

BAIL SLIP

The Petitioner/Accused Viz P.K. Selvaraj S/o. Kuppusamy directed to be was released on bail as per the Order of this Court Dated 07/02/2014 in CrI.M.P.No.1 of 2014 in CrI.RC.No.161/2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.03.2021

CORAM :

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CrI.R.C.No.161 of 2014

and

M.P.No.1 of 2014

P.K.Selvaraj
S/o.Kuppusamy

... Petitioner /Accused

Vs.

Umadevi Sundaram
W/o.Sundaram

... Respondent/ complainant

Prayer: Revision petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the conviction and sentence imposed in the judgment dated 20.12.2013 made in C.A.No.73 of 2010 on the file of the Additional District Judge, Namakkal confirming the conviction and sentence imposed in judgment dated 30.06.2010 made in STC.No.348 of 2009 on the file of the learned Judicial Magistrate No.II, Namakkal by allowing the Criminal Revision Petition.

For Petitioner : Mr.A.Thiyagarajan

For Respondent : Mr.D.Shivakumaran

ORDER

(The cases have been heard through video conference)

For the sake of convenience, the petitioner and the respondent will be referred to as accused and complainant respectively.

2.It is a case of the complainant that the accused had approached her on 15.01.2006 and borrowed a sum of Rs.2,85,000/- from her as hand loan for emergency purpose and agreed to repay the same with interest at the rate of 18% per annum. In order to discharge his liability, the accused had executed a Promissory Note, but the accused neither paid any amount towards interest nor paid the principal. When the complainant approached the accused and made a demand to repay the said amount with interest, the accused issued a cheque bearing No.663515 dated 14.09.2007 for a sum of Rs.3,70,500/- (Ex.P2), drawn on Karur Vysya Bank, Main Branch in favour of the complainant and he assured her that the cheque would be honoured on presentation. The complainant believing his words, presented the cheque through her banker viz. Indian Overseas Bank, Namakkal on 24.09.2007, but the said cheque was returned by the banker of the accused with an endorsement "Account Closed" vide bank return memo dated 25.09.2007 (Ex.P3) and the same was intimated to the complainant through her banker on 26.09.2007 (Ex.P4). Therefore, the complainant issued a statutory demand notice dated 05.01.2007 by registered post (Ex.P5) but the accused even after getting the intimation from the postal department, refused to receive the legal notice sent by the complainant and the said notice (Ex.P6) was returned to her as unclaimed on 05.10.2007. The accused despite receiving the intimation from the postal department, refused to receive the same and the accused knowing well that his bank account has been closed had issued a cheque to the complainant with an intention to cheat her. The complainant has also filed a suit and the plaint dated 19.01.2009 has been marked as Ex.P1. Ex.P7 to Ex.P17 are the Income tax statements and Tax Return Forms to prove that the complainant has the capacity to lend the said hand loan to the accused. Therefore, the complainant initiated prosecution and the same was taken on file in S.T.C.No.348 of 2009 by the learned Judicial Magistrate No.II, Namakkal, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity the NI Act) against the accused.

3.On appearance, the accused was questioned under Section 251 Cr.P.C. and he denied the accusation.

4.The complainant examined herself as P.W.1. and marked Ex.P1 to Ex.P19.

5.When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same and stated that he neither borrowed any amount from the complainant nor executed any promissory note in favour of the complainant and the cheque issued to the complainant is not his cheque and the signature in the cheque was also denied

and he has stated that he was not aware as to how the cheque went to the hands of the complainant even after closing the account. On the side of the defence, the accused examined three witnesses viz. DW1 to DW3 and marked Ex.D1 to Ex.D3 to defend his case.

6.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 30.06.2010 in S.T.C.No.348 of 2009 had found the accused guilty and convicted him u/s.138 of Negotiable Instruments Act, 1881 and sentenced him to undergo simple imprisonment for a period of one year. Against the said conviction and sentence, the accused had filed an appeal in C.A.No.73 of 2010 and the learned Additional District Judge, Namakkal by judgment and order dated 20.12.2013 finding that the accused is guilty for the offence u/s.138 of N.I. Act, confirmed the conviction and sentence imposed by the trial Court. Aggrieved by the findings of the Courts below, the accused has preferred the present Criminal Revision under Section 397 r/w 401 Cr.P.C.

7.Heard Mr.A.Thiyagarajan, learned counsel appearing for the accused and Mr.D.Shivakumaran, learned counsel appearing for the complainant.

8.Learned counsel for the Revision Petitioner / accused would at the outset submit that though the petitioner has got various legal points in the revision, he is not arguing the case on merits and would submit that the petitioner is ready and willing to compound the offence by paying twice the cheque amount which may be paid as compensation to the complainant u/s.357 Cr.P.C. along with Rs.9,000/- towards cost in lieu of the imprisonment. He would further submit that the complainant even as per her own admission is a money lender. The cheque was issued by the petitioner as a security to the loan taken by the petitioner's brother in law from the complainant. He would submit that the complainant has also initiated a suit for recovery of the amount based on the promissory note in O.S.No.15 of 2019 on the file of the Sub Court, Namakkal. He would further submit that the petitioner is ready with demand draft for Rs.7,50,000/- in total out of which, a sum of Rs. 7,41,000/- is paid towards twice the cheque amount and Rs.9,000/- can be paid towards cost to the complainant. He would further reiterate that the petitioner is a School Teacher and that the conviction would carry a stigma of disqualification to his employment and thereby, would pray that the petitioner may be let off on admonition, invoking relevant provisions of the Probation of Offenders Act.

9.Per contra, learned counsel for the respondent / complainant would submit that the cheque is of the year 2007 and

the debt is of the year 2006. The accused had borrowed a sum of Rs.2,85,000/- and had issued a cheque dated 14.09.2007 for Rs.3,70,500/- towards principal and interest for the amount of Rs.2,85,000/- borrowed on 15.01.2006. The cheque had been presented for collection on 24.09.2007 and it was returned stating reason "account closed". Thereby, the respondent / complainant after complying with the legal formalities, had filed a complaint within time. Further, the complainant had proved her case by letting in cogent evidence and the Courts below finding that the complainant has proved her case and that the accused has not rebutted the presumption u/s.118 and 139 of N.I. Act, has rightly convicted the petitioner / accused. He would submit that once it is proved that the offence is committed, any payment made subsequent thereto, will not absolve the accused of criminal liability. In support of his contention, the learned Counsel for the respondent/complainant would rely on the Judgment of the Hon'ble Apex Court in Rajneesh Aggarwal Vs. Amit J.Bhalla reported in (2001) 1 SCC 631.

10. In reply, the learned Counsel for the petitioner would submit that in lieu of the conviction and sentence of imprisonment for one year, the petitioner has now offered to pay twice the cheque amount as compensation cost. He would further submit that in Rajneesh Aggarwal Vs. Amit J.Bhalla, the Hon'ble Apex Court has held that though the payment of cheque amount will not absolve the liability of criminal offence, it may have some effect in the matter awarding sentence and would pray that the sentence of imprisonment may be set aside and the petitioner may be admonished.

11. Heard the learned Counsels on either side and perused the materials on record.

12. The petitioner/accused and the respondent/complainant are present before the Court.

13. It is the case of the complainant that the petitioner/accused had approached her on 15.01.2006 and borrowed a sum of Rs.2,85,000/- from her as hand loan for emergency purpose and agreed to repay the same with interest at the rate of Rs.18% per annum. In discharge of the liability with interest, the petitioner / accused had issued a cheque dated 14.09.2007 for a sum of Rs.3,70,500/-. Thereafter, the cheque had been presented for collection and it had been returned stating reason "account closed" and thereafter, the respondent/complainant had issued a statutory notice and it had been returned. After complying with the legal formalities, the respondent / complainant had filed a complaint which had been taken up in STC No.348 of 2009. The trial Court had found the petitioner/accused guilty and convicted him under Section 138 of

Negotiable Instruments Act and sentenced him to undergo Simple Imprisonment for a period of one year against the said conviction and sentence, the petitioner/accused had filed an appeal in C.A.No.73 of 2010 before the Appellate Court and the Appellate Court had also dismissed the appeal and confirmed the Judgment and order of the trial Court. Both the Courts have not ordered for payment of compensation or fine. The respondent/complainant has also not filed any appeal against non imposition of fine and non awarding of compensation. Further, the respondent/complainant admittedly has initiated O.S.No.15 of 2019 for recovery of money based on the pronote before the Sub Court, Namakkal and had obtained a decree. Now before this Court, the petitioner/accused has offered to pay twice the cheque amount as compensation in lieu of the sentence of imprisonment for one year. At this juncture, this Court deems it fit to refer to a latest Judgment of the Hon'ble Apex Court in P.Mohanraj and Others Vs. Shah Brothers Ispat Pvt. Ltd. reported in (2021) SCC Online SC 152 wherein, the Hon'ble Apex Court has after referring to several earlier judgments had done a detailed analysis and held that the proceedings contained in chapter XVII of the Negotiable Instruments Act are Quasi - Criminal Proceedings in nature. For academic interest, this Court feels it necessary to refer to the relevant paragraphs of the Judgment referred above;

THE NATURE OF PROCEEDINGS UNDER CHAPTER XVII OF THE NEGOTIABLE INSTRUMENTS ACT

39. This brings us to the nature of proceedings under Chapter XVII of the Negotiable Instruments Act. Sections 138 to 142 of the Negotiable Instruments Act were added by Chapter XVII by an Amendment Act of 1988. Section 138 reads as follows:

"138. Dishonour of cheque for insufficiency, etc., of funds in the account.—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, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque,

or with both : Provided that nothing contained in this Section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this Section, "debt or other liability" means a legally enforceable debt or other liability."

40. Section 138 contains within it the ingredients of the offence made out. The deeming provision is important in that the legislature is cognizant of the fact that what is otherwise a civil liability is now also deemed to be an offence, since this liability is made punishable by law. It is important to note that the transaction spoken of is a commercial transaction between two parties which involves payment of money for a debt or liability. The explanation to Section 138 makes it clear that such debt or other liability means a legally enforceable debt or other liability. Thus, a debt or other liability barred by the law of limitation would be outside the scope of Section 138. This, coupled with fine that may extend to twice the amount of the cheque that is payable as compensation to the aggrieved party to cover both the amount of the cheque and the interest and costs thereupon, would show that it is really a hybrid provision to enforce payment under a bounced cheque if it is otherwise enforceable in civil law. Further, though the ingredients of the offence are contained in the first part of Section 138 when the cheque is returned by the bank unpaid for the reasons given in the Section, the proviso gives an opportunity to the drawer of the cheque, stating that the drawer must fail to make payment of the amount

within 15 days of the receipt of a notice, again making it clear that the real object of the provision is not to penalise the wrongdoer for an offence that is already made out, but to compensate the victim.

41. Likewise, under Section 139, a presumption is raised that the holder of a cheque received the cheque for the discharge, in whole or in part, of any debt or other liability. To rebut this presumption, facts must be adduced which, on a preponderance of probability (not beyond reasonable doubt as in the case of criminal offences), must then be proved. Section 140 is also important, in that it shall not be a defence in a prosecution for an offence under Section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that Section, thus making it clear that strict liability will attach, mens rea being no ingredient of the offence. Section 141 then makes Directors and other persons statutorily liable, provided the ingredients of the section are met. Interestingly, for the purposes of this Section, explanation (a) defines "company" as meaning any body corporate and includes a firm or other association of individuals.

42. We have already seen how the language of Sections 96 and 101 would include a Section 138/141 proceeding against a firm so that the moratorium stated therein would apply to such proceedings. If Shri Mehta's arguments were to be accepted, under the same Section, namely, Section 141, two different results would ensue - so far as bodies corporate, which include limited liability partnerships, are concerned, the moratorium provision contained in Section 14 of the IBC would not apply, but so far as a partnership firm is concerned, being covered by Sections 96 and 101 of the IBC, a Section 138/141 proceeding would be stopped in its tracks by virtue of the moratorium imposed by these Sections. Thus, under Section 141(1), whereas a Section 138 proceeding against a corporate body would continue after initiation of the corporate insolvency resolution process, yet, the same proceeding against a firm, being interdicted by Sections 96 and 101, would not so continue. This startling result is one of the consequences of accepting the argument of Shri Mehta, which again leads to the position that inelegant drafting alone cannot lead to such startling results,

the object of Sections 14 and 96 and 101 being the same, namely, to see that during the insolvency resolution process for corporate persons/individuals and firms, the corporate body/firm/individual should be given breathing space to recuperate for a successful resolution of its debts - in the case of a corporate debtor, through a new management coming in; and in the case of individuals and firms, through resolution plans which are accepted by a committee of creditors, by which the debtor is given breathing space in which to pay back his/its debts, which would result in creditors getting more than they would in a bankruptcy proceeding against an individual or a firm.

43. Section 142 is important and is set out hereunder:

"142. Cognizance of offences.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause

(c) of the proviso to Section 138:

Provided that the cognizance of a complaint may be taken by the court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period.

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138.

(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,-

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.”

44. A cursory reading of Section 142 will again make it clear that the procedure under the CrPC has been departed from. First and foremost, no court is to take cognizance of an offence punishable under Section 138 except on a complaint made in writing by the payee or the holder in due course of the cheque - the victim. Further, the language of Section 142(1) (b) would again show the hybrid nature of these provisions inasmuch as a complaint must be made within one month of the date on which the “cause of action” under clause (c) of the proviso to Section 138 arises. The expression “cause of action” is a foreigner to criminal jurisprudence, and would apply only in civil cases to recover money. Chapter XIII of the CrPC, consisting of Sections 177 to 189, is a chapter dealing with the jurisdiction of the criminal courts in inquiries and trials. When the jurisdiction of a criminal court is spoken of by these Sections, the expression “cause of action” is conspicuous by its absence.

45. By an Amendment Act of 2002, various other sections were added to this Chapter. Thus, under Section 143, it is lawful for a Magistrate to pass a sentence of imprisonment for a term not exceeding one year and a fine exceeding INR 5,000/- summarily. This provision is again an important pointer to the fact that the payment of compensation is at the heart of the provision in that a fine exceeding INR 5000/-, the sky being the limit, can be imposed by way of a summary trial which, after application of Section 357 of the CrPC, results in compensating the victim up to twice the amount of the bounced cheque. Under Section 144, the mode of service of summons is done as in civil cases, eschewing the mode contained in Sections 62 to 64 of the CrPC. Likewise, under Section 145, evidence is to be given by the complainant on affidavit, as it is given in civil proceedings, notwithstanding anything contained in the CrPC. Most importantly, by Section 147, offences under this Act are compoundable without any intervention of the court, as is required by Section 320(2) of the CrPC.

46. By another amendment made in 2018, the hybrid nature of these provisions gets a further tilt towards a civil proceeding, by the power to direct interim compensation under Sections 143A and 148 which are set out hereinbelow:

"143-A. Power to direct interim compensation.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under Section 138 may order the drawer of the cheque to pay interim compensation to the complainant—

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

(5) The interim compensation payable under this Section may be recovered as if it were a fine under Section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) The amount of fine imposed under Section 138 or the amount of compensation awarded under Section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this Section."

"148. Power of Appellate Court to order payment pending appeal against conviction.—(1) Notwithstanding anything contained in the Code of Criminal Procedure,

1973 (2 of 1974), in an appeal by the drawer against conviction under Section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under Section 143-A.

(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant."

47. With this analysis of Chapter XVII, let us look at some of the decided cases. In CIT v. Ishwarlal Bhagwandas, (1966) 1 SCR 190, this Court distinguished between civil proceedings and criminal proceedings in the context of Article 132 of the Constitution thus:

"... The expression "civil proceeding" is not defined in the Constitution, nor in the General Clauses Act. The expression in our judgment covers all proceedings in which a party asserts the existence of a civil right conferred by the civil law or by statute, and claims relief for breach thereof. A criminal proceeding on the other hand is ordinarily one in which if carried to its conclusion it may result in the imposition of sentences such as death, imprisonment, fine or forfeiture of property. It also includes proceedings in which in the larger interest of the State, orders to prevent apprehended breach of the peace, orders to bind down persons who are a danger to the maintenance of peace and order, or orders aimed at preventing vagrancy are contemplated

to be passed. But the whole area of proceedings, which reach the High Courts is not exhausted by classifying the proceedings as civil and criminal. There are certain proceedings which may be regarded as neither civil nor criminal. For instance, proceeding for contempt of court, and for exercise of disciplinary jurisdiction against lawyers or other professionals, such as Chartered Accountants may not fall within the classification of proceedings, civil or criminal. But there is no warrant for the view that from the category of civil proceedings, it was intended to exclude proceedings relating to or which seek relief against enforcement of taxation laws of the State. The primary object of a taxation statute is to collect revenue for the governance of the State or for providing specific services and such laws directly affect the civil rights of the tax-payer. If a person is called upon to pay tax which the State is not competent to levy, or which is not imposed in accordance with the law which permits imposition of the tax, or in the levy, assessment and collection of which rights of the tax-payer are infringed in a manner not warranted by the statute, a proceeding to obtain relief whether it is from the tribunal set up by the taxing statute, or from the civil court would be regarded as a civil proceeding. The character of the proceeding, in our judgment, depends not upon the nature of the tribunal which is invested with authority to grant relief, but upon the nature of the right violated and the appropriate relief which may be claimed. A civil proceeding is, therefore, one in which a person seeks to enforce by appropriate relief the alleged infringement of his civil rights against another person or the State, and which if the claim is proved would result in the declaration express or implied of the right claimed and relief such as payment of debt, damages, compensation, delivery of specific property, enforcement of personal rights, determination of status etc."

(at pages 196-197)

"A large number of cases have arisen before the High Courts in India in which conflicting views about the meaning of the expression "civil proceeding" were pressed. In some cases it was held that the expression "civil proceeding" excludes a proceeding instituted in the High Court for the issue of a writ whatever may be the nature of the right infringed and the relief claimed in other cases it has been held that a proceeding resulting from an application for a writ

under Article 226 of the Constitution may in certain cases be deemed to be a "civil proceeding", if the claim made, the right infringed and the relief sought warrant that inference : in still another set of cases it has been held that even if a proceeding commenced by a petition for a writ be generally categorised as a civil proceeding, where the jurisdiction which the High Court exercises relates to revenue, the proceeding is not civil. A perusal of the reasons given in the cases prompt the following observations. There are two preliminary conditions to the exercise of the power to grant certificate : (a) there must be a judgment, decree or final order, and that judgment, decree or final order must be made in a civil proceeding. An advisory opinion in a tax reference may not be appealed from with certificate under Article 133 because the opinion is not a judgment, decree or final order, and (b) a proceeding does not cease to be civil, when relief is claimed for enforcement of civil rights merely because the proceeding is not tried as a civil suit. In a large majority of the cases in which the jurisdiction of the High Court to certify a case under Article 133(1) was negatived it appears to have been assumed that the expression "other proceeding" used in Article 132 of the Constitution is or includes a proceeding of the nature of a revenue proceeding, and therefore the expression "civil proceeding" in Article 133(1) does not include a revenue proceeding. This assumption for reasons already set out is erroneous."

(at page 199)

48. A perusal of this judgment would show that a civil proceeding is not necessarily a proceeding which begins with the filing of a suit and culminates in execution of a decree. It would include a revenue proceeding as well as a writ petition filed under Article 226 of the Constitution, if the reliefs therein are to enforce rights of a civil nature. Interestingly, criminal proceedings are stated to be proceedings in which the larger interest of the State is concerned. Given these tests, it is clear that a Section 138 proceeding can be said to be a "civil sheep" in a "criminal wolf's" clothing, as it is the interest of the victim that is sought to be protected, the larger interest of the State being subsumed in the victim alone moving a court in cheque bouncing cases, as has been seen by us in the analysis made hereinabove of Chapter XVII of the Negotiable Instruments Act.

49. In *Goaplast (P) Ltd. v. Chico Ursula D'Souza*, (2003) 3 SCC 232, the object sought to be achieved by Section 138 is succinctly set out in paragraph 3 thereof:

"3. The learned counsel for the appellant has submitted that mere writing of letter to the bank stopping payment of the post-dated cheques does not take the case out of the purview of the Act. He has invited our attention to the object behind the provision contained in Chapter XVII of the Act. For appreciating the issue involved in the present case, it is necessary to refer to the object behind introduction of Chapter XVII containing Sections 138 to 142. This chapter was introduced in the Act by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (Act 66 of 1988) with the object of inculcating faith in the efficacy of banking operations and giving credibility to negotiable instruments in business transactions and in order to promote efficacy of banking operations. With the policy of liberalisation adopted by the country which brought about increase in international trade and commerce, it became necessary to inculcate faith in banking. World trade is carried through banking operations rather than cash transactions. The amendment was intended to create an atmosphere of faith and reliance on banking system. Therefore, while considering the question of applicability of Section 138 of the Act to a situation presented by the facts of the present case, it is necessary to keep the objects of the legislation in mind. If a party is allowed to use a cheque as a mode of deferred payment and the payee of the cheque on the faith that he will get his payment on the due date accepts such deferred payment by way of cheque, he should not normally suffer on account of non-payment. The faith, which the legislature has desired that such instruments should inspire in commercial transactions would be completely lost if parties are as a matter of routine allowed to interdict payment by issuing instruction to banks to stop payment of cheques. In today's world where use of cash in day-to-day life is almost getting extinct and people are using negotiable instruments in commercial transactions and plastic money for their daily needs as consumers, it is all the more necessary that people's faith in such instruments should be strengthened rather than weakened. Provisions contained in Sections 138 to 142 of the Act are intended to discourage people from not honouring their

commitments by way of payment through cheques. It is desirable that the court should lean in favour of an interpretation which serves the object of the statute. The penal provisions contained in Sections 138 to 142 of the Act are intended to ensure that obligations undertaken by issuing cheques as a mode of payment are honoured. A post-dated cheque will lose its credibility and acceptability if its payment can be stopped routinely. A cheque is a well-recognized mode of payment and post-dated cheques are often used in various transactions in daily life. The purpose of a post-dated cheque is to provide some accommodation to the drawer of the cheque. Therefore, it is all the more necessary that the drawer of the cheque should not be allowed to abuse the accommodation given to him by a creditor by way of acceptance of a post-dated cheque. If stoppage of payment of a post-dated cheque is permitted to take the case out of the purview of Section 138 of the Act, it will amount to allowing the party to take advantage of his own wrong."

50. In *Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd.*, (2008) 2 SCC 305, a Division Bench of this Court referred to the object of Section 138 thus:

"16. Section 138 of the Act was inserted by the Banking, Public Financial Institutions and Negotiable Instruments Law (Amendment) Act, 1988 (Act 66 of 1988) to regulate financial promises in growing business, trade, commerce and industrial activities of the country and the strict liability to promote greater vigilance in financial matters. The incorporation of the provision is designed to safeguard the faith of the creditor in the drawer of the cheque, which is essential to the economic life of a developing country like India. The provision has been introduced with a view to curb cases of issuing cheques indiscriminately by making stringent provisions and safeguarding interest of creditors.

17. As observed by this Court in *Electronics Trade & Technology Development Corpn. Ltd. v. Indian Technologists & Engineers (Electronics) (P) Ltd.* [(1996) 2 SCC 739 : 1996 SCC (Cri) 454] the object of bringing Section 138 in the statute book is to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. The provision is intended to prevent dishonesty on the part of the drawer of negotiable instruments in issuing cheques without sufficient funds or with a view to inducing the payee or holder

in due course to act upon it. It thus seeks to promote the efficacy of bank operations and ensures credibility in transacting business through cheques. In such matters, therefore, normally compounding of offences should not be denied. Presumably, Parliament also realised this aspect and inserted Section 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (Act 55 of 2002). The said Section reads thus:

"147. Offences to be compoundable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable."

51. Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663 is an important judgment of three Hon'ble Judges of this Court. This judgment dealt, in particular, with the compounding provision contained in Section 147 of the Negotiable Instruments Act. Setting out the provision, the Court held:

"10. At present, we are of course concerned with Section 147 of the Act, which reads as follows:

"147. Offences to be compoundable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable."

At this point, it would be apt to clarify that in view of the non obstante clause, the compounding of offences under the Negotiable Instruments Act, 1881 is controlled by Section 147 and the scheme contemplated by Section 320 of the Code of Criminal Procedure (hereinafter "CrPC") will not be applicable in the strict sense since the latter is meant for the specified offences under the Penal Code, 1860.

11. So far as CrPC is concerned, Section 320 deals with offences which are compoundable, either by the parties without the leave of the court or by the parties but only with the leave of the court. Sub-section (1) of Section 320 enumerates the offences which are compoundable without the leave of the court, while sub-section (2) of the said Section specifies the offences which are compoundable with the leave of the court.

12. Section 147 of the Negotiable Instruments Act, 1881 is in the nature of an enabling provision which provides for the compounding of offences prescribed under the same Act, thereby serving as an

exception to the general rule incorporated in sub-section (9) of Section 320 CrPC which states that "No offence shall be compounded except as provided by this Section". A bare reading of this provision would lead us to the inference that offences punishable under laws other than the Penal Code also cannot be compounded. However, since Section 147 was inserted by way of an amendment to a special law, the same will override the effect of Section 320(9) CrPC, especially keeping in mind that Section 147 carries a non obstante clause."

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"15. The compounding of the offence at later stages of litigation in cheque bouncing cases has also been held to be permissible in a recent decision of this Court, reported as K.M Ibrahim v. K.P Mohammed [(2010) 1 SCC 798 : (2010) 1 SCC (Cri) 921 : (2009) 14 Scale 262] wherein Kabir, J. has noted (at SCC p. 802, paras 13-14):

"13. As far as the non obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of the Code relating to compounding of offences. ...

14. It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the appellate forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings. Accordingly, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution."

16. It is evident that the permissibility of the compounding of an offence is linked to the perceived seriousness of the offence and the nature of the remedy provided. On this point we can refer to the following extracts from an academic commentary [cited from : K.N.C Pillai, R.V Kelkar's Criminal Procedure, Fifth Edn. (Lucknow : Eastern Book Company, 2008) at p. 444]:

"17.2 Compounding of offences.—A crime is essentially a wrong against the society and the State. Therefore any compromise between the accused person and the individual victim of the crime should not

absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognise some of them as compoundable offences and some others as compoundable only with the permission of the court."

17. In a recently published commentary, the following observations have been made with regard to the offence punishable under Section 138 of the Act [cited from : Arun Mohan, Some thoughts towards law reforms on the topic of Section 138, Negotiable Instruments Act-Tackling an avalanche of cases (New Delhi : Universal Law Publishing Co. Pvt. Ltd., 2009) at p. 5]:

"... Unlike that for other forms of crime, the punishment here (insofar as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque.

If we were to examine the number of complaints filed which were 'compromised' or 'settled' before the final judgment on one side and the cases which proceeded to judgment and conviction on the other, we will find that the bulk was settled and only a miniscule number continued."

18. It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect. ..."

(emphasis supplied)

52. This judgment was followed by a Division Bench of this Court in JIK Industries Ltd. v. Amarlal V. Juman, (2012) 3 SCC 255, stating:

"68. It is clear from a perusal of the aforesaid Statement of Objects and Reasons that offence under the NI Act, which was previously non-compoundable in view of Section 320 subsection (9) of the Code has now become compoundable. That does not mean that the effect of Section 147 is to obliterate all statutory provisions of Section 320 of the Code relating to the

mode and manner of compounding of an offence. Section 147 will only override Section 320(9) of the Code insofar as offence under Section 147 of the NI Act is concerned. This is also the ratio in Damodar [(2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328] (see para 12). Therefore, the submission of the learned counsel for the appellant to the contrary cannot be accepted."

53. The Court then went into the history of compounding in criminal law as follows:

"78. Compounding as codified in Section 320 of the Code has a historical background. In common law compounding was considered a misdemeanour. In Kenny's Outlines of Criminal Law (19th Edn., 1966) the concept of compounding has been traced as follows : (p. 407, para 422)

"422. Mercy should be shown, not sold.—It is a misdemeanour at common law to 'compound' a felony (and perhaps also to compound a misdemeanour); i.e. to bargain, for value, to abstain from prosecuting the offender who has committed a crime. You commit this offence if you promise a thief not to prosecute him if only he will return the goods he stole from you; but you may lawfully take them back if you make no such promise. You may show mercy, but must not sell mercy. This offence of compounding is committed by the bare act of agreement; even though the compounder afterwards breaks his agreement and prosecutes the criminal. And inasmuch as the law permits not merely the person injured by a crime, but also all other members of the community, to prosecute, it is criminal for anyone to make such a composition; even though he suffered no injury and indeed has no concern with the crime."

सत्यमेव जयते (emphasis in original)

79. Russell on Crime (12th Edn.) also describes:

"Agreements not to prosecute or to stifle a prosecution for a criminal offence are in certain cases criminal."

(Ch. 22 – Compounding Offences, p. 339.)

80. Later on compounding was permitted in certain categories of cases where the rights of the public in general are not affected but in all cases such compounding is permissible with the consent of the injured party.

81. In our country also when the Criminal Procedure Code, 1861 was enacted it was silent about the compounding of offence. Subsequently, when the next Code of 1872 was introduced it mentioned about compounding in Section 188 by providing the mode of compounding. However, it did not contain any provision declaring what offences were compoundable. The decision as to what offences were compoundable was governed by reference to the exception to Section 214 of the Penal Code. The subsequent Code of 1898 provided Section 345 indicating the offences which were compoundable but the said section was only made applicable to compounding of offences defined and permissible under the Penal code. The present Code, which repealed the 1898 Code, contains Section 320 containing comprehensive provisions for compounding.

82. A perusal of Section 320 makes it clear that the provisions contained in Section 320 and the various sub-sections is a code by itself relating to compounding of offence. It provides for the various parameters and procedures and guidelines in the matter of compounding. If this Court upholds the contention of the appellant that as a result of incorporation of Section 147 in the NI Act, the entire gamut of procedure of Section 320 of the Code are made inapplicable to compounding of an offence under the NI Act, in that case the compounding of offence under the NI Act will be left totally unguided or uncontrolled. Such an interpretation apart from being an absurd or unreasonable one will also be contrary to the provisions of Section 4(2) of the Code, which has been discussed above. There is no other statutory procedure for compounding of offence under the NI Act. Therefore, Section 147 of the NI Act must be reasonably construed to mean that as a result of the said section the offences under the NI Act are made compoundable, but the main principle of such compounding, namely, the consent of the person aggrieved or the person injured or the complainant cannot be wished away nor can the same be substituted by virtue of Section 147 of the NI Act."

54. In *Kaushalya Devi Massand v. Roopkishore Khore*, (2011) 4 SCC 593, a Division Bench of this Court succinctly stated:

"11. Having considered the submissions made on behalf of the parties, we are of the view that the gravity of a complaint under the Negotiable Instruments Act cannot be equated with an offence

under the provisions of the Penal Code, 1860 or other criminal offences. An offence under Section 138 of the Negotiable Instruments Act, 1881, is almost in the nature of a civil wrong which has been given criminal overtones."

(emphasis supplied)

(This is the clearest enunciation of a Section 138 proceeding being a "civil sheep" in a "criminal wolf's" clothing.)

55. In *R. Vijayan v. Baby*, (2012) 1 SCC 260, this Court referred to the provisions of Chapter XVII of the Negotiable Instruments Act, observing that Chapter XVII is a unique exercise which blurs the dividing line between civil and criminal jurisdictions. The Court held:

"16. We propose to address an aspect of the cases under Section 138 of the Act, which is not dealt with in *Damodar S. Prabhu* [(2010) 5 SCC 663 : (2010) 2 SCC (Cri) 1328 : (2010) 2 SCC (Civ) 520]. It is sometimes said that cases arising under Section 138 of the Act are really civil cases masquerading as criminal cases. The avowed object of Chapter XVII of the Act is to "encourage the culture of use of cheques and enhance the credibility of the instrument". In effect, its object appears to be both punitive as also compensatory and restitutive, in regard to cheque dishonour cases. Chapter XVII of the Act is a unique exercise which blurs the dividing line between civil and criminal jurisdictions. It provides a single forum and single proceeding, for enforcement of criminal liability (for dishonouring the cheque) and for enforcement of the civil liability (for realisation of the cheque amount) thereby obviating the need for the creditor to move two different fora for relief. This is evident from the following provisions of Chapter XVII of the Act:

(i) The provision for levy of fine which is linked to the cheque amount and may extend to twice the amount of the cheque (Section 138) thereby rendering Section 357(3) virtually infructuous insofar as cheque dishonour cases are concerned.

(ii) The provision enabling a First Class Magistrate to levy fine exceeding Rs. 5000 (Section 143) notwithstanding the ceiling to the fine, as Rs. 5000 imposed by Section 29(2) of the Code.

(iii) The provision relating to mode of service of summons (Section 144) as contrasted from the mode prescribed for criminal cases in Section 62 of the Code.

(iv) The provision for taking evidence of the complainant by affidavit (Section 145) which is more prevalent in civil proceedings, as contrasted from the procedure for recording evidence in the Code.

(v.) The provision making all offences punishable under Section 138 of the Act compoundable.

17. The apparent intention is to ensure that not only the offender is punished, but also ensure that the complainant invariably receives the amount of the cheque by way of compensation under Section 357(1)(b) of the Code. Though a complaint under Section 138 of the Act is in regard to criminal liability for the offence of dishonouring the cheque and not for the recovery of the cheque amount (which strictly speaking, has to be enforced by a civil suit), in practice once the criminal complaint is lodged under Section 138 of the Act, a civil suit is seldom filed to recover the amount of the cheque. This is because of the provision enabling the court to levy a fine linked to the cheque amount and the usual direction in such cases is for payment as compensation, the cheque amount, as loss incurred by the complainant on account of dishonour of cheque, under Section 357(1)(b) of the Code and the provision for compounding the offences under Section 138 of the Act. Most of the cases (except those where liability is denied) get compounded at one stage or the other by payment of the cheque amount with or without interest. Even where the offence is not compounded, the courts tend to direct payment of compensation equal to the cheque amount (or even something more towards interest) by levying a fine commensurate with the cheque amount. A stage has reached when most of the complainants, in particular the financing institutions (particularly private financiers) view the proceedings under Section 138 of the Act, as a proceeding for the recovery of the cheque amount, the punishment of the drawer of the cheque for the offence of dishonour, becoming secondary."

(emphasis supplied)

56. In *Dashrath Rupsingh Rathod v. State of Maharashtra*, (2014) 9 SCC 129, a three-Judge Bench of this Court answered the question as to whether the

territorial jurisdiction for filing of cheque dishonour complaints is restricted to the court within whose territorial jurisdiction the offence is committed, which is the location where the cheque is dishonoured, i.e, returned unpaid by the bank on which it is drawn. This judgment has been legislatively overruled by Section 142(2) of the Negotiable Instruments Act set out hereinabove. However, Shri Mehta relied upon paragraphs 15.2 and 17 of the judgment of Vikramjit Sen, J., which states as follows:

"15.2 We have undertaken this succinct study mindful of the fact that Parliamentary debates have a limited part to play in interpretation of statutes, the presumption being that legislators have the experience, expertise and language skills to draft laws which unambiguously convey their intentions and expectations for the enactments. What is palpably clear is that Parliament was aware that they were converting civil liability into criminal content inter alia by the deeming fiction of culpability in terms of the pandect comprising Section 138 and the succeeding sections, which severely curtail defences to prosecution. Parliament was also aware that the offence of cheating, etc. already envisaged in IPC, continued to be available."

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"17. The marginal note of Section 138 of the NI Act explicitly defines the offence as being the dishonour of cheques for insufficiency, etc. of funds in the account. Of course, the headings, captions or opening words of a piece of legislation are normally not strictly or comprehensively determinative of the sweep of the actual Section itself, but it does presage its intendment. See *Frick India Ltd. v. Union of India* [(1990) 1 SCC 400 : 1990 SCC (Tax) 185] and *Forage & Co. v. Municipal Corpn. of Greater Bombay* [(1999) 8 SCC 577]. Accordingly, unless the provisions of the section clearly point to the contrary, the offence is concerned with the dishonour of a cheque; and in the conundrum before us the body of this provision speaks in the same timbre since it refers to a cheque being "returned by the bank unpaid". None of the provisions of IPC have been rendered nugatory by Section 138 of the NI Act and both operate on their own. It is trite that mens rea is the quintessential of every crime. The objective of Parliament was to strengthen the use of cheques,

distinct from other negotiable instruments, as mercantile tender and therefore it became essential for Section 138 of the NI Act offence to be freed from the requirement of proving mens rea. This has been achieved by deeming the commission of an offence de hors mens rea not only under Section 138 but also by virtue of the succeeding two sections. Section 139 carves out the presumption that the holder of a cheque has received it for the discharge of any liability. Section 140 clarifies that it will not be available as a defence to the drawer that he had no reason to believe, when he issued the cheque, that it would be dishonoured. Section 138 unequivocally states that the offence is committed no sooner the drawee bank returns the cheque unpaid."

57. The focus in this case was on the court within whose jurisdiction the offence under Section 138 can be said to have taken place. This case, therefore, has no direct relevance to the point that has been urged before us.

58. In *Lafarge Aggregates & Concrete India (P) Ltd. v. Sukarsh Azad*, (2014) 13 SCC 779, this Court, continuing the trend of the earlier judgments in describing the hybrid nature of these provisions, held:

"6. The respondents have agreed to pay the said amount but the appellant has refused to accept the payment and insisted that the appeal against rejection of the recall application should be allowed by this Court. The counsel for the appellant submitted that merely because the accused has offered to make the payment at a later stage, the same cannot compel the complainant appellant to accept it and the complainant appellant would be justified in pursuing the complaint which was lodged under the Negotiable Instruments Act, 1881. In support of his submission, the counsel for the appellant also relied on *Rajneesh Aggarwal v. Amit J. Bhalla* [(2001) 1 SCC 631 : 2001 SCC (Cri) 229].1

7. However, we do not feel persuaded to accept this submission as the appellant has to apprise himself that the primary object and reason of the Negotiable Instruments Act, 1881, is not merely penal in nature but is to maintain the efficiency and value of a negotiable instrument by making the accused honour the negotiable instrument and paying the amount for which the instrument had been executed.

8. The object of bringing Sections 138 to 142 of the Negotiable Instruments Act on statute appears to be to inculcate faith in the efficacy of banking operations and credibility in transacting business of negotiable instruments. Despite several remedies, Section 138 of the Act is intended to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a bank and induces the payee or holder in due course to act upon it. Therefore, once a cheque is drawn by a person of an account maintained by him for payment of any amount or discharge of liability or debt or is returned by a bank with endorsement like (i) refer to drawer, (ii) exceeds arrangements, and (iii) instruction for stop payment and like other usual endorsement, it amounts to dishonour within the meaning of Section 138 of the Act. Therefore, even after issuance of notice if the payee or holder does not make the payment within the stipulated period, the statutory presumption would be of dishonest intention exposing to criminal liability."

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"10. However, in the interest of equity, justice and fair play, we deem it appropriate to direct the respondents to make the payment to the appellant by issuing a demand draft in their favour for a sum of Rs. 5 lakhs, which would be treated as an overall amount including interest and compensation towards the cheque for which stop-payment instructions had been issued. If the same is not acceptable to the appellant, it is their choice but that would not allow them to prosecute the respondents herein in pursuance to the complaint which they have lodged implicating these two respondents."

59. In *Meters and Instruments (P) Ltd. v. Kanchan Mehta*, (2018) 1 SCC 560, this Court noticed the object of Section 138 and the amendments made to Chapter XVII, and summarised the case law as follows:

"6. The object of introducing Section 138 and other provisions of Chapter XVII in the Act in the year 1988 [Vide the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988] was to enhance the acceptability of cheques in the settlement of liabilities. The drawer of cheque is made liable to prosecution on dishonour of cheque with safeguards to prevent harassment of honest drawers. The Negotiable

Instruments (Amendment and Miscellaneous Provisions) Act, 2002 to amend the Act was brought in, inter alia, to simplify the procedure to deal with such matters. The amendment includes provision for service of summons by speed post/courier, summary trial and making the offence compoundable.

7. This Court has noted that the object of the statute was to facilitate smooth functioning of business transactions. The provision is necessary as in many transactions cheques were issued merely as a device to defraud the creditors. Dishonour of cheque causes incalculable loss, injury and inconvenience to the payee and credibility of business transactions suffers a setback. [Goaplast (P) Ltd. v. Chico Ursula D'Souza, (2004) 2 SCC 235, p. 248, para 26 : 2004 SCC (Cri) 499] At the same time, it was also noted that nature of offence under Section 138 primarily related to a civil wrong and the 2002 Amendment specifically made it compoundable. [Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd., (2008) 2 SCC 305 : (2008) 1 SCC (Civ) 542 : (2008) 1 SCC (Cri) 351] The offence was also described as "regulatory offence". The burden of proof was on the accused in view of presumption under Section 139 and the standard of proof was of "preponderance of probabilities". [Rangappa v. Sri Mohan, (2010) 11 SCC 441, p. 454, para 28 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184] The object of the provision was described as both punitive as well as compensatory. The intention of the provision was to ensure that the complainant received the amount of cheque by way of compensation. Though proceedings under Section 138 could not be treated as civil suits for recovery, the scheme of the provision, providing for punishment with imprisonment or with fine which could extend to twice the amount of the cheque or to both, made the intention of law clear. The complainant could be given not only the cheque amount but double the amount so as to cover interest and costs. Section 357(1)(b) CrPC provides for payment of compensation for the loss caused by the offence out of the fine. [R. Vijayan v. Baby, (2012) 1 SCC 260, p. 264, para 9 : (2012) 1 SCC (Civ) 79 : (2012) 1 SCC (Cri) 520] Where fine is not imposed, compensation can be awarded under Section 357(3) CrPC to the person who suffered loss. Sentence in default can also be imposed. The object of the provision is not merely penal but to make the accused honour the negotiable instruments. [Lafarge Aggregates & Concrete India (P)

Ltd. v. Sukarsh Azad, (2014) 13 SCC 779, p. 781, para 7 : (2014) 5 SCC (Cri) 818]"

60. The Court then concluded:

"18. From the above discussion the following aspects emerge:

18.1 Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on the accused in view of presumption under Section 139 but the standard of such proof is "preponderance of probabilities". The same has to be normally tried summarily as per provisions of summary trial under CrPC but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 CrPC will apply and the court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.

18.2 The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the court.

18.3 Though compounding requires consent of both parties, even in absence of such consent, the court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.

18.4 Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to Section 143, to hold that it was undesirable to try the case summarily as sentence of more than one year may have to be passed, is to be exercised after considering the further fact that apart from the sentence of imprisonment, the court has jurisdiction under Section 357(3) CrPC to award suitable compensation with default sentence under Section 64 IPC and with further powers of recovery under Section 431 CrPC. With this approach, prison sentence of more than one year may not be required in all cases.

18.5 Since evidence of the complaint can be given on affidavit, subject to the court summoning the person giving affidavit and examining him and the bank's slip being prima facie evidence of the dishonour of cheque, it is unnecessary for the Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the person giving affidavit can be as per Section 264 CrPC. The scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary, where sentence of one year may have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances."2

(emphasis supplied)

61. In a recent judgment in M. Abbas Haji v. T.N Channakeshava, (2019) 9 SCC 606, this Court held:

"6. It is urged before us that the High Court overstepped the limits which the appellate court is bound by criminal cases setting aside an order of acquittal. Proceedings under Section 138 of the Act are quasi-criminal proceedings. The principles, which apply to acquittal in other criminal cases, cannot apply to these cases. ..."

(emphasis supplied)

62. Likewise, in H.N Jagadeesh v. R. Rajeshwari, (2019) 16 SCC 730, this Court again alluded to the quasi-criminal nature of the offence as follows:

"7. The learned counsel for the respondent has submitted that in order to advance the cause of justice, such an approach is permissible and for this purpose he has relied upon the judgment of this Court in Zahira Habibulla H. Sheikh v. State of Gujarat [Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158 : 2004 SCC (Cri) 999]. We are afraid that the ratio of the aforesaid judgment cannot be extended to the facts of this case, particularly when we find that the present case is a complaint case filed by the respondent under Section 138 of the Act and where the proceedings are also of quasi-criminal nature."

(emphasis supplied)

63. A conspectus of these judgments would show that the gravamen of a proceeding under Section 138, though couched in language making the act complained of an offence, is really in order to get back through a summary proceeding, the amount contained in the dishonoured cheque together with interest and costs, expeditiously and cheaply. We have already seen how it is the victim alone who can file the complaint which ordinarily culminates in the payment of fine as compensation which may extend to twice the amount of the cheque which would include the amount of the cheque and the interest and costs thereupon. Given our analysis of Chapter XVII of the Negotiable Instruments Act together with the amendments made thereto and the case law cited hereinabove, it is clear that a quasi-criminal proceeding that is contained in Chapter XVII of the Negotiable Instruments Act would, given the object and context of Section 14 of the IBC, amount to a "proceeding" within the meaning of Section 14(1)(a), the moratorium therefore attaching to such proceeding.

14. As stated above, the proceedings under Chapter XVII of the Negotiable Instrument Act are quasi criminal in nature and that the gravamen of the proceedings though makes the act complained of as an offence, the object of the Act is really in order to get back through a summary proceedings, the amount contained in the dishonoured cheque together with interest and cost expeditiously and cheaply. The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, the sentence of imprisonment can be modified in lieu of compensation paid which is twice the amount of the cheque. In this case, the petitioner/accused has now come up with a proposal to pay twice the cheque amount Rs.7,41,000/- as compensation and also Rs.9,000/- towards cost in lieu of the sentence of imprisonment of one year. This Court is satisfied that the respondent / complainant is duly compensated and this Court is of the opinion that the proceedings can be closed.

15. At this juncture, the learned Counsel for the respondent/complainant would submit that without prejudice to her right in proceeding with the civil litigation, the respondent/complainant is prepared to receive the demand drafts which is for twice the amount of disputed cheque along with cost and is willing to compound the matter.

16. Today the petitioner / accused had handed over two demand drafts drawn on Lakshmi Vilas Bank, in favour of the respondent / complainant dated 30.03.2021 bearing Number 847536

for Rs.2,50,000/- and 847537 for Rs.5,00,000/- totalling to Rs.7,50,000/-, out of which Rs.7,41,000/- is paid towards twice the value of the dishonoured cheque and Rs.9,000/- is paid towards the cost of the proceedings. The respondent / complainant acknowledged receipt of the same.

17. In view of the above, the Criminal Revision case stands partly allowed. In lieu of the petitioner/accused paying twice the cheque amount as compensation, the conviction and sentence of imprisonment for one year stands set aside. It is made clear that the petitioner shall not suffer any stigma of disqualification of his service by the payment of compensation. The bail bonds if any executed by the petitioner shall stand cancelled. The Registry is directed to transmit the original records if any, to the respective Courts forthwith. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge & Sessions judge, Namakkal.
2. The Judicial Magistrate No.II Namakkal.
3. The Chief Judicial Magistrate Namakkal.

copy to

1. The Deputy Register (Criminal side)
High Court of Madras.
(To transmit original records forthwith)

+1cc to Mr.D. Shivakumaran, Advocate, S.R.No. 21560

Cr1.R.C.No.161 of 2014

KV(CO)
CT(13/07/2021)