

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.A. (SB) 144 of 2022

CRAN 1 of 2022

M/s. Maheshwari & Company Private Limited

Vs.

Sailendra Narain & Ors.

With

CRA (SB) 92 of 2023

Yusuf Khan

Vs.

State of West Bengal & Anr.

For the Applicant in

CRA(SB) 144 of 2022 &

For the Respondent No. 2

in CRA (SB) 92 of 2023

:Mr. Sandipan Ganguly, Sr. Adv.

Mr. Karan Dudhwewala, Adv.

Ms. Akansha Yadav, Adv.

Ms. Sakshi Tiwari, Adv.

For the Applicant in CRA (SB) :Mr. Sabyasachi Banerjee, Sr, Adv.
92 of 2023 Ms. Minal Palana, Adv.

Last Heard on :06.08.2025

Judgment on **:25.09.2025**

Bibhas Ranjan De, J.

Preface:-

1. In as much as both the aforementioned appeals channel the self- same judgment rendered by Judgment and order dated 26.07.2022 passed by Ld. Metropolitan Magistrate, 20th Court

Calcutta, (now Judicial Magistrate), it is deemed expedient and judicious to consolidate these appeals for adjudication through this common pronouncement. In the interest of judicial harmony and to ensure uniformity of adjudication, CRA (SB) 144 of 2022, which was initially preferred before the Ld. Session Judge challenging the conviction of one of the accused, and CRA (SB) 92 of 2023 which was subsequently filed before this court after obtaining requisite leave, have been called up together for consolidated disposal by this Court, thereby precluding any possibility of conflicting judicial pronouncement and ensuring coherent administration of justice.

2. The proceeding constituting the bedrock of the aforementioned appellate deliberations were inaugurated by virtue of a comprehensive complaint instituted under aegis of Sections 138 & 141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as N.I. Act) which was duly presented before the Ld. Metropolitan Magistrate, 20th Court Calcutta.

Facts in brief:-

3. The complainant/ company namely M/s. Maheswari & Company Private Limited which deals in business of financial

loan for short terms on the request of the accused persons provided a loan of Rs. 45,00,000/- (Rupees Forty Five lakhs) for the period of 126 days. Thereafter, the accused persons in discharge of their existing liabilities and by way of legal dues issued an A/c Payee cheque bearing no. 030520 dated 31.03.2015 for Rs. 45,00,000/- in favour of the complainant/company and the said cheque was drawn on ICICI Bank, Free Press House, 215 Nariman Point, Mumbai - 400021. But, subsequently, when the complainant duly presented the said cheque within the period of validity through the banker of the company, the said cheque was returned being dishonored with the remark 'Accounted Closed'. Upon receipt of intimation from its banker, the complainant served a demand notice under Section 138/141 of the N.I. Act upon the accused persons through speed post with AD by Ld. Advocate thereby demanding back the payment of the value of the cheque i.e. Rs. 45,00,000/- within statutory period of 15 days from the date of receipt of the said demand notice. However, in spite of receipt of the demand notice, accused persons failed and neglected to pay the dishonored amount to the complainant within the stipulated period as envisaged under

Section 138 of the N.I. Act. Moreover, the demand notices were sent to the correct address of the accused persons but still they did not repay any amount and the accused deliberately closed the bank account as there was not sufficient amount in that account when the cheque was presented for encashment in order to honour the said cheque. Therefore, the accused persons fraudulently and dishonestly committed the offences alleged and as a sequel the complainant company instituted the impugned proceedings against the accused persons.

4. It is not disputed that during the course of the proceedings vide order dated 16.03.2019 case against the accused no. 1 i.e. company M/s. Elder Pharmaceuticals Limited was dropped due its liquidation and vide order dated 26.10.2017 name of the accused no. 2 was expunged from the cause title of this case due to his death. Vide order dated 31.08.2016 this case was withdrawn by the complainant under Section 257 of the code of Criminal Procedure (hereinafter referred to as CrPC) against the accused no. 4.

Comprehensive list of cases relied on behalf of the parties:-

5. For the **Appellant** in respect of CRA (SB) 144 of 2022 & **Respondent** in respect of CRA (SB) 92 of 2023:-

- ***Ashutosh Ashok Parasrampuriyaa vs. Gharrkul Industries Pvt. Ltd., (2021) SCC OnLine SC 915***
- ***Mandvi Cooperative bank Ltd. vs. Nimesh B. Thakore, (2010) 3 SCC 83***
- ***Aneeta Hada vs. Godfather Travels & Tours (P) Ltd. (2012) 5 SCC 661***
- ***S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla, (2005) 8 SCC 89***
- ***S.P. Mani & Mohan Dairy vs. Snehalatha Elanogovan, 2022 SCC OnLine SC 1238***
- ***Bir Singh vs. Mukesh Kumar, (2019) 4 SCC 197***
- ***Uttam Ram vs. Devinder Singh Hudan, (2019) 10 SCC 287***
- ***Kalamani Tex V.P. Balasubramanian, (2021) 5 SCC 283***
- ***Laxmi Dyechem vs. State of Gujrat, (2012) 13 SCC 375***
- ***TRL Krosaki Refractories Ltd vs. SMS Asia Pvt. Ltd (2022) 7 SCC 612***

6. For the **Respondents** in respect of CRA (SB) 144 of 2022 :-

- ***A.C. Narayanan v. State of Maharashtra, (2014) 11 SCC 790***

- ***A.C. Narayanan v. State of Maharashtra, (2015) 12 SCC 203***
- ***Janki Vashdeo Bhojwani v. Indusind Bank Ltd., (2005) 2 SCC 217***
- ***TRL Krosaki Refractories Ltd. v. SMS Asia (P) Ltd., (2022) 7 SCC 612***
- ***Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54***
- ***John K. John v. Tom Varghese, (2007) 12 SCC 714***
- ***John K. Abraham v. Simon C. Abraham, (2014) 2 SCC 236***
- ***Rajco Steel Enterprises v. Kavita Saraff, (2024) 9 SCC 390***
- ***Sunita Palita v. Panchami Stone Quarry, (2022) 10 SCC 152***
- ***Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC***
- ***S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685***
- ***R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple, (2003) 8 SCC 752***
- ***Indian Bank Assn. v. Union of India, (2014) 5 SCC 590***

- ***Ashok Shewakramani v. State of A.P., (2023) 8 SCC 473***
- ***Asraf Ali v. State of Assam, (2008) 16 SCC 328***
- ***H.D. Sundara v. State of Karnataka, (2023) 9 SCC 581***

7. For the **Appellant** in respect of CRA (SB) 92 of 2023:-

- ***Ashok Shewakramani and Others vs. State of Andhra Pradesh and Another, (2023) 8 SCC 473***
- ***A.C. Narayanan Vs. State of Maharashtra, (2014) 11 SCC 790***
- ***A.C. Narayanan Vs. State of Maharashtra, (2015) 12 SCC 203***
- ***Krishna Janardhan Bhatt Vs. Dattatreya G. Hegde, (2008) 4 SCC 54***
- ***John K. Abraham Vs. Simon C. Abraham and others, (2014) 12 SCC 236***
- ***Rajco Steel Enterprises Vs. Kavita Saraff, (2021) SCC Online Cal 4322***
- ***Shri Gurudatta Sugars Marketing Pvt. Ltd. Vs. Prithviraj Sayajirao Deshmukh and Ors., (2024) SCC Online SC 1800***
- ***Rajesh Viren Shah Vs. Redmington (India) Limited, (2024) 4 SCC 305***

- ***Ashok Mal Bafna Vs Upper India Steel Manufacturing and Engineering Company Limited, (2018) 14 SCC 202***
- ***Harshendra Kumar D. Vs. Rebatilata Koley and others, (2011) 3 SCC 351***
- ***DCM Financial Services Limited Vs. J. N. Sareen and Another, (2008) 8 SCC 1***
- ***MSR Leathers Vs. S Palaniappan and another, (2013) 1 SCC 177***
- ***S.P. Mani and Mohan Dairy Vs. Dr. Snehalatha Elangovan, (2023) 10 SCC 685***
- ***M.S. Narayanan Menon Vs. State of Kerala, (2006) 6 SCC 39***
- ***Basalingappa Vs. Mudibasappa, (2019) 5 SCC 418***

In Re: CRA (SB) 144 of 2022

- 8.** This appeal has been preferred assailing the Judgment and Order dated 26.07.2022 passed by the Ld. Metropolitan Magistrate, 20th Court Calcutta in connection with CNS No. 28996/2015 thereby acquitting the accused persons of the charge under Section 138 of the N. I. Act.

Argument advanced:-

- 9.** Ld. Senior Counsel, Mr. Sandipan Ganguly, appearing on behalf of the appellant has contended that Ld. Trial Court, in its judicial determination, has placed exclusive reliance upon the signature appearing on the cheque in question and has consequently recorded its findings by way of an order of conviction against the accused who affixed his signature to the said cheque, whilst simultaneously passing an order of acquittal in favour of the other directors, thereby regrettably overlooking and ignoring the well established jurisprudential principle of vicarious liability as enshrined and contemplated under Section 141 of the N. I. Act.
- 10.** Mr. Ganguly has further submitted that all the directors were responsible for day to day affairs of the company which was categorically averred in the petition of complaint to satisfy the requirements of vicarious liability enshrined in Section 141 of the N.I. Act.
- 11.** Mr. Ganguly has further submitted that Ld. Trial Court did not consider the fact that not a scintilla of evidence was adduced by the acquitted accused to show that the offence was committed without their knowledge or that they had

exercised all due diligence to prevent the commission of such offence.

12. It is further submitted that all four respondents submitted their respective affidavit of evidence but none of them affirmed the contents of the affidavit on oath and therefore question of cross examination does not arise.

13. Per contra, Mr. Dipanjan Dutt, appearing on behalf of the respondent advanced the following arguments:-

- The application under Section 138/141 of the N. I. Act has not been legally ratified by the evidence of PW1, Ashok Sasmal, who had no personal knowledge about existence of any money lending license of the complainant company let alone the alleged transaction. In support of this argument, Mr. Dutt has referred to the cross examination of PW1.
- In course of trial purported covering letter (exhibit 3) was marked with objection and subsequently contents of that particular document was not proved therefore PW1 /complainant could not prove the covering letter in support of alleged transaction.

- Existence of legally enforceable debt has to be proved by the complainant without solely relying on ‘presumption’ under Section 139 of the N.I. Act.
- Complainant failed to produce any instrument of execution of loan.
- Mr. Dutt has also submitted that all the examinations in chief of the respondents were duly substantiated by sworn affidavit but they were conspicuously subjected to cross examination, thereby leaving their testimonies entirely unchallenged and uncontroverted. Moreover, all the respondents in their categorical deposition, specifically and unequivocally testified that they possessed no knowledge whatsoever regarding the alleged transaction in question.

14. Having heard the rival submissions adduced on behalf of the parties as well as after going through the cited judgments it has come to my notice the factual matrix of the judicial precedence advanced on behalf of the appellant herein bear no substantive co-relation to the distinctive circumstances and particular factual tapestry of the matter presently pending before this Court.

Analysis:-

15. At the very outset, before delving into the intricacies of the appeal, it would be pertinent to first discuss about the harmonious and conjoint interpretation of the statutory provisions enshrined in Sections 138 & 141 of the N.I. Act which unequivocally established and crystallize the fundamental legal principle that an employee of a corporate entity can be fastened with vicarious liability for contravention under Section 138 of the N. I. Act, solely and exclusively when such employee was, at the material time of commission of the alleged offence, vested with the responsibility and authority for conducting the day-to-day affairs and operations of the company, and not under any other circumstances whatsoever.
16. Now if I shift my focus to the contents of the complaint which is the genesis of the impugned proceeding and keep the cross examination of the PW1 at juxta position, it would be clear that PW1 who is a sole witness, himself has conceded that he had absolutely no personal knowledge regarding the transaction between the complainant and the accused. Neither had he any knowledge about the licence of the complainant company for providing short term loan through

ICD. PW1 also was unable to ascertain whether the management of the complainant company took any documents from the accused at the time of loan transaction. It is now settled proposition of law that though complaint petition under Section 138 of the N.I. Act can be filed by the power of attorney or any authorized person, as the case may be, but that particular person has to depose and verify on oath before the court in order to prove the contents of the complaint. It is true that all required steps have already been taken at the behest of the complainant in compliance of the Section 138 of the N. I. Act. But, that cannot be said to have been ratified by the evidence of PW1, who had no knowledge about transaction alleged in this case and knowledge about execution of any documents at the time of loan transaction. In these facts & circumstances, I am of the view that the PW1 authorized by the company cannot be held to be competent witness to prove the contents of the written complaint delineating all the allegations made against the accused persons. In this regard, it would be profitable to refer the landmark judgment of **A.C. Narayanan** (supra) wherein Three Judges Bench of the Hon'ble Apex Court observed that it is required by the

complainant to make specific assertion as to the knowledge of the power-of-attorney holder in the said transaction explicitly in the complaint and the power-of-attorney holder who has no knowledge regarding the transactions cannot be examined as a witness in the case.

17. Consequently, unsubstantiated complaint under Section 138 and 141 of the N. I. Act, being fundamentally unsustainable in the eye of law, lacks the requisite legal foundation to set any judicial proceeding in motion.

18. Mr. Dutt, in course of argument has tried to make this Court understand that examination in chief sworn by affidavit filed on behalf of the accused were not controverted through any cross examination.

19. All the respondents/acquitted accused filed affidavit in chief on their behalf without any further affirmation on oath. It is not disputed that an affidavit submitted and examination in chief cannot be considered as evidence unless the deponent (the person who made the affidavit) is present in court to confirm the contents of the affidavit on oath and is made available for cross examination. The affidavit, by itself, does

not constitute evidence without deponent's subsequent affirmation.

20. Explanation provided by an accused during examination under Section 313 of CrPC has significant value as they offer and opportunity to present their defence and explain incriminating circumstances, which helps the Court in evaluating the entire evidence and forming conclusions about accused's guilt or innocence. This procedure is rooted in the principle of natural justice, ensuring that the accused is given a fair chance to respond to the case against them. The explanation can serve as a defence though the accused is not required to prove it beyond reasonable doubt, but only on a 'Preponderance of Probabilities'.

21. In the present matter also, all the other respondents barring respondent no. 4 namely Anuj Saxena, in their replies to the questions put forth in course of their examination under Section 313 CrPC, have maintained a deliberate distance from the quotidian operational affairs and day to day management of the company by the virtue of their post of independent director.

22. The respondent no. 4 namely Anuj Saxena has also unequivocally and categorically articulated his defence with utmost clarity while responding to the judicial inquiries posed by the Court under Section provisions of Section 313 CrPC. His emphatic submission elucidated that he possessed absolutely no cognizance awareness or knowledge whatsoever regarding the impugned transaction in question, and furthermore, he vehemently asserted that he had no supervisory authority, administrative control or operational responsibility over the particular department concerned with the aforementioned matter.

23. At this juncture, it would be pertinent to first discuss the position of law regarding the scope of intervention in a criminal appeal. For, that is the foundation of this challenge. It is the cardinal principle of criminal jurisprudence that there is a presumption of innocence in favour of the accused, unless proven guilty. The presumption continues at all stages of the trial and finally culminates into a fact when the case ends in acquittal. The presumption of innocence gets concretized when the case ends in acquittal. It is so because once the Trial Court, on appreciation of the evidence on record, finds that

the accused was not guilty, the presumption gets strengthened and a higher threshold is expected to rebut the same in appeal.

24. No doubt, an order of acquittal is open to appeal and there is no quarrel about that. It is also beyond doubt that in the exercise of appellate powers, there is no inhibition on the High Court to re-appreciate or re-visit the evidence on record. However, the power of the High Court to re-appreciate the evidence is a qualified power, especially when the order under challenge is of acquittal. The first and foremost question to be asked is whether the Trial Court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence. The second point for consideration is whether the finding of the Trial Court is illegal or affected by an error of law or fact. If not, the third consideration is whether the view taken by the Trial Court is a fairly possible view. A decision of acquittal is not meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity.

25. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The two-

views theory' has been judicially recognized by the Courts and it comes into play when the appreciation of evidence results into two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence. And therefore, when two views are possible, following the one in favour of innocence of the accused is the safest course of action. Furthermore, it is also settled that if the view of the Trial Court, in a case of acquittal, is a plausible view, it is not open for the High Court to convict the accused by re-appreciating the evidence. If such a course is permissible, it would make it practically impossible to settle the rights and liabilities in the eyes of law.

- 26.** Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:-

- (i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive inclusive of all evidence, oral or documentary;
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;
- (iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;
- (iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;
- (v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;
- (vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court.

27. Now if I apply the settled mandate of law as discussed hereinabove to the factual matrix of the present case, it would

be clear that the Ld. Trial Judge, in his judicial wisdom, placed considerable reliance upon the significant circumstances as well as the fact that the respondent no. 4 had conspicuously abstained from affixing his signature to the impugned cheque in question. Consequently, the judicial pronouncements rendered by the Ld. Trial Court cannot, by any stretch of judicial scrutiny, be characterized as perverse or manifestly erroneous. As the circumstances in this case are far from exclusive and a conclusion of guilt could not be drawn from them. To sustain a conviction, the Court must form the view that the accused '**must have**' committed the offence, and not '**may have**'.

28. As a sequel, I find no infirmity in the order passed by the Ld. Trial Court thereby precluding any legitimate foundation for the appellate reversal of the meticulously reasoned judgment of acquittal.

29. With the aforesaid observation, the instant appeal being no. CRA(SB) 144 of 2022 stands dismissed. However, with no order as to costs, each party being left to bear their own cost.

In Re: CRA (SB) 92 of 2023

30. This appeal has been directed against the judgment and order dated 26.07.2022 passed by the Ld. Metropolitan Magistrate 20th Court, Calcutta in connection with CNS-28996/2015 thereby convicting the appellant for commission of offence punishable under Section 138 of the N.I. Act and sentencing him to pay a fine of Rs. 45,00,000/-, in default to suffer imprisonment for two years.

31. Ld. Senior Counsel, Mr. Sabyasachi Banerjee, appearing on behalf of the appellant has mainly canvassed his argument on the point that the debt referred to in Section 138 N. I. Act application is not a personal debt of the appellant but rather debt of the company. The company is the drawer of the cheque and the liability to make payment is upon the company and not on the accused as because the privity of contract continued to operate between the parties even after the appellant had resigned and left the company. Therefore, the duty casts on the company to honour the terms and repay the due amount. Moreover, Mr. Banerjee by referring to Section 141 of the N. I. Act has tried to make this Court understand that the criminal liability of a director must be determined on the debt the offence is alleged to have been committed and as

the appellant duly resigned and parted with the company prior to enchashment of the signed cheque the instrument so issued exclusively belonged to the company and it was for the company and its officers who were part of the organization at the relevant point of time to honour the same. Before parting with, Mr. Banerjee has pried into the same string of argument as that of Mr. Dutt with regard to the competence of the evidence of PW1 and has submitted that as PW1 had no personal knowledge regarding the alleged transaction which is the culminating factor of the impugned proceeding, the order of conviction cannot be sustained.

32. Per contra, Ld. Senior Counsel, Mr. Sandipan Ganguly, has vehemently contended that mere resignation of the appellant prior to dishonor of the cheque is of no consequence as he is the admitted signatory of the cheque which has been further ratified by the appellant himself during his cross examination as defence witness. In this regard, Mr. Ganguly has further added that dropping of the case against the accused company still shall not deter the trial pending against the persons responsible under Section 141 of the Act. By relying on exhibit 3 i.e. the covering letter dated 10.09.2014,

given by the accused company to the complainant it was clearly stated that the impugned cheque was furnished towards the repayment of the loan amount of Rs. 45, 00,000/. Thus, the debt has been established beyond any reasonable doubt. Therefore the onus was on the appellant to show that offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. As during trial no such evidence was ever led to that effect, the Ld. Trial Court rightly convicted the appellant and such conviction is in complete consonance with the settled provisions of law which does not warrant any interference from this Court.

Analysis:-

- 33.** I have gone through all the cases relied on behalf of the parties and after thorough scrutiny of the same, now I would like to proceed with finding answers to the questions posed through the rival contentions adduced by the arguing Counsel for the parties.
- 34.** Upon meticulous examination of the compelling evidence adduced, coupled with irrefutable testimony contained within Exhibit O & P, it becomes manifestly apparent that at material

time when the impugned cheque was presented for encashment and eventually met with the fate of dishonor, the convict/ appellant had already severed his professional ties with the company, having formally tendered his resignation and ceased to be associated therewith. Consequently, in light of this pivotal factual matrix, he cannot be held vicariously liable and fastened with culpability for the alleged offence under the relevant provisions of the N. I. Act.

- 35.** At this juncture, it would be axiomatic to point out the quintessential expression ‘at the relevant point of time’ embedded in Section 141 of the N. I. Act which constitutes the corner stone for determining the criminal liability of corporate personnel, establishing a sophisticated jurisprudential framework wherein culpability is delicately calibrated against the extent of an employee’s stewardship over the companies day to day operational dynamics. Section 141 of the Act provides for constructive liability. A legal fiction has been created thereby. The statute being a penal one, should receive strict construction. It requires strict compliance with the provision. Specific averments in the complaint petition so as to satisfy the requirements of Section 141 of the Act are imperative. In

this regard, it would be pertinent to refer the celebrated judgment of the Hon'ble Apex Court delineated in **DCM Financial Services Limited** (supra) wherein it was held that the mere fact that at one point of time some role has been played by the accused may not by itself be sufficient to attract the constructive liability under Section 141 of the Act.

- 36.** The cheque in question herein is admittedly a post dated one. It was issued on 31.03.2015 in favour of the complainant company but the appellant admittedly resigned on 27.10.2014 which is evident from Exhibit O and the same was accepted by the accused company with effect from 14.11.2014 which is much prior to the date of issuance of the cheque and its subsequent dishonor. Therefore a person who had resigned from the company in the year 2014 cannot be said to be a person in charge of the company in 2015 when the cheque was dishonored as he had no say in the matter of seeing whether that cheque is being honored. It is well settled that resignation from a company absolves a former director from liability for subsequent company actions and that for vicarious liability under Section 141 of the N. I. Act, it must be proved that the accused was in charge of the said company at the

time offence was committed. But in this regard at the risk of repetition, I would like to reiterate that the evidence of PW1 cannot be said to be of any credible value. Based on the evidence of PW1 it would be safe to remark that the averments of the complaint is not corroborated by any oral evidence which raises a big question mark on the veracity of the impugned proceeding altogether. To refute the argument advanced on behalf of the appellant, Ld. Senior Counsel for the respondent by referring to the case of ***Laxmi Dyechem*** (supra) has tried to make this Court understand that the resignation of signatory prior to dishonour of cheque is not a valid defence. But, a careful overall scrutiny of the said judgment pronounced by the Hon'ble Apex Court would clarify that such observation was made with regard to exercise of extra ordinary power of quashment. Therefore, in no stretch of imagination it can be said that the factual nomenclature of ***Laxmi Dyechem*** (supra) has any similarity or applicability to the case at hand.

- 37.** Alternatively, when post dated cheques are issued and the same are accepted, although it may be presumed that the money will be made available in the bank when the same is

presented for encashment, but for that purpose, the provision of constructive liability may not be readily available.

38. The comprehensive synthesis of the aforementioned deliberations crystallized into an irrefutable conclusion that while the appellant did indeed affix his signature to a post-dated cheque in his corporate capacity, his subsequent resignation from the company was formally acknowledged, ratified, and duly promulgated through proper channels. Consequently, it stands to reason that at the material time upon the cheque in question met with dishonor, he could not, by any stretch of imagination, be deemed to have been vested with the requisite authority or charged with the responsibility for orchestrating the company's conduct in such matter.

39. As a natural and inevitable sequel to the foregoing discourse, I am firmly and unequivocally of the considered opinion that the Learned Trial Court's Judgment and Order of conviction against the appellant stands in dire need of reversal and must be set aside in its entirety for the sacred purpose of securing the hallowed ends of justice.

40. As a sequel, the appeal being no. CRA (SB) 92 of 2023 is hereby allowed.

- 41.** Accordingly, the judgment and order dated 26.07.2022 passed by the Ld. Metropolitan Magistrate 20th Court, Calcutta in connection with CNS-28996/2015 stands set aside. The appellant is hereby acquitted of the charge under Section 138 of the N. I. Act. However, the bonds submitted by the appellant shall remain in force for six (6) months from date pursuant to the provision of Section 437A of the CrPC corresponding to Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023.
- 42.** Connected applications, if any, stand disposed of accordingly.
- 43.** All parties to this application shall act on the server copy of this order downloaded from the official website of this Court.
- 44.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]