,000/-, but did not honour it. The cheque was returned unpaid, initially, for want of funds and, later, because the account was blocked. Though Murugessan received a statutory notice under Section 138 of NI Act, he did not respond to it. Thus, Suresh filed CC No.3841/2015.

2. Before the trial Court, Suresh Nakra got himself examined as PW1 and marked seven documents. Those documents are (i) original covering letter dated 20th June 2013 (Exhibit 11), (ii) original cheque issued by accused (Exhibit 12), (iii) Bank written memos (Exhibit 13 & 14), (iv) office copy of legal demand notice (Exhibit 15), (v) Postal receipts (Exhibit 16), (vi) Acknowledgment card (Exhibit 17), (vii) Returned envelopes (Exhibit 18 to 21).

3. Murugessan pleaded not guilty. Besides cross examining PW1, he led no independent evidence. Eventually, the Trial Court dismissed the case through its judgment, dated 18th November 2017. The trial Court has held that Suresh has failed to establish the basic ingredients

of Section 138 of NI Act against Murugessan. It has also found that the statutory burden cast on the accused under Section 139 of NI Act stood discharged effectively. Then aggrieved, Suresh has filed this criminal appeal.

4. Initially, Shri Ajankya Udane, a learned counsel, was appointed from the Bar as the *amicus curiae* to represent Suresh, the appellant. Yet Suresh wanted to argue the case *pro se*. Then, from the day he filed the appeal, he went on representing to the Court that he is a senior citizen —perhaps in his early 60s—that he is an NRI, that it is difficult for him to remain in India only to prosecute this case, and that the appeal must be taken up early. He went on a petition spree.

5. That said, the Court has remained sensitive to his urgency and considerate to his cause, for he has pleaded that he has been wronged and deprived—deprived of a few lakhs. So I persuaded Shri M.K. Dubey, the learned counsel for the respondent-accused, to be ready with the matter, though the appeal belongs to 2018. Shri Dubey has gracefully agreed.

6. In the above circumstances, I have taken up the appeal. Shri

Suresh Nakra *pro se* argued the case, assisted by the counsel this Court appointed. He has advanced four principal contentions: (i) the Trial Court has ignored his ownership over the property the respondent purchased. In that context, he has drawn my attention to Exhibit 24 sale deed. (ii) Murugessan is a partner of the firm that purchased the property—Nandini Milk and Nandini Products ("Nandini")—as is evident from the sale deed. But the trial Court has ignored that aspect. In elaboration, he has submitted that Murugessan himself has filed a copy of the sale deed before the trial Court and that the sale deed has had a copy of the partnership deed annexed to it, showing Murugessan as a partner. (iii) The trial Court has ignored the Liability Letter (Exhibit 11) which Murugessan issued with the cheque. (iv) In the cross-examination, Murugessan's counsel suggested to Suresh that Murugessan issued the cheque when Suresh wanted a hand loan. In other words, Murugessan himself went on recording in a suggestion that he did issue the cheque.

7. Laying emphasis on what he terms Murugessan's admission, Shri Nakra insists that Section 139 of NI Act cast a heavy statutory

burden on Murugessan, but he has failed to discharge it.

8. Shri Nakra has submitted that as the owner of property, he can do anything as he pleases—say 'sell it', 'lease it', 'register it'. About his title to the property, Shri Nakra draws my attention to Exhibt 24 which is more in the nature of a note submitted to the trial Court. It is with a caption, "application to submit documents related to property ownership; proof of ownership of the property." If it were an application, I see no proof that it had been taken on file.

9. Though the documents attached were not brought on record, they still remained in the record and proceedings (R&P). So, after notifying Murugessan's counsel, I examined them. They are these:

Original receipts of payment made to the builder.

Electricity bill from MSEB in the name of Ms. Lata Nakra.

Monthly maintenance bill in the name of Ms. Lata Nakra.

"SAP" agreement between builder and Mrs. Lata Nakra.

Possession letter issued issued by JHB builders.

Copy of cheque payments received from JHB Builders.

Copy of bank statement showing the encashment of cheques received from JHB.

10. All the above documents stand in the name of Suresh Nakra's wife.

11. Eventually, Shri Nakra has submitted that the acquittal must be overturned and the respondent convicted under Section 138 of the N.I. Act.

12. Shri Dubey, the learned counsel for the respondent-accused, has submitted that Suresh has nothing to do with the property JHB sold to Murugesan. He has also submitted that it is entirely a bilateral transaction between JHB and Murugesan, with no whisper about Suresh or, even, his wife. Shri Dubey has stressed that Murugesan is not the purchaser; it is, in fact, Nandini, which has purchased the property. And that is a partnership firm.

13. Initially Shri Dubey has submitted that Suresh could not establish that Murugesan is a Partner in Nandini. But, later, he withdrew that plea when he was shown the partnership deed annexed to the sale deed, filed by Murugesan himself. At any rate, Shri Dubey has insisted that it is a transaction between JHB and Nandini,

Murugesan incidentally being one of the partners.

14. Shri Dubey has submitted that Murugesan has discharged his statutory burden under Section 139 of the NI Act. In that context, he has drawn my attention to Suresh's cross-examination. According to him, the cheque was issued by Mahesh Trading Company ("Mahesh Trading"), another partnership firm. Suresh has unambiguously admitted that Mahesh Trading owed no debt, legally enforceable or otherwise, to Suresh. Once Suresh has admitted that the drawer of the cheque owed no debt to the payee, the cheque remains unenforceable.

15. Shri Dubey has submitted that Suresh has filed his affidavit-in-chief, which has not been verified in accordance with the law. So it remains a mere piece of paper, with no solemnity attached to it. But Shri Nakra pointed out it was duly verified. And it was. So we need not pursue this argument.

16. Then, Shri Dubey has referred to the judgment of this Court in the case of *Hiten Sagar vs. IMC Ltd.*[1], to contend that once a third party undertakes to discharge the liability of another person, there

[1] 2001 Cr. LJ 4311

ought to have been express undertaking to that effect. But here, Suresh himself, according to Shri Dubey, has admitted that Mahesh Trading owes nothing to him.

17. Finally, Shri Dubey has submitted that Mahesh Trading, a legal entity under Section 141 of the N.I. Act, has not been made a party to the case; nor has it been, in the first instance, served with any statutory notice. To sum up his submissions, Shri Dubey has submitted that the complaint has suffered from incurable legal infirmities and factual inaccuracies. Under those circumstances, the Trial Court, Shri Duby concludes, has rightly dismissed the complaint. To support his contentions, he has relied on *Jitendra Vora v. Bhavana Y. Shah*[2].

Reply:

18. In reply, Shri Nakra has submitted that he and his wife are the joint owners of the property. He has submitted that JHB Builders has paid to Smt. Lata Nakra the consideration it had received from the purchaser. And Suresh Nakra has been acting as her Special Power of Attorney.

[2] 2015 All MR (Cri) 4081 (SC)

19. Faced with the problem of not issuing the statutory notice to Mahesh Trading and also not arraying it as a party to the case, Shri Nakra submits that there is no vicarious liability under Section 141 of the N.I. Act for offence under Section 138.

20. Shri Nakra has not relied on any precedents but submitted that there are many precedents to support his case. He has submitted that this case is governed by "the nexus theory." To elaborate it, Shri Nakra has submitted that it is Murugessan who paid the stamp duty; it is he who got the shop registered in Nandini's name. But Murugesan has intentionally issued, according to Shri Nakra, the cheque in Mahesh Trading's name, though it has nothing to do with the transaction.

Double Opportunity:

21. The Court earlier appointed Shri Ajinkya Udane as the counsel for Suresh Nakra, but because of his insistence to argue the case *pro se*, Shri Ajinkya Udane remained on the side lines; he ended up assisting Suresh Nakra during the arguments. Eager and Anxious Suresh Nakra may have been, he has no formal legal training to

appreciate and to articulate the legal nuances. As I have felt he has not helped his own cause by arguing in person, I have asked Shri Ajinkya Udane to supplement Suresh Nakra's submission. I have extended this opportunity because what was supposed to be a penal alternative to a contractual dispute under the NI Act has become a veritable technical minefield, ready to explode with the suitor's one unwary or wrong step. As it did here.

22. So I have asked Shri Ajinkya Udane, the Counsel on record for Suresh, to advance his arguments on any question of law left out. He has submitted that Suresh's not issuing notice to Mahesh Trading and not arraying it as a party to the proceedings seem to be fatal. Despite his best efforts, he could find no decision to counter that supposition. He has submitted that he has nothing more to argue.

Hiatus:

23. After dictating the judgment up to this point, for paucity of time I adjourned the matter from Friday to the immediate next working day: Monday. When I resumed the dictation at 3.30 pm, Shri Nakhra once again insisted he should bring to my notice some more

issues that could not be addressed earlier. Though initially I was reluctant, as Shri Nakra is prosecuting his case *pro se*, I allowed him to supplement his previous submissions.

24. Shri Nakra has submitted that Murugesan has not discharged his burden under Section 139 of NI Act. About the vicarious liability, Shri Nakra relies on *Aneeta Hada v. M/s Godfather Travels & Tours Pvt. Ltd*[3].

25. To distinguish *Hiten Sagar*, a judgment rendered by this Court, Shri Nakra submits that if another person takes on a third party's liability, it may need concrete poof on that count. But in this case the very drawer of the cheque issued a covering letter. And that will suffice.

26. Before dictating my reasons, I have read out to Shri Nakra the rival arguments and asked him whether any of his arguments had been missed out. He said, "everything was covered."

27. Heard Shri Suresh Nakra, the Appellant in person, and Shri Dubey, the learned counsel for the respondent.

[3] (2012) 5 SCC 661

Discussion:

28. As I see, this Appeal raises these issues:

a) Had the appellant owned the property; did he sell it to the respondent?

b) In what capacity has the complainant maintained the complaint?

c) Was the Complaint instituted against the proper accused; in other words, have all the accused been arrayed in the case?

d) Has the complainant discharged his primary burden that the respondent issued the covering letter along with the cheque?

e) Has the respondent discharged his burden under Section 139 of NI Act?

f) Had the appellant owned the property; did he sell it to the respondent?

29. These twin questions need one answer. Of course, the latter encompasses the former. Indeed, Shri Nakra has consistently maintained that he owned a shop in a building constructed by JHB Constructions. He sold that property to Murugesan through JHB Constructions. Selling, I reckon, presupposes ownership. Unless the complainant owned the property, there could be no occasion for him

to sell it.

30. In the alternative, Suresh asserted that he is a duly constituted agent of his wife, who was the owner. And finally, he maintained he and his wife were co-owners. But the documents on record, unmarked though, reveal a different picture.

31. First, it was the builder that sold the property. Second, Suresh's wife seems to have paid the consideration to the builder—be it in full or in part. So the builder issued the receipts in her name. Third, Suresh's wife or even Suresh never had the property conveyed to them by the builder. It was based on an agreement of sale, as was the prevalent market practice. Plainly put, to avoid stamp duties and registration expenses the transactions between a builder and purchaser or between seller and purchaser, usually, take place only on the strength of agreements of sale and power of attorneys. With the consideration paid, the parties deem the agreements of sale irrevocable. And on the strength of a power of attorney, they intermeddle with the property and even sell it to another party – as agents, though.

32. Thus the putative owner remains an agent and deals with the property until he or she sells it away. Legal as it may have been, but it falls short of constituting the agent as the owner. Here, too, the same arrangement seems to have been made. The builder continued to be the owner, Suresh Nakra's wife became an "inchoate" purchaser or owner, so to say.

33. There is no material to show that Suresh was the owner or co-owner. Indeed, he contended that he is his wife's agent. Keeping aside the fact that his wife herself was not the owner, I will accept this assertion. Then, Suresh ought to have maintained the complaint in his wife's name, his remaining her agent. That has not happened.

34. We need not hassle ourselves with a technicality such as Section 54 of the Transfer of Property Act and Section 17 and 49 of Registration Act, which require an immovable property to be conveyed through a registered deed.

35. Indeed, the builder sold the property, and it received the sale consideration. It has allegedly passed on the sale consideration to Smt. Nakra. I am afraid that by itself does not constitute her the

owner. At any rate, Suresh had no role to play. That said, I must also say it is Suresh who received the cheque from Mahesh Trading.

36. On this twin question, I conclude that neither Suresh nor his wife was the owner. And neither sold the property.

b) In what capacity has the complainant maintained the complaint?

37. Suresh Nakra has submitted that his wife executed a special power of attorney in his favour. Indeed, in the name of “application to submit documents”, he has filed a host of documents, but none has been marked in the manner known to law. In fact, Smt. Lata Suresh Nakra executed the alleged special power of attorney constituting Suresh Nakra to be her agent “to sign the agreement of purchase with JHB Construction Company, to pay the stamp duty and registration fees, to lease out the property, to sell it, to deposit the sale proceeds, to deposit the rent collected, to appear before any Court or authority.” It was executed on 9th October 2012 on a sheet of white paper, notarised with the seal of Consulate General of India, Dubai.

38. But Suresh Nakra filed the complaint not as his wife’s

agent, but on his own name. Even if we disregard that the power of attorney Suresh's wife is said to have executed is unstamped and cannot be looked into for whatever purpose under Section 37 of the Stamp Act, Suresh's case cannot be improved. And the last-gasp argument that Suresh was the co-owner, too, fails, for there is no material to support that.

c) *Was the Complaint instituted against the proper accused; in other words, have all the accused been arrayed in the case?*

39. Indisputably, the drawer of the cheque, Mahesh Trading, is a partnership firm. Under usual circumstances it may not have been reckoned as a juristic person, but Section 141 of the NI Act makes it one. So let us examine Section 141:

> "**141.*Offences by companies***.—(1) *If the person committing an offence under Section 138 is a company*, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, *as well as the company, shall be deemed to be guilty* of the offence and shall be liable to be proceeded against and punished accordingly:
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> . . .
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> . . .

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any Director, Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.--For the purposes of this section,--

(a) "company" means any body corporate and *includes a firm or other association of individuals;* and

(b) *"director", in relation to a firm, means a partner in the firm.*"

(italics supplied)

40. From the above provision, we may gather that if the "person" committing the offence is a "company", every person involved in its affairs, "as well as the company", shall be deemed guilty of the offence. The explanation dispels all the conceptual confusions about what a company is. Into the fold of a company the Statute brings, by a legal fiction, even a partnership firm, which is otherwise a non-legal entity.

41. Thus, for the offences under Section 138 of NI Act, a partnership firm is a company and its partner is a deemed director. Indeed, Section 141 is so expansive as to include even an "association of individuals" in the fold of a company. Then, what remains beyond its

reach is a sole proprietary concern, which is neither a firm nor an association of persons.

42. That said, let us examine the precedential position on this score. A company contracted to sell a piece of land to a partnership firm, but a private company, unconnected with the contract, undertook to discharge the firm's liability. So it issued a cheque, signed by one of its directors. The cheque dishonoured, the company sued only the signatory to the cheque, that is the director of the private company. Later it tried to being on record the private company, too. In that context, the Supreme Court in *N. Harihara Krishnan v. J. Thomas*[4], has examined the tenability of the complainant company's approach.

43. First, *Harihara Krishnan* parenthetically observes that a third party's undertaking to pay the contractual liability is permissible under the Contract Act. Then, it observed on facts that the cheque was drawn on the account of the private company; that private company is primarily liable for punishment under Section 138 of the Act. The signatory's liability is in his capacity as its director; thus, it is vicarious,

[4] (2018) 13 SCC 663

if at all. For this proposition, *Harihara Krishnan* quotes with approval *Aneeta Hada v. Godfather Travels & Tours (P) Ltd*[5]. It eventually holds that the prosecution against the appellant-signatory could not be successfully maintained without prosecuting the private company, on behalf of which he signed the cheque.

44. In *Director of Public Prosecutions v. Kent and Sussex Contractors Ltd.*[6], the Appellate Court, per MacNaghten, J., has felicitously expressed the nuances of corporate criminality and the "intention" of a non-human agent. It observes that a body corporate is a 'person' to whom, amongst the various attributes it may have, there should be imputed the attribute of a mind capable of knowing and forming an intention—indeed it is much too late in the day to suggest the contrary.

45. Then, *Kent and Sussex Contractors* notes that the body corporate can only know or form an intention through its human agents, but circumstances may be such that the knowledge of the agent must be imputed to the body corporate.

[5] (2012) 5 SCC 661
[6] (1944) 1 All ER 119 (DC), as quoted in *Aneeta Hada.*

46. After exhaustively analysing the statutory and precedential position on the point, *Aneeta Hada* holds that the commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in section 141 unmistakably clarify that when the company can be prosecuted, only then can the persons mentioned in the other categories be held vicariously liable for the offence—subject to the averments and proof. Then, *Aneeta Hada* arrives at "the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative." And as we have already discussed, a partnership is a company under Section 141 of the NI Act. Indeed, Mahesh Trading is a partnership firm, and it has not been arrayed as a party.

d) Has the complainant discharged his primary burden that the respondent issued the covering letter along with the cheque?

47. Mahesh Trading has issued the cheque. According to Suresh, it undertook to discharge another firm's debt. This discharging of one person's debt by another is legally permissible. Here, who has agreed to

discharge whose debt? Nandini purchased the property. Nandini, through its partner, allegedly agreed to compensate Suresh for the delay by paying Rs.9,00,000/-. But Mahesh Trading issued the cheque. Let us assume it was on Nandini's behalf. In terms of Section 41 of Contract Act, now the payee of cheque cannot take recourse to Nandini. For when Suresh (a promisee) accepts performance of the promise from Mahesh Trading (a third person), he cannot afterwards enforce it against Nandini (the promisor). Rightly Suresh did not enforce it against Nandini. But he did not enforce it against Mahesh Trading, either.

48. Let us consider the alternative. Suresh relies on a letter accompanying the cheque. It was allegedly given by Murugesan. Under Mahesh Trading's seal, Murugesan as the partner signed it. He denied it, though. In the context of the undertaking letter Mahesh Trading has given, Murgesan maintains it has not been duly proved in the face of his denial. He has relied on *Bhavana*.

49. In *Bhavana*, one Shah Agency owed money, but one Shah Enterprises undertook to discharge the burden. So it issued a cheque.

These two Agencies seem to be propriety concerns, each owned by a brother. That cheque dishonoured, the matter reached this Court. A learned Single judge has, first, acknowledged the well-established principle that to maintain a complaint under section 138 of the N.I. Act, the cheque must be issued in discharge of any liability. In the factual context, then, *Bhavana* posed unto itself a question "whether **A** can issue a cheque in discharge of the liability of **B**, in spite of the fact that the liability of **B** has been taken over by **A**." (The emphasis is mine). Then the decision has ruled that

> "[I]n the absence of any documents, creating the liability of petitioners 2 and 3 in favour of petitioner No. 1, mere statement that the cheque was issued by petitioner No. 1 for and on behalf of the petitioners 2 and 3 will not be sufficient to give the cause of action for a complaint under section 138 of the N, I. Act. Even in the notice sent to the petitioner it has not been mentioned that the drawer of the cheque has taken over the liability of the petitioners 2 and 3. "Any liability" occurred in the section is only to mean that any kind of liability of the drawer; and not any other's liability, unless the payee, the drawer and the original debtor entered into any agreement to that effect. In order to entertain a complaint, the Magistrate should have material before him to the effect that there is tripartriate agreement in the above nature. Sometime, a surety of debtor will also issue a cheque. In that case also section 138 will attract in the case of dishonour. Here in this case we have only a unilateral lawyer notice which says that

> the petitioner had undertaken the liability of his brother Mr. Jinish Sagar. It is well settled principle of criminal law that a penal provision of a statute has to be strictly constructed and if in a wider connotation it will amount disadvantage to the accused, such awider connotation cannot be accepted. On a reading of section 138 of the N.I. Act it is clearly spelt out that a cheque must be drawn for discharge of the liability of the drawer of the cheque. In other words if he has drawn a cheque for the discharge of the liability of another person without creating any document, it will not and it would not come under section 138 of the N.I. Act.

50. This decision binds me. *Bhavana* holds that if a third party undertakes to discharge a debt of, say, the principal borrower, there ought to be a document creating the liability vis-à-vis that third party. Plainly put, *Bhavana* insists on a "tripartite agreement", presumably, in writing.

51. I doubt *Bhavana*. But doubting is not disobeying. *Bhavana* reasons that a penal provision must be strictly constructed. If an interpretation disadvantages the accused, *Bhavana* concludes, "such a wider connotation" cannot be accepted.

52. Contractually, when one person signifies to another his willingness to do or to abstain from doing anything, he is said to make a proposal. When the person to whom the proposal is made

signifies his assent to it, the proposal is said to be accepted. A proposal, when accepted, becomes a promise. At the desire of the promisor, if the promisee or any other person has done or abstained from doing something, such act or abstinence is the consideration for the promise. Finally, every promise and every set of promises, forming the consideration for each other, is an agreement. And an agreement need not be in writing unless the law compels.

53. Continued in the same vein, all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object. Thus, consideration includes money, services, personal property, real property, "promise to act and promise to not act."

54. In *Bhavana*, Agency A owed money to the creditor, but Agency B promised to discharge that liability. That is, Agency B undertook to discharge Agency A's liability. Acting on Agency B's promise, the creditor refrained from suing Agency A. Thus a contract has come into existence. The consideration for this contract is the creditor's refraining from suing Agency A. And that has been

signified by Agency B's executing, if it were, an instrument promising to discharge the liability: a cheque.

55. First, contract law does not compel the parties, as I have already noted, to reduce to writing the Agency B's promise to discharge Agency A's debt. Then what is the evidence for this transaction? Agency B's issuing the cheque to the Creditor. With all its attendant statutory presumptions under Section 118 and 139 of the NI Act, a cheque is more than sufficient proof. Contract Act, besides being an independent Act, also subsumes, say, the NI Act. It is not the other way round. Even if the consequences are penal, the nature of contract or the method of its interpretation does not change. What changes is the standard of proof. A provision criminalizing a contractual violation will require a higher standard of proof. But that proof should not, however, result in rewriting the Contract Act.

56. Under the NI Act, the cheque presupposes a valid contract —that is an enforceable debt—and that debt may have arisen out of the drawer's undertaking to pay somebody else's debt. For law

permits it. Thus permitted, that fact needs no further proof than the rebuttable presumption under Section 139 of the Act. On the contrary, by insisting on a tripartite agreement in writing, *Bhavana* not only misreads the contract but also dilutes the statutory command of, for instance, Section 139 of the NI Act.

57. That said, I reiterate *Bhavana* binds me. As Richard A. Posner puts it, discussing a binding precedent and presenting an alternative view is not unhealthy, but disobeying the decision is. Law is organic—alive and growing. Its fossilization makes it decadent. At least, this proposition holds good for horizontal precedents. And, indeed, vertical precedents compel unquestioned compliance. Perhaps, a Bench of appropriate strength, in future, may consider *Bhavana's* holding and decide whether it should continue to hold the field.

58. Going by *Bhavan*a, I hold that Suresh has produced no tripartite agreement involving Nandini, Mahesh Trading, and Suresh. At any rate, Suresh has failed in this case on other fundamental aspects, such as Suresh's failing to sue or prosecute the

principal offender, the company: Mahesh Trading Company. So, I reckon, this question assumes no importance.

e) Has the respondent discharged his burden under Section 139 of NI Act?

59. Indeed, as Suresh has rightly maintained, during his cross examination, Murugesan has suggested that the cheque was given as a hand loan. Thus, the issuing of cheque stood admitted. Then, Section 139 of NI Act could have come into play. But I reckon this question needs no independent answer. Murugesan could not be burdened with criminal prosecution in the absence of the Mahesh Trading, the alleged principal offender.

Conclusion:

60. I hold that the appeal has failed. The trial Court's judgment remains unassailable, as I find no compelling reasons to overturn the acquittal it has handed down to the respondent.

The Criminal Appeal, thus, stands dismissed.

(DAMA SESHADRI NAIDU, J)