

CHHATTISGARH STATE JUDICIAL ACADEMY, BILASPUR

MEMO

No. ~~238~~ 238/CSJA/Online Workshop/2022

Bilaspur, dated 20.10.2022

To,

The District & Sessions Judge,
Balod/Baloda-Bazar/Balrampur at Ramanujganj/Bemetara/Bilaspur/
Dantewada/Dhamtari/Durg/ Janjgir Champa/Jagdalpur/ Jashpur/ Kanker/
Kawardha/Korba/Korea at Baikunthpur/ Kondagaon/Mahasamund/Mungeli/
Raigarh/Raipur/Rajnandgaon/ Surajpur/ Surguja at Ambikapur.

Sub.: Regarding **Online Workshop** of Judges of Lower Judicial Services on **“Key Issues relating to cases of dishonour of cheques under the Negotiable Instruments Act Electronic Evidence”** scheduled to be held on **13/11/2022 (Sunday)**.

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As per Academic Calendar for the year 2022-23, One day Workshop of Lower Judicial Services on **“Key Issues relating to cases of dishonour of cheques under the Negotiable Instruments Act Electronic Evidence”** is scheduled to be held on **13/11/2022 (Sunday)**.

CSJA is organizing Workshop of Judges of Lower Judicial Services on **Key Issues relating to cases of dishonour of cheques under the Negotiable Instruments Act Electronic Evidence”** scheduled to be held on **13/11/2022 (Sunday) at 11.00 a.m.** through **Online mode**.

It is further to inform you that Digital Platform/link to join the online workshop will be shared with all the participants by CSJA.

You are, therefore, requested to circulate it amongst all the concerned Judicial Officers posted in your District as per the table below with a direction that they shall attend the **Online Workshop from the court premises or from their home office on 13/11/2022 (Sunday) by 10.30 a.m. positively in the prescribed uniform.**

They shall maintain social distancing in case more than one are attending the online workshop in a single room and follow the guidelines and norms issued by the Central Government and the State Government as well as advisories issued by the Hon'ble High Court during the period Covid-19.

The table is as under:

District	Name of Judicial Officers / Designation
Ambikapur ✓	Ku. Priya Rajak II Civil Judge Class-II, Ambikapur
	Ku. Shweta Goswami ✓ I Civil Judge Class-II, Ambikapur
Baikunthpur ✓	Shri Mohan Singh Korram I Civil Judge Class-I & Chief Judicial Magistrate, Baikunthpur
	Smt. Archana Bhaskar ✓ II Civil Judge Class-I, Baikunthpur
	Shri Virendra Singh ✓ Civil Judge Class-II, Baikunthpur
	Smt. Ekta Agrawal ✓ Civil Judge Class-I, Manendragarh
	Shri Mohd. Jahangir Tigala ✓ Civil Judge Class-II, Manendragarh
	Shri Devendra Sahu ✓ Civil Judge Class-I, Chirmiri
	Shri Manoj Kumar Kushwaha ✓ Addl. Judge To The Court Of CJ-II, Baikunthpur At Chirmiri, Chirmiri
	Shri Bhagwan Das Panika ✓ Civil Judge Class-II, Janakpur
Balod	Smt. Shyamwati Maravi ✓ I Civil Judge Class-I & Chief Judicial Magistrate, Balod
	Shri Mahesh Babu Sahu ✓ Civil Judge Class-I, Gunderdehi
	Ku. Astha Yadav ✓ II Civil Judge Class-I, Balod
	Ku. Shweta Patel ✓ Civil Judge Class-II, Dondilohara
	Smt. Soni Tiwari ✓ Civil Judge Class-II, Dallirajhara

Baloda-Bazar	✓ Shri Ajay Kumar Xaxa I Civil Judge Class-I & Chief Judicial Magistrate, Baloda-Bazar
	✓ Ku. Mrinalini Katulkar Civil Judge Class-II, Baloda-Bazar
Balrampur	✓ Shri Pankaj Alok Tirkey Civil Judge Class-I & Chief Judicial Magistrate, Balrampur-Rganj
	✓ Shri Satish Kumar Khakha Civil Judge Class-II, Wadrafnagar
	✓ Ku. Akansha Beck Civil Judge Class-II, Rajpur
	✓ Shri Deepak Kumar Sharma Civil Judge Class-II, Balrampur
Bemetara	✓ Smt. Monika Jaiswal I Civil Judge Class-I & Chief Judicial Magistrate, Bemetara
	✓ Ku. Kaminee Verma I Civil Judge Class-II, Bemetara
	✓ Smt. Ankita Mudaliar Civil Judge Class-II, Saja
Bilaspur	✓ Dr. Sumit Kumar Soni I Addl. Judge To The Court Of I Civil Judge Class-I, Bilaspur
	✓ Shri Vivek Kerketta I Civil Judge Class-II, Kota
	✓ Smt. Kalpana Bhagat Ii Civil Judge Class-II, Kota
	✓ Ms. Shubhda Goyal Civil Judge Class-I, Bilha
	✓ Shri Parth Tiwari Addl. Judge To The Court Of I C.J.-II, Bilaspur At Bilha, Bilha
	✓ Ku. Sweta Baghel Civil Judge Class-II, Takhatpur
	✓ Shri Ashwani Kumar Chaturvedi Civil Judge Class-I & C.J.M., Pendra Road
	✓ Shri Rahul Kumar Civil Judge Class-II, Pendra Road

	✓ Shri Narendra Kumar Tendulkar Civil Judge Class-II, Marwahi
Dantewara	Smt. Rashmi Netam ✓ Civil Judge Class-I & Chief Judicial Magistrate, Dantewara
	✓ Shri Avinash Kumar Dubey II Civil Judge Class-II, Dantewara
	✓ Shri Jagdish Ram Civil Judge Class-I & Chief Judicial Magistrate, Bijapur
	✓ Shri Santosh Kumar Mahobiya Civil Judge Class-I & Chief Judicial Magistrate, Sukma
Dhamtari	Ms. Seema Pratap Chandra ✓ II Civil Judge Class-I, Dhamtari
	✓ Shri Janak Kumar Hidko Civil Judge Class-I, Kurud
	✓ Shri Bhavesh Kumar Watti Civil Judge Class-II, Nagari
Durg	✓ Shri Santosh Thakur I Civil Judge Class-I & Chief Judicial Magistrate, Durg
	✓ Shri Tajuddin Asif II Civil Judge Class-I, Durg
	✓ Shri Umesh Kumar Upadhyay IV Civil Judge Class-I, Durg
	✓ Shri Janardan Khare I Addl. Judge To The Court Of I Civil Judge Class-I, Durg
	✓ Shri Pankaj Dixit Civil Judge Class-I, Bhilai-3
	✓ Smt. Sarojani Janardan Khare II Addl. Judge To The Court Of I Civil Judge Class-I, Durg
	✓ Shri Vijendra Sonwani Civil Judge Class-I, Patan
	✓ Ku. Pratibha Markam III Civil Judge Class-I, Durg
	✓ Shri Dilli Singh Baghel V Civil Judge Class-I, Durg

	✓ Ku. Amita Jaiswal Civil Judge Class-II, Bhilai-3
	✓ Shri Satyanand Prasad III Civil Judge Class-II, Durg
	✓ Smt. Amrita Dinesh Mishra II Civil Judge Class-II, Durg
	✓ Ku. Deepa Suchita Tirkey VI Civil Judge Class-II, Durg
	✓ Shri Vivek Netam IX Civil Judge Class-II, Durg
	✓ Shri Puneet Ram Gurupanch Xiv Civil Judge Class-II, Durg
	✓ Smt. Shivani Singh XI Civil Judge Class-II, Durg
	✓ Smt. Sheelu Kesary V Civil Judge Class-II, Durg
	✓ Smt. Savita Singh Thakur X Civil Judge Class-II, Durg
	✓ Shri Dwijendra Nath Thakur IV Civil Judge Class-II, Durg
	✓ Ku. Ankita Madanlal Gupta VIII Civil Judge Class-II, Durg
	✓ Ku. Payal Topno XVI Civil Judge Class-II, Durg
	✓ Ku. Ankita Tigga XV Civil Judge Class-II, Durg
Jagdalpur	✓ Smt. Anita Dhruw II Civil Judge Class-I, Jagdalpur
	✓ Ku. Seema Kanwar III Civil Judge Class-I, Jagdalpur
	✓ Smt. Minakshee Nag IV Civil Judge Class-II, Jagdalpur
Janjgir- Champa	✓ Shiv Prakash Tripathi II Civil Judge Class-I, Janjgir-Champa

	✓ Ku. Chetna Thakur Civil Judge Class-I, Sakti
	✓ Ravi Kumar Mahobia I Civil Judge Class-II, Dabhra
	✓ Smt. Ganga Patel Civil Judge Class-I, Champa
	✓ Shri Anshul Minz Civil Judge Class-II, Pamgarh
	✓ Ku. Leenam Bansode Civil Judge Class-II, Jaijaipur
	✓ Ku. Preeti Civil Judge Class-II, Navagarh
	✓ Shri Rajat Kumar Nirala Civil Judge Class-II, Malkharoda
	✓ Shri Jeetendra Pradhan Civil Judge Class-I, Akaltara
Jashpur	✓ Shri Damarudhar Chouhan I Civil Judge Class-I & Chief Judicial Magistrate, Jashpur
	✓ Shri Anil Kumar Chauhan Civil Judge Class-II, Jashpur
	✓ Shri Sachin Paul Toppo Civil Judge Class-II, Bagicha
	✓ Shri Umesh Kumar Bhagwatkar Civil Judge Class-II, Patthalgaon
	✓ Smt. Shweta Shrivastava Civil Judge Class I, Kunkuri
Kanker	✓ Shri Anand Borkar Civil Judge Class-I, Bhanupratappur
	✓ Shri Krishnakant Bhardwaj I Civil Judge Class-I & Chief Judicial Magistrate, Kanker
	✓ Shri Shankar Kashyap Civil Judge Class-II, Kanker
	✓ Shri Ravi Kumar Kashyap Civil Judge Class-II, Pakhanjur

Kabirdham	Shri Roopnarayan Pathare
	✓ II Civil Judge Class-I & Addl. Chief Judicial Magistrate, Kawardha
	✓ Ku. Akansha Rathore Civil Judge Class-II, Pandariya
Kondagaon	Smt. Mona Chauhan
	✓ I Civil Judge Class-I & Chief Judicial Magistrate, Kondagaon
	✓ Shri Bhupesh Kumar Basant II Civil Judge Class-I, Kondagaon
	✓ Ku. Anjali Singh Civil Judge Class-II, Keshkal
Korba	Shri Brijesh Rai
	✓ III Civil Judge Class-I, Korba
	Shri Rahul Sharma
	✓ Civil Judge Class-II, Katghora
	✓ Ku. Shweta Mishra Civil Judge Class-II, Pali
Mahasamund	✓ Smt. Barkha Rani Verma Civil Judge Class-II, Kartala
	Ku. Chitralekha Sonwani
	✓ I Civil Judge Class-I & Chief Judicial Magistrate, Mahasamund
	✓ Smt. Ravinder Kaur III Civil Judge Class-I, Mahasamund
	✓ Shri Rahul Shroff I Civil Judge Class-II, Mahasamund
	✓ Smt. Aditi Thakur Shroff II Civil Judge Class-II, Mahasamund
	✓ Ku. Yogita Jangade Addl. Judge To The Court Of I Civil Judge Class-Ii, Mahasamund
	✓ Smt. Namita Minj Bhaskar Civil Judge Class-I, Saraipali
	✓ Shri Prateek Tembhurkar Civil Judge Class-II, Pithoura
	✓ Shri Girivar Singh Rajput Addl. Judge To The Court Of I CJ-II, Mahasamund At Basna, Basna

Mungeli	✓ Smt. Shruti Dubey II Civil Judge Class-I, Mungeli
	✓ Shri Lokesh Kumar III Civil Judge Class-I, Mungeli
	✓ Shri Anant Deep Tirkey Civil Judge Class-II, Lormi
Raigarh	✓ Shri Gulapan Ram Yadav II Civil Judge Class-II, Raigarh
	✓ Ku. Satpreet Kour Chhabra IV Civil Judge Class-II, Raigarh
	✓ Shri Bhaskar Mishra II Civil Judge Class-I, Raigarh
	✓ Smt Chandrakala Devi Sahu Civil Judge Class-I, Gharghora
	✓ Shri Amit Matre Civil Judge Class-II, Dharamjaigarh
	✓ Shri Sheelu Singh Civil Judge Class-I, Sarangarh
	✓ Shri Abhinav Dahariya I Addl. Judge To The Court Of I CJ-II, Raigarh At Sarangarh, Sarangarh
	✓ Shri Prashant Kumar Dewangan II Addl. Judge To The Court Of I CJ-II, Raigarh At Sarangarh, Sarangarh
	✓ Smt. Deepti Barwa I Civil Judge Class-II, Kharsiya
	✓ Ku. Manjusha Toppo II Civil Judge Class-II, Kharsiya
Raipur	✓ Smt. Sweta Upadhyaya Gaur VII Civil Judge Class-I, Raipur
	✓ Smt. Neha Yati Mishra II Addl. Judge To The Court Of I Civil Judge Class-I, Raipur
	✓ Smt. Nidhi Sharma III Addl. Judge To The Court Of I Civil Judge Class-I, Raipur

✓	Ku. Akanksha Thakur X Civil Judge Class-II, Raipur
	Shri Pallve Raghuvanshi ✓ IV Addl. Judge To The Court Of I Civil Judge Class-I, Raipur
	Shri Mohit Singh ✓ VI Addl. Judge To The Court Of I Civil Judge Class-I, Raipur
	Shri Arun Norge ✓ VIII Civil Judge Class-II, Raipur
	Shri Anup Tigga ✓ I Civil Judge Class-II, Raipur
	Shri Alok Kumar Agrawal ✓ II Civil Judge Class-II, Raipur
	Shri Alok Pandey Civil Judge Class-II, Tilda
	✓ Smt. Chhaya Singh I Civil Judge Class-I & Chief Judicial Magistrate, Gariaband
	✓ Shri Nilesh Jagdalla Civil Judge Class-II, Gariaband
	✓ Shri Avinash Toppo Civil Judge Class-II, Rajim
	✓ Ku. Kiran Panna Civil Judge Class-II, Deobhog
Rajnandgaon	Shri Bhupat Singh Sahu ✓ II Addl. Judge To The Court Of I Civil Judge Class-I, Rajnandgaon
	✓ Shri Dular Singh Nirmalkar Civil Judge Class-I, Ambagarh Chowki
	✓ Smt. Yashoda Nag Civil Judge Class-I & Addl. Chief Judicial Magistrate, Dongargarh
	✓ Shri Harendra Singh Nag Addl. Judge To The Court Of Civil Judge Class - I, Dongargarh
	✓ Shri Vivek Garg Civil Judge Class-I & Addl. Chief Judicial Magistrate, Khairagarh
	✓ Ku. Sanjulata Dewangan Civil Judge Class-II, Chhuikhadan

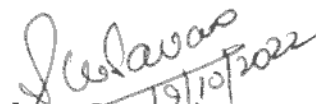
Surajpur	Smt. Sushma Lakra ✓ I Civil Judge Class-I & Chief Judicial Magistrate, Surajpur
	Shri Anand Kumar Singh ✓ III Civil Judge Class-I, Surajpur
	Shri Aslam Khan ✓ IV Civil Judge Class-I, Surajpur
	Shri Sameer Kujur ✓ Civil Judge Class-I, Pratappur

For ready reference, copy of Reading Material is enclosed herewith.

All the participants nominated by the District & Sessions Judges shall prepare the paper on the subject and one of them will present in the Workshop.

A further request is made that in case of exigency any of the abovesaid Judicial Officers is not present in his/her headquarter or place of posting and is present in other district within the State, he/she shall attend the On-line Workshop from nearest Civil Court building where he/she is at present with an oral information to the concerned District & Sessions Judge. The said District & Sessions Judge is requested to accommodate him/her.

Encl: Copy of Reading Material.

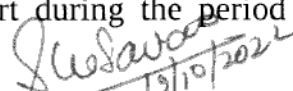

(Sushma Sawant)
Director

Endt.No. 839/CSJA/Online Workshop/2022

Bilaspur, dated 20.10.2022

Copy to :

1. S.O. to Registrar General, High Court of C.G. Bilaspur for information.
2. CPC for directing the In-charge, NIC for uploading the memo on official website of CSJA.
3. All Judicial Officers of Lower Judicial Services as per the table above with a direction that they shall attend the **Online Workshop from the court premises or their home offices on 13/11/2022 (Sunday) by 10.30 a.m. positively in the prescribed uniform.** They shall maintain social distancing in case more than one are attending Online workshop in a single room and follow the guidelines and norms issued by the Central Government and the State Government as well as the advisories issued by Hon'ble High Court during the period Covid-19.


(Sushma Sawant)
Director

Dishonour of Cheques Under the Negotiable Instrument Act Electronic Evidence

S.No.	Particulars of the Case Law	Brief	Relevant Paragraphs	Page Number
01.	Smt. Meel Bai Vs Rameshvar Prasad Chauhan 2015, SCC Online Chh 1622,	For offence under Section 138 of the N.I. Act i.e. dishonour of the cheque, the jail sentence is not mandatory.	10-13, 24,25	1
02.	Atharva Agro Chemical Pvt. Ltd. Through Murari Lal Agarwal Director and partner of the firm Vs Gopal Chand Barik and Another 2021, SCC Online Chh ,	Punishment to be awarded under Section 138 of the NI Act cases is meant to ensure payment of money and threat to jail is only to ensure recovery of cheque amount.	20-23	8
03.	Suganthi Suresh Kumar Vs. Jagdeeshan (2002) 2 SCC 420	If the amounts had been paid to the complainant there perhaps would have been justification for imposing a flee-bite sentence as had been chosen by the trial court. But in a case where the amount covered by the cheque remained unpaid it should be the look out of the trial Magistrates that the sentence for the offence under Section 138 should be of such a nature as to give proper effect to the object of the legislation. No drawer of the cheque can be allowed to take dishonour of the cheque issued by him light heartedly. The very object of enactment of provisions like Section 138 of the Act would stand defeated if the sentence is of the nature passed by the trial	9-14	15

		Magistrate. It is a different matter if the accused paid the amount atleast during the pendency of the case.		
04.	Damodar S. Prabhu Vs Sayed Babala H. (2010) 5 SCC 663	That Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused. • If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit. • Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs. • Finally, if the application for compounding is made before the Supreme Court, the figure would	10-12,16,18	22

		increase to 20% of the cheque amount. • It was also directed that it should be mandatory for the complainant to disclose that no other complaint has been filed in any other court in respect of the same transaction. Such a disclosure should be made on a sworn affidavit which should accompany the complaint filed under Section 200 of the CrPC. If it is found that such multiple complaints have been filed, orders for transfer of the complaint to the first court should be given. These directions should be given effect prospectively		
05.	Rangappa Vs Sri Mohan (2010) 11 SCC 441	The presumption available under Section 139 of the N.I. Act includes presumption that there exists a legally enforceable debt or liability, though, such presumption is rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. Thus the initial presumption provided in aforesaid provision favours the complainant and accused can rebut the said presumption and discharge the reverse onus by adducing evidence	26-28,	33
06.	Kaushalya Devi Massand Vs. Roopkishore Khore (2011) 4 SCC 593	the gravity of complaint under N.I. Act cannot be equated with an offence under the provisions of	11	47

		the Indian Penal Code, 1860 or other criminal offences.		
07.	R.Vijayan Vs. Baby and Another (2012) 1 SCC 260	in all cases of conviction, uniformly exercise the power to levy fine up to twice the cheque amount (keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss) and direct payment of such amount as compensation. One other solution is a further amendment to the provision of Chapter XVII so that in all cases where there is a conviction, there should be a consequential levy of fine of an amount sufficient to cover the cheque amount and interest thereon at a fixed rate of 9% per annum interest, followed by award of such sum as compensation from the fine amount. This would lead to uniformity in decisions, avoid multiplicity of proceedings (one for enforcing civil liability and another for enforcing criminal liability) and achieve the object of Chapter XVII of the Act, which is to increase the credibility of the instrument. This is however a matter for the Law Commission of India to consider.	11-20	50
08.	R.Mohan Vs. A.K Vijaya Kumar (2012) 8 SCC 721	The payment by way of compensation must, however, be reasonable. What is reasonable may depend upon the facts and circum-	10-14,29,30	59

		stances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by instalments, may also be given. The court may enforce the order by imposing sentence in default.		
09.	MSR Leathers Vs. S. Palaniappan (2013) 1 SCC 177	no prohibition exists against the subsequent presentation of cheque and institution of a criminal complaint based on the subsequent dishonour of the same.	12,16,21	68
10.	Meters and Instrument Pvt Ltd and Another Vs. Kanchan Mehta (2018) 1 SCC 560	.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	88
11.	Basalingappa Vs. Mudibasappa (2019) 5 SCC 418	Once the execution of cheque is admitted, s. 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.	14-18,25	102

		The presumption under s. 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities. To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also y reference to the circumstances upon which they rely. That it is not necessary for the accused to come in the witness box in support of his defence, s.139 imposed an evidentiary burden and not a persuasive burden. It is not necessary for the accused to come in the witness box to support his defence.		
12.	Birendra Prasad Sah Vs. State of Bihar and Another (2019) 7 SCC 273	Under S. 142(1), complaint has to be instituted within one month of cause of action under S. 138 proviso (c), which however stipulates that cognizance may be taken after prescribed period, if complainant satisfies court about sufficient cause. In this case, both in Paras 7 and 8 of complaint, appellant complainant, held,	7-10	120

		indicated adequate and sufficient reasons for not being able to institute complaint within stipulated period and CJM, held, rightly condoned delay. High Court had merely adverted to presumption that first notice would be deemed to have been served if it was dispatched in ordinary course. Even if that presumption applies, sufficient cause was shown by appellant for condoning delay in instituting complaint taking basis of complaint as issuance of first legal notice dt. 31-12-2015, hence, quashment of proceedings, held, was erroneous		
13.	Triyambak S.Hegde Vs. Sripad (2022) 1 SCC 742	Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities	14-25	222

		can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely. However, the legal position relating to presumption arising under Section 118 and 139 of N.I. Act on signature being admitted has been reiterated. Hence, whether there is rebuttal or not would depend on the facts and circumstances of each case. the gravity of complaint under N.I. Act cannot be equated with an offence under the provisions of the Indian Penal Code, 1860 or other criminal offences.		
14.	P.Rasiya Vs Abdul Nazer and Another 2022 SCC Online SC 1131	In a cheque bounce case under section 138 Negotiable Act, 1881, the complainant is not required to spell out in complaint, the nature of the transaction or source of fund since the onus is on accused to prove that the cheque was issued not towards a debt or liability.	6-8	233

2015 SCC OnLine Chh 1622 : (2016) 168 AIC (Sum 25) 12 : 2016 ACD 111 :
(2016) 2 CGLJ 340

In the High Court of Chhattisgarh at Bilaspur
(BEFORE SANJAY K. AGRAWAL, J.)

Smt. Meel Bai Age (Not mentioned in judgment) 50 years W/o
Jageshvar Prasad Kurre R/o Village Tifra, Tah. & Distt. Bilaspur
C.G. Applicant

v.

Rameshvar Prasad Chauhan S/o Baldeo Prasad Chauhan Age 40
years R/o Risda, Tah. Masturi, Distt. Bilaspur C.G. Non-
Applicant

Criminal Revision No. 583 of 2012
Decided on September 18, 2015

For Applicant: Mr. Raj Kumar Gupta, Advocate

For Non-Applicant: Ms. C.K. Navrang, Advocate

ORDER ON BOARD

SANJAY K. AGRAWAL, J.:— The complainant/non-applicant Rasmeshvar Prasad Chauhan filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter called as 'N.I. Act'), stating *inter alia* that on 30/06/2009 and 15/12/2009 towards the existing liability, the applicant/accused-Smt. Meel Bai issued two cheques amounting to Rs. 2,50,000/- to the complainant, which was dishonoured on account of insufficient fund in her account. After serving legal notice, when the amount was not repaid, the complaint was filed for commission of offence punishable under Section 138 of the N.I. Act, in which, present applicant-Smt. Meel Bai abjured her guilt by pleading that she has falsely been implicated in the case and entered into defence.

2. In order to prove the offence, the complainant/non-applicant examined himself as PW-1 and brought five documents on record, whereas, the defence examined two witnesses and brought no document on record.

3. After considering contentions of the parties and evidence available on record, the Judicial Magistrate First Class, Bilaspur, C.G. by its judgment dated 24/03/2012, convicted the accused/applicant-Smt. Meel Bai for the offence punishable under Section 138 of the N.I. Act and sentenced her to undergo simple imprisonment for one year and also awarded compensation of Rs. 2,50,000/- under Section 357(3) of the Cr.P.C. in default of payment of compensation amount to further undergo simple imprisonment for three months.

4. Feeling dissatisfied with the conviction for offence under Section 138 of the N.I. Act, the accused-Smt. Meel Bai preferred Criminal Appeal No. 100/2012 before the Court of Session. The Second Additional Session Judge, Bilaspur, C.G., by its judgment dated 23/08/2012 maintained the conviction under Section 138 of the N.I. Act finding no merit but reduced the jail sentence from simple imprisonment for one year to imprisonment till rising of the Court and enhanced the compensation amount from Rs. 2,50,000/- to Rs. 2,75,000/- and further directed to pay the compensation amount within a period of one month, in default of payment of compensation amount to further undergo simple imprisonment for six months.

5. Invoking revisional jurisdiction by this Court under Section 397 read with Section 401 of the Cr.P.C. the applicant preferred instant criminal revision.

6. Mr. Raj Kumar Gupta, learned counsel appearing for the accused-Smt. Meel Bai would submit that conviction recorded and sentence awarded by both the Courts

below are absolutely illegal in view of fact that there is no pre-existing liability on her part towards complainant-Rasmeshvar Prasad Chauhan and as such, the conviction recorded is bad & unsustainable in law and deserves to be set aside. He would further submit that sentence awarded is shockingly on higher side as the jail sentence is not mandatory in view of the language employed in Section 138 of the N.I. Act.

7. Ms. C.K. Navrang, learned counsel appearing for the complainant - Rasmeshvar Prasad Chauhan would submit that conviction recorded by the trial Magistrate as affirmed by the Appellate Court is well merited and does not call for any interference and the sentence awarded is also just, fair and reasonable.

8. I have heard the learned counsel appearing for the parties and perused the judgment impugned including records of the case carefully.

9. Upon hearing both the counsel, following two questions arise for determination.

(i) Whether the conviction of Smt. Meel Bai for offence under Section 138 of the N.I. Act is just and proper?

(ii) Whether the punishment imposed upon the accused-Smt. Meel Bai by the Appellate Court is just and proper?

Answer to question No. 1.

10. I shall first take up the plea of Mr. Gupta that there was no pre-existing liability against the complainant to make payment of Rs. 2,50,000/- by cheque. It is admitted position on record that the applicant had purchased the land bearing Khasra No. 624/132, area 470 sq. ft. situated at Devi Nagar, Bilaspur from the complainant for a consideration of Rs. 3,00,000/- on 30/06/2009 and against that, she issued cheque on 30/06/2009 which was dishonoured due to insufficient fund and later on, she issued another cheque on 15/12/2009 and that cheque submitted for payment, which was also dishonoured due to insufficient fund, thereafter, notice was issued and complaint under Section 138 of the N.I. Act was filed.

11. Section 139 of the N.I. Act provides as under:—

“139. Presumption in favour of holder.- It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.”

12. The presumption mandated by Section 139 of the N.I. Act was considered by the Supreme Court in the matter of *Rangappa v. Sri Mohan*¹, it has been held that the presumption available under Section 139 of the N.I. Act includes presumption that there exists a legally enforceable debt or liability, though, such presumption is rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. Thus the initial presumption provided in aforesaid provision favours the complainant and accused can rebut the said presumption and discharge the reverse onus by adducing evidence. The aforesaid decision has been followed and reiterated by Their Lordships of Supreme Court in the matter of *S. Natarajan v. Sama Dharman*².

13. The Trial Magistrate has clearly recorded a finding that there was a legally enforceable liability of the applicant against purchase of land and in discharge of that, two cheques were issued to the complainant and that cheques were returned due to insufficient fund in the account of accused/applicant and the said finding of the trial Magistrate has been affirmed by the Appellate Court. The said finding recorded by Trial Magistrate and duly affirmed by Appellate Court is based on evidence available on the record and in which, I do not find any illegality and as such, the applicant has rightly been convicted by trial Court and the Appellate Court has not committed any illegality in affirming the same, this question is answered accordingly.

Answer to Question No. 2

14. Section 138 of the N.I. Act provides as under:—

“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 honor the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that banker, such person shall be deemed to have committed an offence and shall without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend to one year, 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 XVII 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 fifteen 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.”

15. By virtue of Section 138 of the N.I. Act, the Criminal Court after convicting the accused has to impose punishment of imprisonment, which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both.

16. In the matter of *State of Maharashtra v. Jugamander La*³ Their Lordships of the Supreme Court has held that, expression ‘shall be punishable for imprisonment and also for the fine’, means that the Court is bound to impose a sentence comprising both imprisonment and fine.

17. Furthermore, Their Lordships of the Supreme Court in the matter of *The Assistant Commissioner, Assessment-II, Bangalore v. Velliappa Textiles Ltd.*⁴ has held as under

“35.....Where the legislature has granted discretion to the court in the matter of sentencing, it is open to the court to use its discretion. Where, however, the legislature, for reasons of policy, has done away with this discretion, it is not open to the court to impose only a part of the sentence prescribed by the legislature, for that would amount re-writing the provisions of the statute.”

18. But, here in the instant case, in Section 138 of the N.I. Act the word “or” has been employed and discretion has been conferred to the Criminal Court sentencing the convicted person for offence under Section 138 of the N.I. Act, Thus, there is a discretion left with the Criminal Court either to sentence the accused with imprisonment or to punish the accused with the sentence of fine upon considering the facts and circumstances of the case.

19. In the matter of *Damodar S. Prabhu v. Sayed Babalal H.*⁵, Their Lordships of the Supreme Court while examining the object sought to be achieved by provisions of Section 138 of the N.I. Act and purpose underlying the punishment provided therein has held that Section 138 of the N.I. Act cases are meant to secure payment of money by holding as under:—

“17. 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."

20. Very recently, in the matter of *Somnath Sarkar v. Utpal Basu Mallick*⁶, Their Lordships of the Supreme Court while considering the punishment to be imposed under Section 138 of the N.I. Act have held in no uncertain term that under Section 138 of the N.I. Act, only fine sentence can be imposed by the Criminal Court and observed as under:—

"15.....Suffice it to say that the High Court was competent on a plain reading of Section 138 to impose a sentence of fine only upon the appellant. Inasmuch as the High Court did so, it committed no jurisdictional error....."

21. Thus, from the provisions contained in Section 138 of the N.I. Act and going by the law laid down by Their Lordships of the Supreme Court in aforesaid judgments it is quite vivid that Criminal Court sentencing the accused for commission of offence under Section 138 of the N.I. Act is competent to impose sentence of fine only as imposition of jail sentence is not mandatory as it is discretion vested with the Criminal Court either to impose jail sentence or sentence of fine only depending on the facts and circumstances of particular case.

22. Now the question raised and to be considered in this revision is whether the trial Court as well as the Court of Session is justified in imposing compensation upon the applicant/accused under Section 357(3) of the Cr.P.C. In order to consider the said plea it would be appropriate to set out the provisions contained in the aforesaid provision:—

"357. Order to pay compensation- (1) When a court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

- (a) in defraying the expenses properly incurred in the prosecution;
- (b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the court, recoverable by such person in a civil court;

(c)-(d)

(2)

(3) When a court imposes a sentence, of which fine does not form a part, the court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an appellate court or by the High Court or Court of Sessions when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this section."

23. The law with regard to grant of compensation under Section 357(3) of the Cr.P.C. in cases arising from Section 138 of the N.I. Act is well settled. The object of Section 138 of the N.I. Act appears to be punitive as well as compensatory in nature as it provides a single forum and single proceeding for enforcement in criminal liability (for dishonouring the cheque) and for enforcement of civil liability (for realization of cheque amount). In the matter of *R. Vijayan v. Baby*⁷, Their Lordships of the Supreme

Court culled out the following principle contained in provisions of Chapter-XVII of the Act, which states as under:—

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

24. Their Lordships in the later part of judgment while considering the intention of legislature for enacting Section 138 of the N.I. Act has held as under:—

“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.

18. Having reached that stage, if some Magistrates go by the traditional view that the criminal proceedings are for imposing punishment on the accused, either imprisonment or fine or both, and there is no need to compensate the complainant, particularly if the complainant is not a “victim” in the real sense, but is a well-to-do financier or financing institution, difficulties and complications arise. In those cases where the discretion to direct payment of compensation is not exercised, it causes considerable difficulty to the complainant, as invariably, by the time the criminal case is decided, the limitation for filing civil cases would have expired. As the provisions of Chapter XVII of the Act strongly lean towards grant of reimbursement of the loss by way of compensation, the courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine up to twice the cheque amount (keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss) and direct payment of such amount as compensation. Direction to pay compensation by way of restitution in regard to the loss on account of dishonour of the cheque should be practical and realistic, which would mean not only the payment of the cheque amount but interest thereon at a reasonable rate. Uniformity and consistency in deciding similar cases by different courts, not only increase the credibility of cheque as a negotiable instrument, but also the credibility of courts of justice.

19. We are conscious of the fact that proceedings under Section 138 of the Act cannot be treated as civil suits for recovery of the cheque amount with interest. We are also conscious of the fact that compensation awarded under Section 357(1)(b) is not intended to be an elaborate exercise taking note of interest, etc. Our observations are necessitated due to the need to have uniformity and consistency in

decision making. In same type of cheque dishonour cases, after convicting the accused, if some courts grant compensation and if some other courts do not grant compensation, the inconsistency, though perfectly acceptable in the eye of the law, will give rise to certain amount of uncertainty in the minds of litigants about the functioning of courts. Citizens will not be able to arrange or regulate their affairs in a proper manner as they will not know whether they should simultaneously file a civil suit or not. The problem is aggravated having regard to the fact that in spite of Section 143(3) of the Act requiring the complaints in regard to cheque dishonour cases under Section 138 of the Act to be concluded within six months from the date of the filing of the complaint, such cases seldom reach finality before three or four years let alone six months. These cases give rise to complications where civil suits have not been filed within three years on account of the pendency of the criminal cases. While it is not the duty of criminal courts to ensure that successful complainants get the cheque amount also, it is their duty to have uniformity and consistency with other courts dealing with similar cases.

25. Thus, it is quite vivid that under Section 138 of the N.I. Act Criminal Court is competent to levy fine up to twice the cheque amount and direct payment of such amount as compensation by way of restitution in regard to the loss on account of dishonour of cheque under Section 357(1)(b) of the Cr.P.C. and as such, the power under Section 357(3) of the Cr. P.C. cannot be exercised by Criminal Court in the cheque dishonour cases.

26. Turning back to the facts of the case it is apparent that the learned trial Magistrate after convicting the applicant for offence under Section 138 of the N.I. Act sentenced her to undergo simple imprisonment for one year and awarded compensation of Rs. 2,50,000/- under Section 357(3) of the Cr.P.C. On appeal being preferred, the Court of Session modified the jail sentence of one year simple imprisonment to imprisonment till rising of the Court and enhanced the compensation from Rs. 2,50,000/- to Rs. 2,75,000/- and directed the said amount to be paid to the complainant.

27. Taking into consideration the provisions contained in Section 138 of the N.I. Act in which punishment imposable is two years imprisonment or with fine which can be twice to the amount of cheque and taking note of the law laid down in this behalf by Their Lordships of the Supreme Court in the aforesaid cases that the punishment to be awarded in Section 138 of the N.I. Act cases are meant to ensure payment of money and threat of jail is only to ensure recovery and as such, imposition of jail sentence is not mandatory, in the considered opinion of this Court, ends of justice would be served if only the applicant is punished with the fine sentence and she is fined to an amount equal to cheque amount i.e. Rs. 2,50,000/- and additional fine of Rs. 25,000/- towards interest on the said amount is imposed and accordingly applicant is sentenced to pay fine of Rs. 2,75,000/- in total and is directed that the total fine amount of Rs. 2,75,000/- be paid to the non applicant/complainant under Section 357(1)(b) of the Cr.P.C. It is stated at bar that the applicant has deposited an amount of Rs. 1,37,500/- in compliance of this Court order dated 22/04/2013 and said amount shall be disbursed to the complainant/non-applicant forthwith. The remaining amount of compensation be deposited by applicant within a period of forty five days and it shall also be paid immediately thereafter to the complainant. If the balance fine amount is not deposited within forty five days from today, the applicant will undergo simple imprisonment for one month.

28. As a fallout and consequence of the aforesaid discussion, the criminal revision is allowed in part. The conviction of the applicant for offence under Section 138 of the N.I. Act is hereby maintained, whereas the jail sentence of the applicant is set aside and the fine sentence of Rs. 2,75,000/- as indicated hereinabove is imposed which is payable to the non-applicant/complainant under Section 357(1)(b) of the Cr.P.C.

¹ (2010) 11 SCC 441

² 2014 (9) SCALE 3

³ AIR 1966 SC 940

⁴ (2003) 11 SCC 405

⁵ (2010) 5 SCC 663

⁶ (2013) 16 SCC 465

⁷ (2012) 1 SCC 260

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In the High Court of Chhattisgarh at Bilaspur
(BEFORE SANJAY K. AGRAWAL, J.)

Criminal Misc. Petition No. 357 of 2013

Atharva Agro Chemical Pvt. Ltd., Through Murari Lal Agrawal ...
Petitioner;
Versus

Gopal Chand Barik and Another ... Respondents.

And

Criminal Revision No. 233 of 2013

Atharva Agro Chemical Pvt. Ltd., Through Murari Lal Agrawal ...
Applicant;
Versus

Gopal Chand Barik and Another ... Non-applicants.

Criminal Misc. Petition No. 357 of 2013 and Criminal Revision No. 233 of 2013

Decided on February 4, 2021

Advocates who appeared in this case:

For Petitioner/Complainant : - Mr. P.R. Patankar, Advocate.

For Respondent No. 1/Accused : - Mr. Amiyakant Tiwari & Ms. Swati Verma,
Advocates.

For Respondent No. 2/State : - Mr. Suyash Dhar, Panel Lawyer.

The Order of the Court was delivered by

SANJAY K. AGRAWAL, J.:— Since common question of fact and law is involved in both the petitions, they are heard together and being disposed of by this common order.

2. Respondent No. 1/accused issued a cheque of Rs. 2,67,011/- to the complainant/petitioner on 3-4-2011 which was submitted by the petitioner/complainant in his bank for realisation, but the same was returned by the Bank informing that the cheque has been dishonoured on account of insufficient fund. Thereafter, legal notice was served by the complainant to the accused on 30-4-2011 and criminal complaint was filed for offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') before the trial Magistrate. The trial Magistrate upon full trial by his judgment dated 4-8-2012 found the offence under Section 138 of the NI Act proved against the accused/respondent No. 1 and convicted him under Section 138 and sentenced to undergo RI for three months. Feeling aggrieved against the judgment of conviction and order of sentence awarded, the accused preferred criminal appeal under Section 374(3) of the CrPC, whereas, the complainant preferred criminal revision against the order not awarding compensation amount/fine to the accused. The revisional Court dismissed the revision of the complainant/petitioner holding that he could have invoked the remedy of appeal under Section 372 of the CrPC against which the present Cr.M.P. No. 357/2013 has been filed by the complainant/petitioner. However, the appellate Court in appeal under Section 374(3) of the CrPC maintained conviction of the accused/respondent No. 1, but set aside the sentence of imprisonment and sentenced only to pay fine of Rs. 5,000/-, in default to undergo imprisonment for one month, against which the present revision Cr. Rev. No. 233/2013 has been preferred by the complainant. This is how

both the cases have been placed for consideration.

3. Mr. P.R. Patankar, learned counsel appearing for the petitioner herein/complainant, would submit that once conviction has been maintained for offence under Section 138 of the NI Act by the appellate Court, sentence could not have been interfered with or even if it has been interfered, it could have been awarded sentence of fine to the extent of the cheque amount or double of the cheque amount whichever is reasonable, but the appellate Court interfered with sentence and confined the sentence to fine amount that too Rs. 5,000/- only which is absolutely unjustified and bad in law. He would further submit that the revision preferred by the complainant was so competent which has also been illegally rejected by the revisional Court. As such, the present criminal revision be allowed and the sentence awarded by the trial Court be restored or it be converted to fine and compensation be awarded to the complainant.

4. Mr. Amiyakant Tiwari, learned counsel appearing for the accused/respondent No. 1 herein, would vehemently submit that the learned appellate Court has rightly interfered with the sentence and sentenced to fine only which the accused had already deposited, as such, interference cannot be made in the order of the appellate Court. He would further submit that the learned appellate Court has rightly set aside the jail sentence and converted it to fine sentence.

5. I have heard learned counsel for the parties and perused the judgment of the trial Court as well as of the appellate Court and the revisional Court and also went through the record with utmost circumspection.

Cr. Rev. No. 233/2013

6. Section 138 of the NI Act provides as under:—

“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 honor the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that banker, such person shall be deemed to have committed an offence and shall without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend to one year, 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.”

7. By virtue of Section 138 of the NI Act, the Criminal Court after convicting the accused has to impose punishment of imprisonment, which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both.

8. In the matter of *State of Maharashtra v. Jugamander Lal*¹, their Lordships of the

Supreme Court have held that, expression 'shall be punishable for imprisonment and also for the fine', means that the Court is bound to impose a sentence comprising both imprisonment and fine.

9. Furthermore, their Lordships of the Supreme Court in the matter of *The Assistant Commissioner, Assessment-II, Bangalore v. Velliappa Textiles Ltd.*² have held as under:—

“35. ... Where the legislature has granted discretion to the court in the matter of sentencing, it is open to the court to use its discretion. Where, however, the legislature, for reasons of policy, has done away with this discretion, it is not open to the court to impose only a part of the sentence prescribed by the legislature, for that would amount re-writing the provisions of the statute.”

10. Here in the instant case, in Section 138 of the NI Act the word “or” has been employed and discretion has been conferred to the Criminal Court sentencing the convicted person for offence under Section 138 of the NI Act. Thus, there is a discretion left with the Criminal Court dealing with complaint under Section 138 of the NI Act either to sentence the accused with imprisonment or to punish the accused with the sentence of fine upon considering the facts and circumstances of the case.

11. In the matter of *Damodar S. Prabhu v. Sayed Babalal H.*³, their Lordships of the Supreme Court while examining the object sought to be achieved by provisions of Section 138 of the NI Act and purpose underlying the punishment provided therein have held that Section 138 of the NI Act cases are meant to secure payment of money by holding as under:—

“17. 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.”

12. In the matter of *Somnath Sarkar v. Utpal Basu Mallick*⁴, their Lordships of the Supreme Court while considering the punishment to be imposed under Section 138 of the NI Act have held in no uncertain terms that under Section 138 of the NI Act, only fine sentence can be imposed by the Criminal Court and observed as under:—

“15. ... Suffice it to say that the High Court was competent on a plain reading of Section 138 to impose a sentence of fine only upon the appellant. Inasmuch as the High Court did so, it committed no jurisdictional error. ...”

13. Thus, from the provisions contained in Section 138 of the NI Act and following the principles of law laid down by their Lordships of the Supreme Court in the aforesaid judgments (supra), it is quite vivid that Criminal Court sentencing the accused for commission of offence under Section 138 of the NI Act is competent to impose sentence of fine only as imposition of jail sentence is not mandatory as it is the discretion vested with the Criminal Court dealing with complaint under Section 138 of the NI Act either to impose jail sentence or sentence of fine only depending on the facts and circumstances of particular case.

14. Now, the question raised and to be considered in this revision is, whether the trial Court as well as the Court of Session is justified in not imposing compensation upon the accused/respondent No. 1 under Section 357(1)(b) of the CrPC. In order to consider the said plea it would be appropriate to set out the provisions contained in the aforesaid provision:—

“357. Order to pay compensation.—(1) When a court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

- (a) in defraying the expenses properly incurred in the prosecution;
- (b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the court, recoverable by such person in a civil court;

(c)-(d) * * * *

(2) * * * *

(3) When a court imposes a sentence, of which fine does not form a part, the court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an appellate court or by the High Court or Court of Sessions when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this section."

15. The law with regard to grant of compensation under Section 357(3) of the CrPC in cases arising from Section 138 of the NI Act is well settled. The object of Section 138 of the NI Act appears to be punitive as well as compensatory in nature as it provides a single forum and single proceeding for enforcement in criminal liability (for dishonouring the cheque) and for enforcement of civil liability (for realization of cheque amount).

16. In the matter of *Suganthi Suresh Kumar v. Jagdeeshan*⁵, the Supreme Court while dealing with flea-bite sentence (imprisonment till rising of court and fine of Rs. 5,000/-) imposed under Section 138 of the NI Act, held that same is not justified when the amount (over 4 lakhs) had not been paid by accused to complainant during pendency of the case before trial court or High Court and observed as under:—

"12. The total amount covered by the cheques involved in the present two cases was Rs. 4,50,000. There is no case for the respondent that the said amount had been paid either during the pendency of the cases before the trial court or revision before the High Court or this Court. If the amounts had been paid to the complainant there perhaps would have been justification for imposing a flea-bite sentence as had been chosen by the trial court. But in a case where the amount covered by the cheque remained unpaid it should be the lookout of the trial Magistrates that the sentence for the offence under Section 138 should be of such a nature as to give proper effect to the object of the legislation. No drawer of the cheque can be allowed to take dishonour of the cheque issued by him light-heartedly. The very object of enactment of provisions like Section 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Magistrate. It is a different matter if the accused paid the amount at least during the pendency of the case."

17. In the matter of *R. Vijayan v. Baby*⁶, their Lordships of the Supreme Court culled out the following principle contained in the provisions of Chapter-XVII of the Act, which states as under:—

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

18. Their Lordships in the later part of judgment while considering the intention of legislature for enacting Section 138 of the NI Act, have held as under:—

"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.

18. Having reached that stage, if some Magistrates go by the traditional view that the criminal proceedings are for imposing punishment on the accused, either imprisonment or fine or both, and there is no need to compensate the complainant, particularly if the complainant is not a "victim" in the real sense, but is a well-to-do financier or financing institution, difficulties and complications arise. In those cases where the discretion to direct payment of compensation is not exercised, it causes considerable difficulty to the complainant, as invariably, by the time the criminal case is decided, the limitation for filing civil cases would have expired. As the provisions of Chapter XVII of the Act strongly lean towards grant of reimbursement of the loss by way of compensation, the courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine up to twice the cheque amount (keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss) and direct payment of such amount as compensation. Direction to pay compensation by way of restitution in regard to the loss on account of dishonour of the cheque should be practical and realistic, which would mean not only the payment of the cheque amount but interest thereon at a reasonable rate. Uniformity and consistency in deciding similar cases by different courts, not only increase the credibility of cheque as a negotiable instrument, but also the credibility of courts of justice.

19. We are conscious of the fact that proceedings under Section 138 of the Act cannot be treated as civil suits for recovery of the cheque amount with interest. We are also conscious of the fact that compensation awarded under Section 357(1)(b) is not intended to be an elaborate exercise taking note of interest, etc. Our observations are necessitated due to the need to have uniformity and consistency in decision making. In same type of cheque dishonour cases, after convicting the accused, if some courts grant compensation and if some other courts do not grant compensation, the inconsistency, though perfectly acceptable in the eye of the law, will give rise to certain amount of uncertainty in the minds of litigants about the functioning of courts. Citizens will not be able to arrange or regulate their affairs in a proper manner as they will not know whether they should simultaneously file a civil suit or not. The problem is aggravated having regard to the fact that in spite of Section 143(3) of the Act requiring the complaints in regard to cheque dishonour cases under Section 138 of the Act to be concluded within six months from the date of the filing of the complaint, such cases seldom reach finality before three or four

years let alone six months. These cases give rise to complications where civil suits have not been filed within three years on account of the pendency of the criminal cases. While it is not the duty of criminal courts to ensure that successful complainants get the cheque amount also, it is their duty to have uniformity and consistency with other courts dealing with similar cases.”

19. In the matter of *Bir Singh v. Mukesh Kumar*⁷, the Supreme Court following the principle of law laid down in *R. Vijayan* (supra), held that Section 138 of the NI Act is both punitive as well as compensatory and restitutive, and also provides for enforcement of civil liability for realisation of cheque amount. It was held as under:—

“25. In *R. Vijayan v. Baby*⁸ this Court observed that the object of Chapter XVII of the Negotiable Instruments Act is both punitive as also compensatory and restitutive. It provides a single forum and single proceeding for enforcement of criminal liability by reason of dishonour of 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 Court expressed its anguish that some Magistrates went by the traditional view, that the criminal proceedings were for imposing punishment and did not exercise discretion to direct payment of compensation, causing considerable difficulty to the complainant, as invariably the limitation for filing civil cases would expire by the time the criminal case was decided.”

20. Thereafter, while granting appeal and confirming conviction of the respondent therein, their Lordships of the Supreme Court sentenced him only to fine, which was enhanced to Rs. 16 lakhs and further directed the same to be paid as compensation to the complainant. It was held as under:—

“40. The appeals are allowed. The judgment⁹ and order of the High Court is set aside. The conviction of the respondent under Section 138 of the Negotiable Instruments Act is confirmed. However, the respondent-accused is sentenced only to fine, which is enhanced to Rs. 16 lakhs and shall be paid as compensation to the appellant complainant. The fine shall be deposited in the trial court within eight weeks from the date, failing which the sentence of imprisonment of one year as imposed by the trial court shall revive. There shall be no order as to costs.”

21. Thus, it is quite vivid that under Section 138 of the NI Act, Criminal Court is competent to levy fine up to twice the cheque amount and direct payment of such amount as compensation by way of restitution in regard to the loss on account of dishonour of cheque under Section 357(1)(b) of the CrPC and as such, the power under Section 357(3) of the CrPC cannot be exercised by Criminal Court in the cheque dishonour cases.

22. Reverting to the facts of the present case in the light of the aforesaid position, it is quite vivid that the trial Magistrate has convicted the accused/respondent No. 1 under Section 138 of the NI Act and sentenced him to undergo RI for three months, but no fine was imposed, however, in appeal filed by the accused, the appellate Court maintained conviction, but reduced sentence to fine sentence only. Taking into consideration, the provisions contained in Section 138 of the NI Act in which punishment imposable is two years imprisonment or with fine which can be twice the amount of cheque and taking note of the law laid down by the Supreme Court noticed herein-above including the judgment in *Bir Singh* (supra) and other cases, punishment to be awarded in Section 138 of the NI Act cases are meant to ensure payment of money and threat of jail is only to ensure recovery and as such, imposition of jail sentence is not mandatory. In the considered opinion of this Court, ends of justice would be served if fine awarded Rs. 5,000/- is enhanced to Rs. 2,67,011/- and an additional amount of Rs. 25,000/- towards interest on the said amount is imposed. Accordingly, the accused/respondent No. 1 is sentenced to pay fine of Rs. 2,67,011/-

and Rs. 25,000/- which shall be paid as compensation to the complainant/petitioner under Section 357(1)(b) of the CrPC. It is stated at the Bar that respondent No. 1 has deposited fine of Rs. 5,000/- in compliance of the order passed by the appellate Court. Remaining amount of compensation shall be deposited by respondent No. 1 before the CCD of the concerned trial Court within a period of 45 days and shall be paid immediately to the complainant. If balance amount of fine is not deposited within the stipulated period, respondent No. 1 shall undergo simple imprisonment for one month.

23. As a fallout and consequence of the aforesaid discussion, the criminal revision is allowed in part. Conviction of the accused/respondent No. 1 under Section 138 of the NI Act is not under challenge, however, he is sentenced to pay fine of Rs. 2,67,011/- and Rs. 25,000/- with default stipulation as indicated herein-above which is payable to the petitioner/complainant under Section 357(1)(b) of the CrPC.

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24. Since the criminal revision has been allowed in part herein-above, this petition has become infructuous and it is accordingly dismissed as having become infructuous.

¹ AIR 1966 SC 940

² (2003) 11 SCC 405

³ (2010) 5 SCC 663

⁴ (2013) 16 SCC 465

⁵ (2002) 2 SCC 420

⁶ (2012) 1 SCC 260

⁷ (2019) 4 SCC 197

⁸ *Mukesh Kumar v. Bir Singh*, 2017 SCC OnLine P&H 5352

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of amendment with effect from 27-2-1962, provides that the affidavit referred to in the proviso to sub-section (1) of Section 83 shall be sworn before a Magistrate of the First Class or a Notary or a Commissioner of Oaths and shall be in Form 25. Thus Form 25 is the prescribed form required under the proviso to Section 83(1), in which form the affidavit is required to be made. The form indicates that the deponent must state that which of the paragraphs are true to his knowledge and which of the paragraphs are true to his information. The election petition in the present case contains a verification which states that paragraphs (2) to (21) are true to the information received by the petitioner, sources of which have been disclosed in the main petition. The accompanying affidavit also states that the particulars of corrupt practices mentioned in paragraphs (2) to (21) are true to the information received from the authorities/persons concerned are believed to be true. Out of these paragraphs, paragraphs 3, 4, 5, 9, 15, 16, 17, 18 and 19 have already been struck off by the order of the High Court dated 21-7-2000. On considering the averments made in the election petition, as well as the contents of the verification and affidavit referred to earlier, we are unable to persuade ourselves with the submission of Mr Venugopal that there has been an infraction of the proviso to Section 83(1) of the Act so as to reject the petition on that score at the threshold.

7. In view of our conclusion on Question 1, the appeals are allowed and the impugned orders of the High Court dated 21-7-2000 as well as 31-1-2001 are set aside and Election Petition No. 3 of 1998 in the High Court of Madhya Pradesh at Jabalpur is held to be not maintainable.

(2002) 2 Supreme Court Cases 420

(BEFORE K.T. THOMAS AND S.N. PHUKAN, JJ.)

SUGANTHI SURESH KUMAR . . . Appellant;

Versus

JAGDEESHAN . . . Respondent.

Criminal Appeals Nos. 65-66 of 2002[†], decided on January 15, 2002

A. Negotiable Instruments Act, 1881 — S. 138 — Sentence — Flea-bite sentence (imprisonment till rising of court and fine of Rs 5000) — Not justified when the amount (over 4 lakhs) had not been paid by accused to complainant during pendency of the case before trial court or High Court — Provisions of Ss. 357(1) and 431 CrPC considered — That complainant subsequently filed a civil suit and attached all properties of accused is no ground to impose a lesser sentence — Matter remitted to trial court for awarding appropriate sentence

B. Constitution of India — Art. 141 — Per incuriam — Legal proposition laid down by Supreme Court cannot be bypassed by High Court on ground that attention of Supreme Court had not been drawn to a specific statutory provision

[†] From the Judgment and Order dated 20-4-2001 of the Madras High Court in CrI. RPs Nos. 118 and 119 of 2001 : (2001) 3 Crimes 185

- Two cheques drawn by the respondent in favour of the appellant were dishonoured by the drawee bank. The total amount covered by the cheques was Rs 4,50,000. The trial Magistrate convicted the respondent under Section 138 of the Negotiable Instruments Act but sentenced him only to undergo imprisonment till rising of the court and pay a fine of Rs 5000 in both the cases. The appellant preferred revision before the High Court on the premise that the sentence was grossly inadequate and contended that the trial Magistrate should at least have invoked Section 357(3) CrPC. The Single Judge of the High Court did not interfere with the sentence passed on the respondent and therefore he dismissed both the revisions. Nonetheless, he directed the trial Magistrates “to keep in mind the object of providing stringent punishment and the guidelines given by the Apex Court in *Pankajbhai Nagjibhai Patel v. State of Gujarat* (2001) 2 SCC 595”. However, the High Court did not invoke Section 357(3) CrPC. Disposing of the appeals, the Supreme Court

Held :

- There was no case for the respondent that the amount involved in the two cases had been paid either during the pendency of the cases before the trial court or revision before the High Court or the Supreme Court. If the amounts had been paid to the complainant there perhaps would have been justification for imposing a flea-bite sentence as had been chosen by the trial court. But in a case where the amount covered by the cheque remained unpaid it should be the lookout of the trial Magistrates that the sentence for the offence under Section 138 should be of such a nature as to give proper effect to the object of the legislation. No drawer of the cheque can be allowed to take dishonour of the cheque issued by him light-heartedly. The very object of enactment of provisions like Section 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Magistrate. (Para 12)
- That the complainant has subsequently filed a civil suit and attached all the properties of the respondent is not a ground for lessening the gravity of the offence or to impose a minor sentence chosen by the trial court. (Para 13)
- The Supreme Court in *K. Bhaskaran case* (1999) 7 SCC 510 had reminded all concerned that it is well to remember the emphasis laid on the need for making liberal use of Section 357(3) of the Code. This was observed by reference to a decision of the Supreme Court in *Hari Singh case* (1988) 4 SCC 551 wherein it was laid down that a court may enforce an order to pay compensation “by imposing a sentence in default”. A Single Judge of the High Court of Kerala in *Rajendran v. Jose* (2001) 3 KLT 431, however, directed that the decision of the Supreme Court in *Hari Singh case* is not to be followed as the Supreme Court laid down the legal proposition without adverting to Section 431 of the Code. Thereafter, the Single Judge cited another decision of the Supreme Court in *Balraj case* (1994) 4 SCC 29 which related to a murder case. But there is not even a remote hint in the said decision doubting the correctness of the legal proposition adopted in *Hari Singh case*. In other words the said legal position remains in force as no other Bench of the Supreme Court has even chosen to depart from it. (Paras 5, 6 and 8)
- K. Bhaskaran v. Sankaran Vaidhyan Balan*, (1999) 7 SCC 510 : 1999 SCC (Cri) 1284; *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551 : 1988 SCC (Cri) 984 : AIR 1988 SC 2127, relied on
- Rajendran v. Jose*, (2001) 3 KLT 431, referred to

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Balraj v. State of U.P., (1994) 4 SCC 29 : 1994 SCC (Cri) 823 : AIR 1995 SC 1935, distinguished

It is impermissible for the High Court to overrule the decision of the Apex Court on the ground that the Supreme Court laid down the legal position without considering any other point. It is not only a matter of discipline for the High Courts in India, it is the mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The High Court cannot question the correctness of the decision of the Supreme Court even though the point sought before the High Court was not considered by the Supreme Court. That apart, Section 431 of the Code has only prescribed that any money (other than fine) payable by virtue of an order made under the Code shall be recoverable "as if it were a fine".
 (Paras 9 and 10)

Anil Kumar Neotia v. Union of India, (1988) 2 SCC 587 : AIR 1988 SC 1353, relied on

What the Supreme Court pronounced in *Hari Singh case* is open to all courts in India to follow the said course. The said legal position would continue to hold good until it is overruled by a larger Bench of the Supreme Court. Hence the Single Judge of the High Court of Kerala has committed an impropriety by expressing that the said legal direction of the Supreme Court should not be followed by the subordinate courts in Kerala. The course adopted by the said Judge in *Rajendran case* is disapproved. It is unfortunate that when the Sessions Judge has correctly taken a course in accordance with the discipline, the Single Judge of the High Court has incorrectly reversed it.
 (Para 11)

Rajendran v. Jose, (2001) 3 KLT 431, overruled

Pankajbhai Nagjibhai Patel v. State of Gujarat, (2001) 2 SCC 595 : 2001 SCC (Cri) 369, referred to

As it is now proposed to remit the case back to the trial court, it is not necessary to indicate what exactly should be the limit of proper sentence to be passed. The trial Magistrate shall hear both sides once again in the matter of sentence and pass a sentence which is condign. Therefore, the sentence passed on the respondent is set aside and the case is remitted back to the trial Magistrate for passing appropriate sentence on the respondent after hearing both sides.
 (Para 14)

R-M/ATZ/25108/CR

Advocates who appeared in this case :

K.V. Viswanathan, Kunwar Ajit Mohan Singh and K.V. Venkataraman, Advocates, for the Appellant;

T. Raja, Advocate, for the Respondent.

Chronological list of cases cited

	on page(s)	
1. (2001) 3 KLT 431, <i>Rajendran v. Jose</i>	424c, 425e	
2. (2001) 2 SCC 595 : 2001 SCC (Cri) 369, <i>Pankajbhai Nagjibhai Patel v. State of Gujarat</i>	423d-e	g
3. (1999) 7 SCC 510 : 1999 SCC (Cri) 1284, <i>K. Bhaskaran v. Sankaran Vaidhyan Balan</i>	423e	
4. (1994) 4 SCC 29 : 1994 SCC (Cri) 823 : AIR 1995 SC 1935, <i>Balraj v. State of U.P.</i>	424f-g	
5. (1988) 4 SCC 551 : 1988 SCC (Cri) 984 : AIR 1988 SC 2127, <i>Hari Singh v. Sukhbir Singh</i>	424a-b, 424c-d, 424d-e, 424g-h, 425c-d	h
6. (1988) 2 SCC 587 : AIR 1988 SC 1353, <i>Anil Kumar Neotia v. Union of India</i>	425a-b	

The Judgment of the Court was delivered by

THOMAS, J.— Leave granted.

- a* **2.** The appellant in this case is the complainant before the Court of IXth Metropolitan Magistrate, Saidapet, Chennai. The offence pitted against the respondent was under Section 138 of the Negotiable Instruments Act. In fact there were two complaints arising out of two sets of cheques which were dishonoured by the drawee bank. The trial Magistrate after holding the respondent guilty of the offence convicted him of the aforesaid offence but
- b* sentenced him only to undergo imprisonment till rising of the court and pay a fine of Rs 5000 in both cases. Apparently the respondent was happy and therefore he did not prefer any appeal. But the complainant/appellant was unhappy and therefore he preferred two revisions before the High Court on the premise that the sentence was grossly inadequate. He contended before the High Court that the trial Magistrate should at least have invoked the
- c* provision under Section 357(3) of the Code of Criminal Procedure (for short “the Code”).

- 3.** However the learned Single Judge of the High Court of Madras was not inclined to interfere with the sentence passed on the respondent and therefore he dismissed both the revisions. Nonetheless, learned Single Judge
- d* has chosen this opportunity to send a message to the trial Magistrates “to keep in mind the object of providing stringent punishment and the guidelines given by the Apex Court in *Pankajbhai Nagjibhai Patel v. State of Gujarat*¹”. Nor did the High Court invoke Section 357(3) of the Code.

- 4.** Mr K.V. Viswanathan, learned counsel for the petitioner invited our attention to the following observations made by this Court in *K. Bhaskaran v. Sankaran Vaidhyan Balan*²: (SCC p. 521, paras 30-31)
- e*

- If a Judicial Magistrate of the First Class were to order compensation to be paid to the complainant from out of the fine realised the complainant will be the loser when the cheque amount exceeded the said limit. In such a case a complainant would get only the maximum amount of rupees five thousand. But the Magistrate in such cases can alleviate the grievance of the complainant by making resort to Section 357(3) CrPC. The Supreme Court has emphasised the need for making liberal use of that provision. No limit is mentioned in the sub-section and therefore, a Magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the
- f*
- g* complainant. Thus, even if the trial was before a Court of a Magistrate of the First Class in respect of a cheque which covers an amount exceeding Rs 5000 the Court has power to award compensation to be paid to the complainant.

- h*
- 1 (2001) 2 SCC 595 : 2001 SCC (Cri) 369
 2 (1999) 7 SCC 510 : 1999 SCC (Cri) 1284

5. In the said decision this Court reminded all concerned that it is well to remember the emphasis laid on the need for making liberal use of Section 357(3) of the Code. This was observed by reference to a decision of this Court in *Hari Singh v. Sukhbir Singh*³. In the said decision this Court held as follows: (SCC p. 558, para 11) a

“The quantum of compensation may be determined by taking into account the nature of crime, the justness of the claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by instalments, may also be given. *The court may enforce the order by imposing sentence in default.*” (emphasis supplied) b

6. Our attention has been brought to a decision rendered by a Single Judge of the High Court of Kerala vide *Rajendran v. Jose*⁴. Learned Judge has directed that the decision of this Court in *Hari Singh v. Sukhbir Singh*³ is not to be followed as this Court laid down the said legal proposition without advert to Section 431 of the Code. The Single Judge of the High Court of Kerala bypassed the legal proposition made by the Apex Court in the following manner: (KLT p. 432, para 4) c

“4. The learned Sessions Judge imposed sentence in default on the basis of the observation made by the Apex Court in *Hari Kishan & State of Haryana v. Sukhbir Singh*³, that court may enforce the order by imposing sentence in default. It appears that while disposing of that appeal attention of Apex Court was not drawn specifically to the provisions of Section 431 CrPC providing for recovery of money (other than fine) payable by virtue of any order made under the Criminal Procedure Code.” d

7. Saying so, learned Single Judge set aside that part of the order passed by the Sessions Court directing an accused to undergo simple imprisonment for a period of six months in case of his committing default in payment of the compensation awarded (KLT p. 433, para 5). e

8. Thereafter learned Single Judge cited another decision of this Court in *Balraj v. State of U.P.*⁵ It related to a murder case. Apart from the sentence of imprisonment this Court awarded compensation and directed the amount to be collected under Section 431 of the Code. But there is not even a remote hint in the said decision doubting the correctness of the legal proposition adopted in *Hari Singh v. Sukhbir Singh*³. In other words the said legal position remains in force as no other Bench of this Court has even chosen to depart from it. f

3 (1988) 4 SCC 551 : 1988 SCC (Cri) 984 : AIR 1988 SC 2127 g

4 (2001) 3 KLT 431

5 (1994) 4 SCC 29 : 1994 SCC (Cri) 823 : AIR 1995 SC 1935 h

9. It is impermissible for the High Court to overrule the decision of the Apex Court on the ground that the Supreme Court laid down the legal position without considering any other point. It is not only a matter of discipline for the High Courts in India, it is the mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all courts within the territory of India. It was pointed out by this Court in *Anil Kumar Neotia v. Union of India*⁶ that the High Court cannot question the correctness of the decision of the Supreme Court even though the point sought before the High Court was not considered by the Supreme Court.

10. That apart, Section 431 of the Code has only prescribed that any money (other than fine) payable by virtue of an order made under the Code shall be recoverable “as if it were a fine”. Two modes of recovery of the fine have been indicated in Section 421(1) of the Code. The proviso to the sub-section says that if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue such warrant for levy of the amount.

11. When this Court pronounced in *Hari Singh v. Sukhbir Singh*³ that a court may enforce an order to pay compensation “by imposing a sentence in default” it is open to all courts in India to follow the said course. The said legal position would continue to hold good until it is overruled by a larger Bench of this Court. Hence learned Single Judge of the High Court of Kerala has committed an impropriety by expressing that the said legal direction of this Court should not be followed by the subordinate courts in Kerala. We express our disapproval of the course adopted by the said Judge in *Rajendran v. Jose*⁴. It is unfortunate that when the Sessions Judge has correctly done a course in accordance with the discipline the Single Judge of the High Court has incorrectly reversed it.

12. The total amount covered by the cheques involved in the present two cases was Rs 4,50,000. There is no case for the respondent that the said amount had been paid either during the pendency of the cases before the trial court or revision before the High Court or this Court. If the amounts had been paid to the complainant there perhaps would have been justification for imposing a flea-bite sentence as had been chosen by the trial court. But in a case where the amount covered by the cheque remained unpaid it should be the lookout of the trial Magistrates that the sentence for the offence under Section 138 should be of such a nature as to give proper effect to the object of the legislation. No drawer of the cheque can be allowed to take dishonour of the cheque issued by him light-heartedly. The very object of enactment of provisions like Section 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Magistrate. It is a different matter if the accused paid the amount at least during the pendency of the case.

⁶ (1988) 2 SCC 587 : AIR 1988 SC 1353

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13. Learned counsel for the respondent contended that the complainant has subsequently filed a civil suit and attached all the properties of the respondent. That is not a ground for lessening the gravity of the offence or to impose a minor sentence chosen by the trial court. a

14. As we propose to remit the case back to the trial court, we do not wish to indicate what exactly should be the limit of proper sentence to be passed. The trial Magistrate shall hear both sides once again in the matter of sentence and pass a sentence which is condign. We, therefore, set aside the sentence passed on the respondent and remit the case back to the trial Magistrate for passing appropriate sentence on the respondent after hearing both sides. b

15. Learned counsel for the respondent made a plea that if the respondent is able to make payment of the amount covered by the cheques he shall not be debarred from taking up the plea for mitigation of the sentence. The respondent will be entitled to make such a plea in the event of his succeeding in paying the amount covered by the cheques. c

16. Appeals are disposed of in the above terms.

(2002) 2 Supreme Court Cases 426

(BEFORE UMESH C. BANERJEE AND N. SANTOSH HEGDE, JJ.) d

Criminal Appeal No. 78 of 1999

STATE OF HARYANA . . . Appellant;

Versus

RAM SINGH . . . Respondent. e

With

Criminal Appeal No. 79 of 1999

RAI SAHAB AND ANOTHER . . . Appellants;

Versus

STATE OF HARYANA . . . Respondent. f

Criminal Appeals Nos. 78 and 79 of 1999[†], decided on January 15, 2002

A. Penal Code, 1860 — Ss. 302 r/w 149 — Benefit of doubt — Murder by gunshot firing — Medical evidence instead of supporting eyewitness account running counter to it and such inconsistency rendering the ocular testimony not dependable and trustworthy — Some bones said to have been collected by investigating officer from the place of occurrence not placed for examination before the doctor who conducted post-mortem examination though the same were produced before court and were identified by deceased's brother as the same pieces of bones which were collected by investigating officer — Though the doctor got the body of deceased X-rayed for ascertaining the nature of weapons used but he did not mention about g

[†] From the Judgment and Order dated 2-7-1997 of the Punjab and Haryana High Court in Crl. A. No. 421-DB of 1995 : (1998) 3 Chandigarh Cri Cas 144 h

DAMODAR S. PRABHU v. SAYED BABALAL H.

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quo prevailing with regard to Anisha's custody. The conditions laid down by the High Court regarding visitation rights to the petitioner are, in our view, sufficient for Anisha to experience the love and affection both of her father and mother. There is no reason why the petitioner, who will have access to Anisha on holidays and weekends, cannot look after her welfare without having continuous custody of her person.

27. As has repeatedly been said, in these matters the interest of the minor is of paramount importance to the Court which stands in loco parentis to the minor. Of course, the wishes of the minor are to be given due weightage, and, in the instant case, the same has been done. We, therefore, see no reason to interfere with the order passed by the learned Principal Judge, Family Court, Mumbai at Bandra, as affirmed by the Bombay High Court.

28. The special leave petitions are, accordingly, dismissed and all interim orders are hereby dissolved.

(2010) 5 Supreme Court Cases 663

(BEFORE K.G. BALAKRISHNAN, C.J. AND P. SATHASIVAM
AND J.M. PANCHAL, JJ.)

DAMODAR S. PRABHU

.. Appellant;

Versus

SAYED BABALAL H.

.. Respondent.

Criminal Appeals No. 963 of 2010[†] with Nos. 964-66 of 2010[‡],
decided on May 3, 2010

A. Negotiable Instruments Act, 1881 — Ss. 138 and 147 — Guidelines/Directions issued: (i) to encourage litigants in cheque dishonour cases to opt for compounding during early stages of litigation to ease choking of criminal justice system; (ii) for graded scheme of imposing costs on parties who unduly delay compounding of offence; and (iii) for controlling of filing of complaints in multiple jurisdictions relatable to same transaction

Held :

It is directed that the writ of summons in a cheque dishonour case should be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused. If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the court deems fit. Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition

[†] Arising out of SLP (Crl.) No. 6369 of 2007. From the Judgment and Order dated 14-8-2007 of the High Court of Bombay at Goa in Crl. A. No. 74 of 2006

[‡] Arising out of SLPs (Crl.) Nos. 6370-72 of 2007

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SUPREME COURT CASES

(2010) 5 SCC

that the accused pays 15% of the cheque amount by way of costs. Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount. (Para 21)

As far as filing of complaint before multiple jurisdictions relating to same transaction is concerned, it is directed that it should be mandatory for the complainant to disclose that no other complaint has been filed in any other court in respect of the same transaction which should be made on a sworn affidavit which should accompany the complaint filed under Section 200 CrPC. If it is found that such multiple complaints have been filed, orders for transfer of the complaint to the first court should be given, generally speaking, by the High Court after imposing heavy costs on the complainant for resorting to such a practice. (Para 23)

These directions should be given effect prospectively. (Para 23)

O.P. Dholakia v. State of Haryana, (2000) 1 SCC 762 : 2000 SCC (Cri) 310; *Sivasankaran v. State of Kerala*, (2002) 8 SCC 164 : 2002 SCC (Cri) 1872; *Kishore Kumar v. J.K. Corpn. Ltd.*, (2004) 13 SCC 494 : (2006) 1 SCC (Cri) 348; *Sailesh Shyam Parsekar v. Baban*, (2005) 4 SCC 162 : 2005 SCC (Cri) 1321; *Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd.*, (2008) 2 SCC 305 : (2008) 1 SCC (Cri) 351; *K.M. Ibrahim v. K.P. Mohammed*, (2010) 1 SCC 798 : (2010) 1 SCC (Cri) 921, *considered*

B. Negotiable Instruments Act, 1881 — Ss. 147 & 138 and S. 320, Criminal Procedure Code, 1973 — Relative scope — Compounding of cheque dishonour cases — Scheme for — Held, compounding of offences under the Negotiable Instruments Act, 1881 is controlled by S. 147 and the scheme contemplated by S. 320 CrPC will not be applicable in the strict sense (Paras 10 to 12)

R. Rajeshwari v. H.N. Jagadish, (2008) 4 SCC 82 : (2008) 2 SCC (Cri) 186, *considered*

C. Negotiable Instruments Act, 1881 — Ss. 147 and 138 — Compounding of offence — Considerations for — Held, the same is linked to perceived seriousness of offence and nature of remedy provided — Criminal Procedure Code, 1973, S. 320 (Para 16)

K.N.C. Pillai: *R.V. Kelkar's Criminal Procedure*, Fifth Edn. (Lucknow: Eastern Book Company, 2008) at p. 444, *relied on*

D. Negotiable Instruments Act, 1881 — S. 138 — Offence of dishonour of cheque — Punishment — Nature of — Held, compensatory aspect of remedy should be given priority over punitive aspect (Para 18)

Arun Mohan: *Some thoughts towards law reforms on the topic of Section 138, Negotiable Instruments Act—Tackling an avalanche of cases* at p. 5, *relied on*

E. Constitution of India — Arts. 136 and 142 — Exercise of power — Issue of directions, orders or guidelines to do complete justice — Legislative vacuum — No explicit guidance as to at what stage compounding can be done under S. 147, Negotiable Instruments Act and whether compounding can be done at instance of complainant or with leave of court — Though conscious of the view that guidelines issued to discourage litigants from unduly delaying the compounding of the offence in cases involving S. 138 of NI Act could be seen as an act of judicial law-making and therefore an intrusion into the legislative domain, directions issued to do complete justice under Article 142 of the Constitution in relation to the subject-matter where there was a legislative vacuum — Negotiable Instruments Act, 1881 — Ss. 138 and 141 — Judiciary — Judicial activism/Role of judiciary — Judicial law-making (Paras 24 and 25)

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**F. Negotiable Instruments Act, 1881 — S. 138 — Object of — Stated
(Paras 3 and 4)**

P-D/A/46155/CR

a

Advocates who appeared in this case :

G.E. Vahanvati (Amicus Curiae), Solicitor General for India (Arun Pedneker and V.N. Raghupathy, Advocates) for the Appellant;
Sunil Kr. Verma, Advocate, for the Respondent.

Chronological list of cases cited

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b

1. (2010) 1 SCC 798 : (2010) 1 SCC (Cri) 921, *K.M. Ibrahim v. K.P. Mohammed* 669f
2. (2008) 4 SCC 82 : (2008) 2 SCC (Cri) 186, *R. Rajeshwari v. H.N. Jagadish* 669c
3. (2008) 2 SCC 305 : (2008) 1 SCC (Cri) 351, *Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd.* 668f-g
4. (2005) 4 SCC 162 : 2005 SCC (Cri) 1321, *Sailesh Shyam Parsekar v. Baban* 667d
5. (2004) 13 SCC 494 : (2006) 1 SCC (Cri) 348, *Kishore Kumar v. J.K. Corpn. Ltd.* 667d
6. (2002) 8 SCC 164 : 2002 SCC (Cri) 1872, *Sivasankaran v. State of Kerala* 667d
7. (2000) 1 SCC 762 : 2000 SCC (Cri) 310, *O.P. Dholakia v. State of Haryana* 667a-b

ORDER

d

1. Leave granted. The present appeals are in respect of litigation involving the offence enumerated by Section 138 of the Negotiable Instruments Act, 1881 (hereinafter “the Act”). It is not necessary for us to delve into the facts leading up to the institution of proceedings before this Court since the appellant and the respondent have arrived at a settlement and prayed for the compounding of the offence as contemplated by Section 147 of the Act. It would suffice to say that the parties were involved in commercial transactions and that disputes had arisen on account of the dishonour of five cheques issued by the appellant. Thereafter, the parties went through the several stages of litigation before their dispute reached this Court by way of special leave petitions.

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2. With regard to the impugned judgments delivered by the High Court of Bombay at Goa, the appellant has prayed for the setting aside of his conviction in these matters by relying on the consent terms that have been arrived at between the parties. The respondent has not opposed this plea and, therefore, we allow the compounding of the offence and set aside the appellant’s conviction in each of the impugned judgments.

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3. However, there are some larger issues which can be appropriately addressed in the context of the present case. It may be recalled that Chapter XVII comprising Sections 138 to 142 was inserted into the Act by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (66 of 1988). The object of bringing Section 138 into the statute was to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. It was to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficient arrangements made by the drawer, with adequate safeguards to prevent

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harassment of honest drawers. If the cheque is dishonoured for insufficiency of funds in the drawer's account or if it exceeds the amount arranged to be paid from that account, the drawer is to 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. a

4. It may be noted that when the offence was inserted in the statute in 1988, it carried the provision for imprisonment up to one year, which was revised to two years following the amendment to the Act in 2002. It is quite evident that the legislative intent was to provide a strong criminal remedy in order to deter the worryingly high incidence of dishonour of cheques. While the possibility of imprisonment up to two years provides a remedy of a punitive nature, the provision for imposing a "fine which may extend to twice the amount of the cheque" serves a compensatory purpose. What must be remembered is that the dishonour of a cheque can be best described as a regulatory offence that has been created to serve the public interest in ensuring the reliability of these instruments. The impact of this offence is usually confined to the private parties involved in commercial transactions. b
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5. Invariably, the provision of a strong criminal remedy has encouraged the institution of a large number of cases that are relatable to the offence contemplated by Section 138 of the Act. So much so, that at present a disproportionately large number of cases involving the dishonour of cheques is choking our criminal justice system, especially at the level of Magistrates' Courts. As per the 213th Report of the Law Commission of India, more than 38 lakh cheque bouncing cases were pending before various courts in the country as of October 2008. This is putting an unprecedented strain on our judicial system. d

6. Mr Goolam E. Vahanvati, Solicitor General (now Attorney General for India) had appeared as amicus curiae in the present matter and referred to the facts herein as an illustration of how parties involved in cheque bounce cases usually seek the compounding of the offence at a very late stage. The interests of justice would indeed be better served if parties resorted to compounding as a method to resolve their disputes at an early stage instead of engaging in protracted litigation before several forums, thereby causing undue delay, expenditure and strain on part of the judicial system. This is clearly a situation that is causing some concern, since Section 147 of the Act does not prescribe as to what stage is appropriate for compounding the offence and whether the same can be done at the instance of the complainant or with the leave of the court. e
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7. The learned Attorney General stressed on the importance of using compounding as an expedient method to hasten the disposal of cases. In this regard, the learned Attorney General has proposed that this Court should frame some guidelines to disincentivise litigants from seeking the compounding of the offence at an unduly late stage of litigation. In other words, judicial directions have been sought to nudge litigants in cheque bounce cases to opt for compounding during the early stages of litigation, thereby bringing down the arrears. g
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8. Before examining the guidelines proposed by the learned Attorney General, it would be useful to clarify the position relating to the
- a compounding of offences under the Negotiable Instruments Act, 1881. Even before the insertion of Section 147 in the Act (by way of an amendment in 2002) some High Courts had permitted the compounding of the offence contemplated by Section 138 during the later stages of litigation. In fact, in *O.P. Dholakia v. State of Haryana*¹ a Division Bench of this Court had permitted the compounding of the offence even though the petitioner's
- b conviction had been upheld by all the three designated forums. After noting that the petitioner had already entered into a compromise with the complainant, the Bench had rejected the State's argument that this Court need not interfere with the conviction and sentence since it was open to the parties to enter into a compromise at an earlier stage and that they had not done so. The Bench had observed: (SCC p. 763, para 3)

- c "3. ... taking into consideration the nature of offence in question and the fact that the complainant and the accused have already entered into a compromise, we think it appropriate to grant permission, in the peculiar facts and circumstances of the present case, to compound."

- Similar reliefs were granted in the orders reported as *Sivasankaran v. State of Kerala*², *Kishore Kumar v. J.K. Corpn. Ltd.*³ and *Sailesh Shyam Parsekar v. Baban*⁴ among other cases.
- d

9. As mentioned above, the Negotiable Instruments Act, 1881 was amended by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 which inserted a specific provision i.e. Section 147 "to make the offences under the Act compoundable". We can refer to the following extract from the Statement of Objects and Reasons attached to the
- e 2002 amendment which is self-explanatory:

- "Prefatory Note—Statement of Objects and Reasons.—The Negotiable Instruments Act, 1881 was amended by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 wherein a new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque. These provisions were incorporated with a view to encourage the culture of use of cheques and enhancing the credibility of the instrument. The existing provisions in the Negotiable Instruments Act, 1881, namely, Sections 138 to 142 in Chapter XVII have been found deficient in dealing with dishonour of cheques. Not only the punishment provided in the Act has proved to be inadequate, the procedure prescribed for the courts to deal with such matters has been found to be cumbersome. The courts are unable to dispose of such cases expeditiously in a time bound manner in view of the procedure contained in the Act." (emphasis supplied)
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- 1 (2000) 1 SCC 762 : 2000 SCC (Cri) 310
- 2 (2002) 8 SCC 164 : 2002 SCC (Cri) 1872
- 3 (2004) 13 SCC 494 : (2006) 1 SCC (Cri) 348
- 4 (2005) 4 SCC 162 : 2005 SCC (Cri) 1321
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In order to address the deficiencies referred to above, Section 10 of the 2002 amendment inserted Sections 143, 144, 145, 146 and 147 into the Act, which deal with aspects such as the power of the court to try cases summarily (Section 143), mode of service of summons (Section 144), evidence on affidavit (Section 145), bank's slip to be considered as prima facie evidence of certain facts (Section 146) and offences under the Act to be compoundable (Section 147). a

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

“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. c

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. d

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. e

13. In *Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd.*⁵ this Court had examined “whether an offence punishable under Section 138 of the Act which is a special law can be compounded”. After taking note of a divergence of views in past decisions, this Court took the following position (C.K. Thakker, J. at SCC p. 310, para 17): g

“17. ... This 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 h

⁵ (2008) 2 SCC 305 : (2008) 1 SCC (Cri) 351

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a 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 (55 of 2002)."

In the same decision, the Court had also noted: (SCC p. 308, para 11)

b "11. ... Certain offences are very serious in which compromise or settlement is not permissible. Some other offences, on the other hand, are not so serious and the law may allow the parties to settle them by entering into a compromise. The compounding of an offence signifies that the person against whom an offence has been committed has received some gratification to an act as an inducement for his abstaining from proceeding further with the case."

c 14. It would also be pertinent to refer to this Court's decision in *R. Rajeshwari v. H.N. Jagadish*⁶ wherein the following observations were made (S.B. Sinha, J. at SCC p. 85, para 12):

"12. Negotiable Instruments Act is a special Act. Section 147 of the Act provides for a non obstante clause, stating:

d '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.'

e Indisputably, the provisions of the Code of Criminal Procedure, 1973 would be applicable to the proceedings pending before the courts for trial of offences under the said Act. *Stricto sensu*, however, the table appended to Section 320 of the Code of Criminal Procedure is not attracted as the provisions mentioned therein refer only to provisions of the Penal Code and none other."

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*⁷ wherein Kabir, J. has noted (at SCC p. 802, paras 13-14):

f "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. ...

g 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

h 6 (2008) 4 SCC 82 : (2008) 2 SCC (Cri) 186

7 (2010) 1 SCC 798 : (2010) 1 SCC (Cri) 921 : (2009) 14 Scale 262

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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. There is also some support for the apprehensions raised by the learned Attorney General that a majority of cheque bounce cases are indeed being compromised or settled by way of compounding, albeit during the later stages of litigation thereby contributing to undue delay in justice delivery. The problem herein is with the tendency of litigants to belatedly choose compounding as a means to resolve their dispute. Furthermore, the written submissions filed on behalf of the learned Attorney General have stressed on the fact that unlike Section 320 CrPC, Section 147 of the Negotiable Instruments Act provides no explicit guidance as to what stage compounding can or cannot be done and whether

compounding can be done at the instance of the complainant or with the leave of the court.

- a* 19. As mentioned earlier, the learned Attorney General's submission is that in the absence of statutory guidance, parties are choosing compounding as a method of last resort instead of opting for it as soon as the Magistrates take cognizance of the complaints. One explanation for such behaviour could be that the accused persons are willing to take the chance of progressing through the various stages of litigation and then choose the route of settlement only when no other route remains. While such behaviour may be viewed as rational from the viewpoint of litigants, the hard facts are that the undue delay in opting for compounding contributes to the arrears pending before the courts at various levels. If the accused is willing to settle or compromise by way of compounding of the offence at a later stage of litigation, it is generally indicative of some merit in the complainant's case.
- b*
- c* In such cases it would be desirable if parties choose compounding during the earlier stages of litigation. If however, the accused has a valid defence such as a mistake, forgery or coercion among other grounds, then the matter can be litigated through the specified forums.

- d* 20. It may be noted here that Section 143 of the Act makes an offence under Section 138 triable by a Judicial Magistrate, First Class (JMFC). After trial, the progression of further legal proceedings would depend on whether there has been a conviction or an acquittal.

- e*
 - In the case of conviction, an appeal would lie to the Court of Sessions under Section 374(3)(a) CrPC; thereafter a revision to the High Court under Sections 397/401 CrPC and finally a petition before the Supreme Court, seeking special leave to appeal under Section 136 of the Constitution of India. Thus, in case of conviction there will be four levels of litigation.
 - In the case of acquittal by JMFC, the complainant could appeal to the High Court under Section 378(4) CrPC, and thereafter for special leave to appeal to the Supreme Court under Article 136.
- f* In such an instance, therefore, there will be three levels of proceedings.

- g* 21. With regard to the progression of litigation in cheque bouncing cases, the learned Attorney General has urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system being burdened but the complainant is also deprived of effective justice.
- h* In view of this submission, we direct that the following guidelines be followed:

THE GUIDELINES

(i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the writ of summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused. a

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the court deems fit. b

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs. c

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount. d

22. Let it also be clarified that any costs imposed in accordance with these Guidelines should be deposited with the Legal Services Authority operating at the level of the court before which compounding takes place. For instance, in case of compounding during the pendency of proceedings before a Magistrate's Court or a Court of Session, such costs should be deposited with the District Legal Services Authority. Likewise, costs imposed in connection with composition before the High Court should be deposited with the State Legal Services Authority and those imposed in connection with composition before the Supreme Court should be deposited with the National Legal Services Authority. e

23. We are also in agreement with the learned Attorney General's suggestions for controlling the filing of multiple complaints that are relatable to the same transaction. It was submitted that complaints are being increasingly filed in multiple jurisdictions in a vexatious manner which causes tremendous harassment and prejudice to the drawers of the cheque. For instance, in the same transaction pertaining to a loan taken on an instalment basis to be repaid in equated monthly instalments, several cheques are taken which are dated for each monthly instalment and upon the dishonour of each of such cheques, different complaints are being filed in different courts which may also have jurisdiction in relation to the complaint. In light of this submission, we direct that it should be mandatory for the complainant to disclose that no other complaint has been filed in any other court in respect of the same transaction. Such a disclosure should be made on a sworn affidavit which should accompany the complaint filed under Section 200 CrPC. If it is found that such multiple complaints have been filed, orders f
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a for transfer of the complaint to the first court should be given, generally speaking, by the High Court after imposing heavy costs on the complainant for resorting to such a practice. These directions should be given effect prospectively.

b **24.** We are also conscious of the view that the judicial endorsement of the abovequoted Guidelines could be seen as an act of judicial law-making and therefore an intrusion into the legislative domain. It must be kept in mind that Section 147 of the Act does not carry any guidance on how to proceed with the compounding of offences under the Act. We have already explained that the scheme contemplated under Section 320 CrPC cannot be followed in the strict sense. In view of the legislative vacuum, we see no hurdle to the endorsement of some suggestions which have been designed to discourage litigants from unduly delaying the composition of the offence in cases involving Section 138 of the Act.

c **25.** The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the court is spent on the trial of these cases and the parties are not liable to pay any court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. Even though the imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance. Bona fide litigants should of course contest the proceedings to their logical end.

d **26.** Even in the past, this Court has used its power to do complete justice under Article 142 of the Constitution to frame guidelines in relation to the subject-matter where there was a legislative vacuum.

e **27.** The present set of appeals are disposed of accordingly.

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(BEFORE R.V. RAVEENDRAN AND DR. M.K. SHARMA, JJ.)

f ABRAR AHMED GULAM AHMED . . . Appellant;
Versus

STATE OF MAHARASHTRA . . . Respondent.

Criminal Appeal No. 940 of 2008[†], decided on April 23, 2010

g **Criminal Law — Maharashtra Control of Organised Crime Act, 1999 (30 of 1999) — Ss. 2(1)(e) and 5 — Supreme Court's direction to Special Court — Issues raised by appellant herein, in miscellaneous application in MCOC special case — Directed to be considered on its own merits in light of findings given in *Zameer Ahmed Latifur Rehman Sheikh case*, (2010) 5 SCC 246, if fresh application is moved by him (Para 2)**

Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra, (2010) 5 SCC 246, referred to
Direction issued H-D/46088/CR

h [†] From the Judgment and Order dated 15-4-2008 of the Special Court under MCOC Act at Gr. Bombay in Misc. Application No. 142 of 2008 in MCOC Special Case No. 23 of 2006

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tenement only under Regulation 33(7) and not Regulation 33(9). Regulation 33(9) was invoked only to get additional FSI of 1.5 by MHADA.

- a **19.** We may at this juncture note that the question whether Regulation 33(9) will apply as contended by the appellant or Regulation 33(7) read with Regulation 33(9) will apply, as contended by the respondents, is academic and not relevant for the purpose of ascertaining whether the appellants as old occupants are entitled to any additional balcony area.
- b **20.** Under the Scheme approved by this Court, MHADA which did not have adequate funds for constructing tenements, proposed to execute the project through a developer. The arrangement as per the Scheme was that the benefit of Regulation 33(9) was to be taken only for utilising the higher FSI floor and the development by the developer will be governed by DC Regulation 33(7) read with Appendix III.
- c **21.** Appendix III requires that each occupant to be rehabilitated should be given a minimum carpet area of 225 sq ft. As per the Scheme approved, the contractor had to construct 335 tenements for the rehabilitation of the existing occupants free of cost and each tenement was to be of an area of 225 sq ft. The Scheme did not contemplate construction and delivery of any balcony in addition to the 225 sq ft carpet area. Insofar as the area to be delivered to the previous occupants is concerned, the extent is clear, that is,
- d 225 sq ft without any balcony. Further, the assumption of the appellants that if the matter had been governed by Regulation 33(9), the tenement measurement would have been 225 sq ft plus a balcony of a minimum measurement of 10% of 22.5 sq ft, is baseless as Regulation 33(9) does not require it. Be that as it may.
- e **22.** We therefore find no merit in this appeal and the same is dismissed.

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(BEFORE K.G. BALAKRISHNAN, C.J. AND P. SATHASIVAM AND
J.M. PANCHAL, JJ.)

- f RANGAPPA . . . Appellant;
Versus
SRI MOHAN . . . Respondent.

Criminal Appeal No. 1020 of 2010[†], decided on May 7, 2010

- g **A. Negotiable Instruments Act, 1881 — S. 139 — Presumption under — Scope of — Held, presumption mandated by S. 139 includes a presumption that there exists a legally enforceable debt or liability — However, such presumption is rebuttable in nature — Criminal Trial — Proof — Presumptions — Generally**

- h [†] Arising out of SLP (Crl.) No. 407 of 2006. From the Judgment and Order dated 26-10-2005 of the High Court of Karnataka, Bangalore in Crl. A. No. 1367 of 2005

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Held :

The presumption mandated by Section 139 includes a presumption that there exists a legally enforceable debt or liability. This is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, herein, there can be no doubt that there is an initial presumption which favours the respondent complainant. (Para 26)

Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166, *overruled on this point*

B. Negotiable Instruments Act, 1881 — Ss. 138 and 139 — Purpose, relative scope and functioning of, explained — Rebuttable presumption under S. 139 — Standard of proof for rebutting, stated — Manner in which defence can be raised by accused, outlined — Reliance on prosecution materials by accused to prove defence, held, permissible — Criminal Trial — Proof — Burden and Onus of proof — Reverse onus statutory clauses — Interpretation of — Standard of proof in such cases

Held :

Section 139 is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard of proof. (Para 27)

The reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of “preponderance of probabilities”. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. The accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own. (Para 28)

C. Negotiable Instruments Act, 1881 — Ss. 138 and 139 — Dishonour of cheque — Conviction for — Matters to be considered by court — Held, what courts have to consider is whether ingredients of offence enumerated in S. 138 have been met and if so, whether accused was able to rebut statutory presumption contemplated under S. 139 (Para 18)

D. Negotiable Instruments Act, 1881 — S. 138 — Dishonour of post-dated cheque — On account of “stop payment” instructions sent by drawer to his bank — S. 138 if attracted — Held, S. 138 can be attracted in such a case, irrespective of insufficiency of funds in his account (Para 18)

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- a **E. Negotiable Instruments Act, 1881 — Ss. 138 and 139 — Dishonour of cheque — Conviction confirmed — Appellant-accused, drawer of cheque in question, neither raising a probable defence nor able to contest existence of a legally enforceable debt or liability — High Court reversing his acquittal — Sustainability — Held, complaint discloses prima facie existence of a legally enforceable debt or liability — Since appellant admitted that signature on the cheque was his, statutory presumption under S. 139 comes into play and the same was not rebutted even with regard to the materials submitted by complainant — Appellant not able to prove “lost cheque” theory — Apart from not raising a probable defence, appellant was also not able to contest the existence of a legally enforceable debt or liability — Hence, his conviction by High Court, held, proper**

- c Dismissing the appeal, the Supreme Court
Held :

- d The High Court’s view that the accused did not raise a probable defence, is correct. The defence by the appellant-accused of the loss of a blank cheque was taken up belatedly. In the “stop payment” instructions sent to his Bank, the accused had mentioned the date of cheque, different to that of the complainant’s version. Moreover, the High Court rightly noted that if the accused had indeed lost a blank cheque bearing his signature, the question of his mentioning the date of the cheque could not arise. Furthermore, the instructions to “stop payment” had not even mentioned that the cheque had been lost. A perusal of the trial record also shows that the accused appeared to be aware of the fact that the cheque was with the complainant. Furthermore, the very fact that the accused had failed to reply to the statutory notice under Section 138 of the Act leads to the inference that there was merit in the complainant’s version. Apart from not raising a probable defence, the appellant-accused was not able to contest the existence of a legally enforceable debt or liability. (Paras 14 and 29)

- f The fact that the accused had made regular payments to the complainant in relation to the construction of his house does not preclude the possibility of the complainant having spent his own money for the same purpose. As per the record of the case, there was a slight discrepancy in the complainant’s version, insofar as it was not clear whether the accused had asked for a hand loan to meet the construction-related expenses or whether the complainant had incurred the said expenditure over a period of time. Either way, the complaint discloses the prima facie existence of a legally enforceable debt or liability since the complainant has maintained that his money was used for the construction expenses. Since the accused did admit that the signature on the cheque was his, the statutory presumption comes into play and the same has not been rebutted even with regard to the materials submitted by the complainant. (Para 30)

- g *Hiten P. Dalal v. Bratindranath Banerjee*, (2001) 6 SCC 16 : 2001 SCC (Cri) 960, relied on

- h

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Goaplast (P) Ltd. v. Chico Ursula D'Souza, (2003) 3 SCC 232 : 2003 SCC (Cri) 603; *Krishna Janardhan Bhat v. Dattatraya G. Hegde*, (2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166; *Mallavarapu Kasivisweswara Rao v. Thadikonda Ramulu Firm*, (2008) 7 SCC 655; *Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal*, (1999) 3 SCC 35; *M.M.T.C. Ltd. v. Medchl Chemicals & Pharma (P) Ltd.*, (2002) 1 SCC 234 : 2002 SCC (Cri) 121, affirmed

Hence, there is no reason to interfere with the final order of the High Court, which recorded a finding of conviction against the appellant. (Para 31)

Y-D/A/46311SVR

Advocates who appeared in this case :

Girish Ananthamurthy and P.P. Singh, Advocates, for the Appellant;
Basava Prabhu S. Patil, Senior Advocate (B. Subrahmanya Prasad and V.N. Raghupathy, Advocates) for the Respondent.

<i>Chronological list of cases cited</i>	<i>on page(s)</i>
1. (2008) 7 SCC 655, <i>Mallavarapu Kasivisweswara Rao v. Thadikonda Ramulu Firm</i>	452a, 452c
2. (2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166, <i>Krishna Janardhan Bhat v. Dattatraya G. Hegde (overruled on this point)</i>	449f, 450e-f, 451a-b, 453a-b, 453e
3. (2003) 3 SCC 232 : 2003 SCC (Cri) 603, <i>Goaplast (P) Ltd. v. Chico Ursula D'Souza</i>	448g
4. (2002) 1 SCC 234 : 2002 SCC (Cri) 121, <i>M.M.T.C. Ltd. v. Medchl Chemicals & Pharma (P) Ltd.</i>	453b
5. (2001) 6 SCC 16 : 2001 SCC (Cri) 960, <i>Hiten P. Dalal v. Bratindranath Banerjee</i>	451b
6. (1999) 3 SCC 35, <i>Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal</i>	452c

The Judgment of the Court was delivered by

K.G. BALAKRISHNAN, C.J.— Leave granted. In the present case, the trial court had acquitted the appellant-accused in a case related to the dishonour of a cheque under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter “the Act”). This finding of acquittal had been made by the Additional JMFC at Ranebennur, Karnataka in Criminal Case No. 993 of 2001, by way of a judgment dated 30-5-2005.

2. On appeal by the respondent complainant, the High Court had reversed the trial court’s decision and recorded a finding of conviction while directing that the appellant-accused should pay a fine of ₹75,000, failing which he would have to undergo three months’ simple imprisonment (SI). Aggrieved by this final order passed by the High Court of Karnataka (in Criminal Appeal No. 1367 of 2005) dated 26-10-2005, the appellant-accused has approached this Court by way of a petition seeking special leave to appeal.

3. The legal question before us pertains to the proper interpretation of Section 139 of the Act which shifts the burden of proof on to the accused in respect of cheque bouncing cases. More specifically, we have been asked to clarify the manner in which this statutory presumption can be rebutted.

4. Before addressing the legal question, it would be apt to survey the facts leading up to the present litigation. Admittedly, both the appellant-accused and the respondent claimant are residents of Ranebennur,

Karnataka. The appellant-accused is a mechanic who had engaged the services of the respondent complainant who is a Civil Engineer, for the purpose of supervising the construction of his house in Ranebennur. The said construction was completed on 20-10-1998 and this indicates that the parties were well acquainted with each other.

5. As per the respondent complainant, the chain of facts unfolded in the following manner. In October 1998, the accused had requested him for a hand loan of ₹45,000 in order to meet the construction expenses. In view of their acquaintance, the complainant had paid ₹45,000 by way of cash. On receiving this amount, the appellant-accused had initially assured repayment by October 1999 but on failure to do so, he sought more time till December 2000.

6. The accused had then issued a cheque bearing No. 0886322, post-dated for 8-2-2001 for ₹45,000 drawn on Syndicate Bank, Kudremukh Branch. Consequently, on 8-2-2001, the complainant had presented this cheque through Karnataka Bank, Ranebennur for encashment. However, on 16-2-2001 the said Bank issued a return memo stating that the “payment has been stopped by the drawer” and this memo was handed over to the complainant on 21-2-2001.

7. The complainant had then issued notice to the accused in this regard on 26-2-2001. On receiving the same, the accused failed to honour the cheque within the statutorily prescribed period and also did not reply to the notice sent in the manner contemplated under Section 138 of the Act.

8. Following these developments, the complainant had filed a complaint (under Section 200 of the Code of Criminal Procedure) against the accused for the offence punishable under Section 138 of the Act. The appellant-accused had raised the defence that the cheque in question was a blank cheque bearing his signature which had been lost and that it had come into the hands of the complainant who had then tried to misuse it. The accused’s case was that there was no legally enforceable debt or liability between the parties since he had not asked for a hand loan as alleged by the complainant.

9. The trial Judge found in favour of the accused by taking note of some discrepancies in the complainant’s version. As per the trial Judge, in the course of the cross-examination the complainant was not certain as to when the accused had actually issued the cheque. It was noted that while the complaint stated that the cheque had been issued in December 2000, at a later point it was conceded that the cheque had been handed over when the accused had met the complainant to obtain the work completion certificate for his house in March 2001. Later, it was stated that the cheque had been with the complainant about 15-20 days prior to the presentation of the same for encashment, which would place the date of handing over of the cheque in January 2001.

10. Furthermore, the trial Judge noted that in the complaint it had been submitted that the complainant had paid ₹45,000 in cash as a hand loan to the accused, whereas during the cross-examination it appeared that the

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complainant had spent this amount during the construction of the accused's house from time to time and that the complainant had realised the extent of the liability after auditing the costs on completion of the construction. Apart from these discrepancies on part of the complainant, the trial Judge also noted that the accused used to pay the complainant a monthly salary in lieu of his services as a building supervisor apart from periodically handing over the money which was used for the construction of the house. In light of these regular payments, the trial Judge found it unlikely that the complainant would have spent his own money on the construction work.

11. With regard to these observations, the trial Judge held that there was no material to substantiate that the accused had issued the cheque in relation to a legally enforceable debt. It was observed that the accused's failure to reply to the notice sent by the complainant did not attract the presumption under Section 139 of the Act since the complainant had failed to prove that he had given a hand loan to the accused and that the accused had issued a cheque as alleged.

12. Furthermore, the trial Judge erroneously decided that the offence made punishable by Section 138 of the Act had not been committed in this case since the alleged dishonour of cheque was not on account of insufficiency of funds since the accused had instructed his Bank to stop payment. Accordingly, the trial Judge had recorded a finding of acquittal. However, on appeal against acquittal, the High Court reversed the findings and convicted the appellant-accused.

13. The High Court in its order noted that in the course of the trial proceedings, the accused had admitted that the signature on the impugned cheque (No. 0886322 dated 8-2-2001) was indeed his own. Once this fact has been acknowledged, Section 139 of the Act mandates a presumption that the cheque pertained to a legally enforceable debt or liability. This presumption is of a rebuttal nature and the onus is then on the accused to raise a probable defence. With regard to the present facts, the High Court found that the defence raised by the accused was not probable.

14. In respect of the accused's stand that he had lost a blank cheque bearing his signature, the High Court noted that in the instructions sent by the accused to his Bank for stopping payment, there is a reference to Cheque No. 0886322 dated 20-7-1999. This is in conflict with the complainant's version wherein the accused had given instructions for stopping payment in respect of the same cheque, albeit one which was dated 8-2-2001. The High Court also noted that if the accused had indeed lost a blank cheque bearing his signature, the question of his mentioning the date of the cheque as 20-7-1999 could not arise. At a later point in the order, it has been noted that the instructions sent by the accused to his Bank for stopping payment on the cheque do not mention that the same had been lost. However, the correspondence does refer to the cheque being dated 20-7-1999.

15. Furthermore, during the cross-examination of the complainant, it was suggested on behalf of the accused that the complainant had the custody of

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a the cheque since 1998. This suggestion indicates that the accused was aware of the fact that the complainant had the cheque, thereby weakening his claim of having lost a blank cheque. Furthermore, a perusal of the record shows that the accused had belatedly taken up the defence of having lost a blank cheque at the time of his examination during the trial. Prior to the filing of the complaint, the accused had not even replied to the notice sent by the complainant since that would have afforded an opportunity to raise the defence at an earlier stage.

b 16. All of these circumstances led the High Court to conclude that the accused had not raised a probable defence to rebut the statutory presumption. It was held that:

c “6. Once the cheque relates to the account of the accused and he accepts and admits the signatures on the said cheque, then initial presumption as contemplated under Section 139 of the Negotiable Instruments Act has to be raised by the court in favour of the complainant. The presumption referred to in Section 139 of the NI Act is a mandatory presumption and not a general presumption, but the accused is entitled to rebut the said presumption.

d What is required to be established by the accused in order to rebut the presumption is different from each case under the given circumstances. But the fact remains that a mere plausible explanation is not expected from the accused and it must be more than a plausible explanation by way of rebuttal evidence. In other words, the defence raised by way of rebuttal evidence must be probable and capable of being accepted by the court.

e The defence raised by the accused was that a blank cheque was lost by him, which was made use of by the complainant. Unless this barrier is crossed by the accused, the other defence raised by him whether the cheque was issued towards the hand loan or towards the amount spent by the complainant need not be considered...”

f Hence, the High Court concluded that the alleged discrepancies on part of the complainant which had been noted by the trial court were not material since the accused had failed to raise a probable defence to rebut the presumption placed on him by Section 139 of the Act. Accordingly, the High Court recorded a finding of conviction.

g 17. In the course of the proceedings before this Court, the contentions related to the proper interpretation of Sections 118(a), 138 and 139 of the Act. Before addressing them, it would be useful to quote the language of the relevant provisions:

“118. *Presumptions as to negotiable instruments.*—Until the contrary is proved, the following presumptions shall be made:

h (a) *of consideration:* that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;

* * *

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.

139. *Presumption in favour of holder.*—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.”

18. Ordinarily in cheque bouncing cases, what the courts have to consider is whether the ingredients of the offence enumerated in Section 138 of the Act have been met and if so, whether the accused was able to rebut the statutory presumption contemplated by Section 139 of the Act. With respect to the facts of the present case, it must be clarified that contrary to the trial court’s finding, Section 138 of the Act can indeed be attracted when a cheque is dishonoured on account of “stop payment” instructions sent by the accused to his bank in respect of a post-dated cheque, irrespective of insufficiency of funds in the account. This position was clarified by this Court in *Goaplast (P) Ltd. v. Chico Ursula D’Souza*¹, wherein it was held: (SCC pp. 232g-233c)

“Chapter XVII containing Sections 138 to 142 was introduced in the Act by 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. The said provisions were intended to discourage

1 (2003) 3 SCC 232 : 2003 SCC (Cri) 603

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a people from not honouring their commitments by way of payment through cheques. The court should lean in favour of an interpretation which serves the object of the statute. A post-dated cheque will lose its credibility and acceptability if its payment can be stopped routinely. 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.

b In view of Section 139, it has to be presumed that a cheque is issued in discharge of any debt or other liability. The presumption can be rebutted by adducing evidence and the burden of proof is on the person who wants to rebut the presumption. This presumption coupled with the object of Chapter XVII of the Act leads to the conclusion that by countermending payment of post-dated cheque, a party should not be allowed to get away from the penal provision of Section 138 of the Act. A contrary view would render Section 138 a dead letter and will provide a handle to persons trying to avoid payment under legal obligations undertaken by them through their own acts which in other words can be said to be taking advantage of one's own wrong."

d 19. It has been contended on behalf of the appellant-accused that the presumption mandated by Section 139 of the Act does not extend to the existence of a legally enforceable debt or liability and that the same stood rebutted in this case, keeping in mind the discrepancies in the complainant's version. It was reasoned that it is open to the accused to rely on the materials produced by the complainant for disproving the existence of a legally enforceable debt or liability. It has been contended that since the complainant e did not conclusively show whether a debt was owed to him in respect of a hand loan or in relation to expenditure incurred during the construction of the accused's house, the existence of a legally enforceable debt or liability had not been shown, thereby creating a probable defence for the accused.

f 20. The counsel appearing for the appellant-accused has relied on a decision given by a Division Bench of this Court in *Krishna Janardhan Bhat v. Dattatraya G. Hegde*², the operative observations from which are reproduced below: (S.B. Sinha, J. at SCC pp. 61-63, paras 29-32 & 34)

"29. Section 138 of the Act has three ingredients viz.:

- (i) that there is a legally enforceable debt;
- (ii) that the cheque was drawn from the account of bank for discharge in whole or in part of any debt or other liability which presupposes a legally enforceable debt; and
- (iii) that the cheque so issued had been returned due to insufficiency of funds.

g 30. The proviso appended to the said section provides for compliance with legal requirements before a complaint petition can be acted upon by

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a court of law. Section 139 of the Act merely raises a presumption in regard to the second aspect of the matter. *Existence of legally recoverable debt is not a matter of presumption under Section 139 of the Act. It merely raises a presumption in favour of a holder of the cheque that the same has been issued for discharge of any debt or other liability.* a

31. The courts below, as noticed hereinbefore, proceeded on the basis that Section 139 raises a presumption in regard to existence of a debt also. The courts below, in our opinion, committed a serious error in proceeding on the basis that for proving the defence the accused is required to step into the witness box and unless he does so he would not be discharging his burden. Such an approach on the part of the courts, we feel, is not correct. b

32. An accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. An accused has a constitutional right to maintain silence. Standard of proof on the part of an accused and that of the prosecution in a criminal case is different. c

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34. *Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is 'preponderance of probabilities'. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which he relies.'* d

(emphasis supplied)

21. Specifically in relation to the nature of the presumption contemplated by Section 139 of the Act, it was observed: (*Krishna Janardhan Bhat case*², SCC p. 66, para 45) e

"45. We are not oblivious of the fact that the said provision has been inserted to regulate the growing business, trade, commerce and industrial activities of the country and the strict liability to promote greater vigilance in financial matters and 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. This, however, shall not mean that the courts shall put a blind eye to the ground realities. *Statute mandates raising of presumption but it stops at that. It does not say how presumption drawn should be held to have rebutted. Other important principles of legal jurisprudence, namely, presumption of innocence as human rights and the doctrine of reverse burden introduced by Section 139 should be delicately balanced.* Such balancing acts, indisputably would largely depend upon the factual matrix of each case, the materials brought on record and having regard to legal principles governing the same." f

(emphasis supplied) h

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22. With respect to the decision cited above, the counsel appearing for the respondent claimant has submitted that the observations to the effect that
- a the “existence of legally recoverable debt is not a matter of presumption under Section 139 of the Act” and that “it merely raises a presumption in favour of a holder of the cheque that the same has been issued for discharge of any debt or other liability” (see p. 62, para 30 in *Krishna Janardhan Bhat*²) are in conflict with the statutory provisions as well as an established line of precedents of this Court. It will thus be necessary to examine some of
- b the extracts cited by the respondent claimant. For instance, in *Hiten P. Dalal v. Bratindranath Banerjee*³, it was held: (Ruma Pal, J. at SCC pp. 24-25, paras 22-23)

- “22. Because both Sections 138 and 139 require that the court ‘shall presume’ the liability of the drawer of the cheques for the amounts for which the cheques are drawn, ... it is obligatory on the court to raise this
- c presumption in every case where the factual basis for the raising of the presumption had been established. ‘It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused.’ ... Such a presumption is a presumption of law, as distinguished from a presumption of fact which describes provisions
- d by which the court ‘may presume’ a certain state of affairs. Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter, all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. *The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence*
- e *showing the reasonable possibility of the non-existence of the presumed fact.*

23. In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the Court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the
- f contrary. A fact is said to be proved when,

‘after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.’

- Therefore, the rebuttal does not have to be conclusively established but
- g such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the ‘prudent man’.” (emphasis supplied)

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3 (2001) 6 SCC 16 : 2001 SCC (Cri) 960

23. The respondent claimant has also referred to the decision reported as *Mallavarapu Kasivisweswara Rao v. Thadikonda Ramulu Firm*⁴, wherein it was observed: (SCC p. 660, para 17)

“17. Under Section 118(a) of the Negotiable Instruments Act, the court is obliged to presume, until the contrary is proved, that the promissory note was made for consideration. It is also a settled position that the initial burden in this regard lies on the defendant to prove the non-existence of consideration by bringing on record such facts and circumstances which would lead the court to believe the non-existence of the consideration either by direct evidence or by preponderance of probabilities showing that the existence of consideration was improbable, doubtful or illegal.”

24. This decision in *Mallavarapu Kasivisweswara Rao case*⁴, then proceeded to cite an extract from the earlier decision in *Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal*⁵: (SCC pp. 50-51, para 12)

“12. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. *If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies.* In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt. *The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the*

4 (2008) 7 SCC 655

5 (1999) 3 SCC 35

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a *consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist.”* (emphasis supplied)

Interestingly, the very same extract has also been approvingly cited in *Krishna Janardhan Bhat*².

25. With regard to the facts in the present case, we can also refer to the following observations in *M.M.T.C. Ltd. v. Medchl Chemicals & Pharma (P) Ltd.*⁶: (SCC p. 240, para 19)

b “19. ... The authority shows that even when the cheque is dishonoured by reason of stop-payment instructions by virtue of Section 139 the court has to presume that the cheque was received by the holder for the discharge, in whole or in part, of any debt or liability. Of course this is a rebuttable presumption. The accused can thus show that the ‘stop-payment’ instructions were not issued because of insufficiency or paucity of funds. If the accused shows that in his account there were sufficient funds to clear the amount of the cheque at the time of presentation of the cheque for encashment at the drawer bank and that the stop-payment notice had been issued because of other valid causes including that there was no existing debt or liability at the time of presentation of cheque for encashment, then offence under Section 138 would not be made out. The important thing is that the burden of so proving would be on the accused.” (emphasis supplied)

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f 26. In light of these extracts, we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in *Krishna Janardhan Bhat*² may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.

g 27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the

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⁶ (2002) 1 SCC 234 : 2002 SCC (Cri) 121

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construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof.

28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of “preponderance of probabilities”. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own. a

29. Coming back to the facts in the present case, we are in agreement with the High Court’s view that the accused did not raise a probable defence. As noted earlier, the defence of the loss of a blank cheque was taken up belatedly and the accused had mentioned a different date in the “stop payment” instructions to his Bank. Furthermore, the instructions to “stop payment” had not even mentioned that the cheque had been lost. A perusal of the trial record also shows that the accused appeared to be aware of the fact that the cheque was with the complainant. Furthermore, the very fact that the accused had failed to reply to the statutory notice under Section 138 of the Act leads to the inference that there was merit in the complainant’s version. Apart from not raising a probable defence, the appellant-accused was not able to contest the existence of a legally enforceable debt or liability. b

30. The fact that the accused had made regular payments to the complainant in relation to the construction of his house does not preclude the possibility of the complainant having spent his own money for the same purpose. As per the record of the case, there was a slight discrepancy in the complainant’s version, insofar as it was not clear whether the accused had asked for a hand loan to meet the construction-related expenses or whether the complainant had incurred the said expenditure over a period of time. Either way, the complaint discloses the prima facie existence of a legally enforceable debt or liability since the complainant has maintained that his money was used for the construction expenses. Since the accused did admit that the signature on the cheque was his, the statutory presumption comes into play and the same has not been rebutted even with regard to the materials submitted by the complainant. c

31. In conclusion, we find no reason to interfere with the final order of the High Court, dated 26-10-2005, which recorded a finding of conviction against the appellant. The present appeal is disposed of accordingly. d

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Therefore, we set aside the judgment of the Division Bench of the High Court and direct that the disciplinary proceedings against the appellant be finally disposed of in accordance with the direction given by the Tribunal in para 6 of the order. The appellant may submit a representation within two weeks to the disciplinary authority and we make it clear that the matter shall be finally disposed of by the disciplinary authority within a period of 3 months thereafter.

8. The appeal is disposed of.

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(BEFORE ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.)

KAUSHALYA DEVI MASSAND . . . Appellant;

Versus

ROOPKISHORE KHORE . . . Respondent.

Criminal Appeal No. 723 of 2011[†], decided on March 15, 2011

Negotiable Instruments Act, 1881 — S. 138 — Dishonour of cheque — Nature of offence — Sentencing — Compensation instead of substantive sentence of imprisonment — Whether jail sentence necessary as a deterrent — Matter protracted for 14 yrs — Effect — Held, gravity of complaint under NI Act cannot be equated with offence under IPC or other criminal offences — This offence is almost in the nature of a civil wrong which has been given criminal overtones — Magistrate was of the view that imposition of a fine payable as compensation to appellant was sufficient to meet ends of justice — Except factum of appellant complainant, being a widowed lady of advanced age, there are no other special circumstances which call for interference with order of Magistrate, as confirmed by High Court, with increased fine after interval of 14 yrs — However, amount of compensation payable increased by a further sum of ₹2 lakhs in addition to the sum of ₹6 lakhs already directed to be paid by respondent to appellant, to be deposited in trial court within two weeks and in default to undergo one month's simple imprisonment i.e. total fine/compensation of ₹8 lakhs awarded in respect of original liability under dishonoured cheques of ₹3 lakhs — Criminal Procedure Code, 1973, S. 357

SB-D/47534/CVR

Advocates who appeared in this case :

Power-of-attorney holder (Air Marshal Harish Massand) for Appellant-in-person;
Shakil Ahmad Syed, Shuaibuddin and S. Nadeem Aziz Taahaa, Advocates, for the Respondent.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J.— Leave granted. On a complaint filed by the appellant herein, Smt Kaushalya Devi Massand, the respondent herein, Roopkishore, was convicted by the Judicial Magistrate First Class, Indore (M.P.) under Section 138 of the Negotiable Instruments Act, 1881, in Criminal Case No. 445 of 2000.

[†] Arising out of SLP (Crl.) No. 9922 of 2009. From the Judgment and Order dated 30-7-2009/14-9-2009 of the High Court of Madhya Pradesh at Indore in Misc. Cr. Case No. 1619 of 2008

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2. Having regard to the fact that the respondent had deposited a sum of ₹3,50,000, as against the cheque amounting to ₹2 lakhs, the learned Magistrate was of the view that sentence of fine only would suffice without awarding any jail sentence. The learned Magistrate, accordingly, sentenced the respondent to pay a fine of ₹4 lakhs which was to be paid to the appellant herein as compensation. However, the learned Magistrate also indicated that a sum of ₹3,50,000 had already been deposited and that the balance amounting to ₹50,000 was to be deposited by the respondent and if deposited, the same was to be paid to the appellant. On failure to deposit the said amount of ₹50,000, the respondent would have to undergo two months' rigorous imprisonment. a

3. The order of the learned Magistrate was challenged by the respondent before the learned Third Upper Sessions Judge, Indore (M.P.), by way of Criminal Revision No. 593 of 2006. The learned Sessions Judge while confirming the judgment of conviction passed by the Magistrate, remanded the matter to the learned Magistrate for a fresh hearing on the question of quantum of sentence and to pass an order accordingly. c

4. The said orders of the learned Sessions Judge and the learned Magistrate dated 27-12-2007 and 23-2-2007, respectively are the subject-matter of the present appeal. Incidentally, the appeal has been filed by the complainant, Smt Kaushalya Devi Massand, who is being represented by her son, Shri Harish Massand, on the strength of a power of attorney executed by the appellant in his favour. d

5. Shri Massand submitted that the offence was in respect of three cheques dated 1-5-1997, 15-5-1997 and 30-5-1997, for ₹1 lakh each. The said cheques were issued in lieu of the payment of consideration against the sale of property. On presentation of the cheques to the bank, the same were dishonoured on the ground of insufficient funds. Subsequently, in lieu of the three cheques which had been dishonoured, four cheques drawn on Central Bank of India, Sanyogitaganj Branch, Indore, were issued by the respondent to the appellant, namely, (i) Cheque No. 0121035 dated 15-6-1999 for ₹50,000; (ii) Cheque No. 0121036 dated 15-7-1999 for ₹1 lakh; (iii) Cheque No. 0121037 dated 15-8-1999 for ₹50,000; and (iv) Cheque No. 0121038 dated 15-9-1999 for ₹1 lakh. The said cheques presented to the Bank were again dishonoured due to insufficient funds resulting in the filing of the complaint, as indicated hereinabove. e

6. Shri Massand submitted that since 1997, the appellant, an old widowed lady, was subjected to unnecessary harassment for the last 14 years and the respondent had not even been punished with a jail sentence for a day, despite the severe inconvenience and trouble which the appellant had to suffer on account of the dishonesty of the respondent and the fraud perpetrated by him. g

7. Shri Massand pointed out that while not sentencing the respondent to a jail sentence despite the enormity of the offence committed by the respondent, ironically the Magistrate sentenced the respondent to two h

KAUSHALYA DEVI MASSAND v. ROOPKISHORE KHORE (*Kabir, J.*) 595

months' rigorous imprisonment in default of payment of ₹50,000 towards the fine/compensation of ₹4 lakhs. Shri Massand also took us through the
a order-sheet of the case before the learned Magistrate to show the manner in which the proceedings had been prolonged by the respondent.

8. Shri Massand submitted that in order to maintain the faith of the people in the judicial system, it was only proper that a jail sentence be awarded to the respondent to serve as a deterrent to others involved in similar activities.

b 9. Mr Shakil Ahmad Syed, learned advocate, who appeared for the respondent, submitted that after an interval of 14 years it would be unjust to sentence the respondent to a jail term, especially when the initial liability of ₹2 lakhs had been increased to ₹4 lakhs by the Magistrate and to ₹6 lakhs by the High Court.

c 10. The learned counsel submitted that the respondent was ready to pay a further sum of ₹2 lakhs towards the compensation amount. In addition, the learned counsel submitted that a jail sentence for an offence under Section 138 of the Negotiable Instruments Act, 1881, was not mandatory and it was within the discretion of the Magistrate to award a sentence of fine only, as has been done in the instant case.

d 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.

e 12. The learned Magistrate, in his wisdom was of the view that imposition of a fine payable as compensation to the appellant was sufficient to meet the ends of justice in the instant case. Except having regard to the submission made that the appellant complainant, is a widowed lady of advanced age, there is no other special circumstance which calls for interference with the order of the learned Magistrate, as confirmed by the
f High Court, with an increased fine.

g 13. After an interval of 14 years, we are not inclined to interfere with the order of the High Court impugned in the appeal, except to the extent of increasing the amount of compensation payable by a further sum of ₹2 lakhs. The said amount of ₹2 lakhs in addition to the sum of ₹6 lakhs already directed to be paid by the respondent to the appellant, shall be deposited in the trial court within two weeks from date and upon such deposit being made, the appellant will be at liberty to withdraw the same by way of compensation, together with the amounts already deposited, if not already withdrawn. In default of such deposit, the appellant shall undergo one month's simple imprisonment.

h 14. The appeal is partly allowed to the aforesaid extent.

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(BEFORE R.V. RAVEENDRAN AND R.M. LODHA, JJ.)

R. VIJAYAN

.. Appellant; *a*

Versus

BABY AND ANOTHER

.. Respondents.

Criminal Appeal No. 1902 of 2011[†], decided on October 11, 2011

A. Criminal Procedure Code, 1973 — Ss. 357(3) & (4) and 29(2) — Compensation under S. 357(3) in a case of dishonour of cheque — Entitlement to and quantum *b*

— Sentence of Magistrate consisting of compensation of Rs 20,000 to complainant and a fine of Rs 2000 — But Magistrate not passing any sentence of imprisonment — When conviction was set aside, complainant filed a revision in High Court, challenging non-grant of compensation of Rs 20,000 but did not challenge non-imposition of sentence of imprisonment — At relevant point of time i.e. before 2002 Amendment (i.e. for period prior to 6-2-2003), Magistrate's power to impose fine being limited to Rs 5000 — Accused being a widow and policewoman — Considering powers of Magistrate at relevant point of time and on facts, held, High Court was justified in: (a) denying payment of compensation of Rs 20,000 under S. 357(3) CrPC, and (b) not converting sentence from fine to imprisonment, so as to enable itself to award compensation *c*

— However clarified (though not applicable to present case), after 2002 Amendment, in view of conferment of special power on Magistrate under S. 143(1), NI Act, ceiling as to amount of fine stipulated in S. 29(2) CrPC has been removed — Consequently after 6-2-2003, in dishonour of cheque cases, said ceiling of Rs 5000 has been replaced with a ceiling of twice the cheque amount — Negotiable Instruments Act, 1881, S. 143(1) [inserted w.e.f. 6-2-2003] and S. 138 *d*

The Magistrate found the accused guilty under Section 138, NI Act and sentenced her to pay a fine of Rs 2000 and in default to undergo imprisonment for one month. He also directed the accused to pay Rs 20,000 as compensation to the complainant and in default to undergo simple imprisonment for three months. The High Court by the impugned order upheld the fine of Rs 2000 imposed by the Magistrate with the default sentence but did not uphold the direction for payment of compensation under Section 357(3) CrPC. *e*

Dismissing the appeal, the Supreme Court

Held :

At the relevant point of time (1995-1996), the maximum fine that the First Class Magistrate could impose was Rs 5000. Therefore, it is also not possible to increase the fine to Rs 22,000 so that Rs 20,000 could be awarded as compensation, from the amount recovered as fine. (Para 11) *f*

The High Court was justified in holding that once the sentence consists of only fine, the power under Section 357(3) CrPC could not be invoked for *g*

[†] Arising out of SLP (Crl.) No. 2586 of 2007. From the Judgment and Order dated 8-11-2006 of the High Court of Kerala at Ernakulam in Crl. A. No. 1071 of 2002 *h*

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a directing payment of compensation. The High Court was also justified in not converting the sentence from fine to imprisonment, so as to enable itself to award compensation, as the facts and circumstances of the case did not warrant imprisonment. Therefore, the High Court does not call for interference. The first respondent was a widow and policewoman. On the facts and circumstances, the Magistrate thought fit to impose only a fine and not imprisonment. When the conviction was set aside, the appellant filed a revision, challenging the non-grant of compensation of Rs 20,000. He did not however challenge the non-imposition of sentence of imprisonment. (Para 12)

b *State of Punjab v. Gurmej Singh*, (2002) 6 SCC 663 : 2002 SCC (Cri) 1460; *Sivasuriyan v. Thangavelu*, (2004) 13 SCC 795 : (2006) 1 SCC (Cri) 532; *Damodar S. Prabhu v. Sayed Babalal H.*, (2010) 5 SCC 663 : (2010) 2 SCC (Cri) 1328 : (2010) 2 SCC (Civ) 520, followed

c It is of some interest to note, though it is not any assistance in this case, that the difficulty caused by the ceiling imposed by Section 29(2) CrPC has been subsequently solved by insertion of Section 143 in NI Act (by Amendment Act 55 of 2002) with effect from 6-2-2003. In view of conferment of special power and jurisdiction upon the First Class Magistrate, under Section 143(1), NI Act, the ceiling as to the amount of fine stipulated in Section 29(2) CrPC is removed. Consequently, in regard to any prosecution for offences punishable under Section 138, NI Act, a First Class Magistrate may impose a fine exceeding Rs 5000, the ceiling being twice the amount of the cheque. (Para 13)

d **B. Negotiable Instruments Act, 1881 — Ch. 17 and S. 138 — Inconsistencies in Ch. 17 pointed out and remedies suggested for adjudicatory and legislative mechanisms — Ch. 17 providing for both traditional punitive provisions as well as compensatory and restitutive provisions — Difficulties for complainants with regard to recovery of cheque with interest pointed out (as courts might follow traditional punitive approach rather than a compensatory and restitutive approach) (both approaches being valid) — Therefore, suggested that: (a) either approach of courts should be more uniform, practical and realistic, or (b) provisions of Ch. 17 be amended suitably — Criminal Procedure Code, 1973 — S. 357(3) — Penology — Punitive vis-à-vis compensatory and restitutive approach**
(Paras 14 to 20)

SS-D/48799/CVR

f Advocates who appeared in this case :
Dr. Rajeev Dhavan, Senior Advocate (C.K. Sasi, Advocate), for the Appellant;
G. Prakash and Ms K. Sarada Devi, Advocates, for the Respondents.

Chronological list of cases cited

on page(s)

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| 1. | (2010) 5 SCC 663 : (2010) 2 SCC (Cri) 1328 : (2010) 2 SCC (Civ) 520,
<i>Damodar S. Prabhu v. Sayed Babalal H.</i> | 265g, 266f |
| 2. | (2004) 13 SCC 795 : (2006) 1 SCC (Cri) 532, <i>Sivasuriyan v. Thangavelu</i> | 263f |
| 3. | (2002) 6 SCC 663 : 2002 SCC (Cri) 1460, <i>State of Punjab v. Gurmej Singh</i> | 263e |

g The Judgment of the Court was delivered by

h **R.V. RAVEENDRAN, J.**— Leave granted. Heard. The complainant in a complaint under Section 138 of the Negotiable Instruments Act, 1881 (“the Act”, for short) is the appellant in this appeal by special leave. A cheque dated 31-3-1995 for Rs 20,000 issued by the first respondent drawn in favour of the complainant, towards alleged repayment of a loan was dishonoured when presented for payment. The appellant sent a notice dated 20-4-1995

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demanding payment. According to the complainant, the notice was served on the first respondent but the payment was not made. Therefore, on 25-5-1995 the appellant lodged a complaint against the first respondent, under Section 138 of the Act before the First Class Magistrate IV (Mobile), Thiruvananthapuram. After trial, the learned Magistrate by judgment dated 30-11-1996 found the accused guilty under Section 138 of the Act and sentenced her to pay a fine of Rs 2000 and in default to undergo imprisonment for one month. He also directed the accused to pay Rs 20,000 as compensation to the complainant and in default to undergo simple imprisonment for three months.

2. The first respondent challenged the said judgment and the criminal appeal filed by her was allowed by the First Additional Sessions Judge, Thiruvananthapuram by judgment dated 26-11-2001. The conviction and sentence imposed on the first respondent was set aside and the appellant was acquitted. The first appellate court held that the accused having denied her signature in the postal acknowledgment relating to the notice dated 20-4-1995, the appellant ought to have examined the postman who served the notice; and as the appellant did not do so, the court held that the complainant had not discharged the burden to prove that the notice was duly served on the first respondent.

3. The appellant filed criminal appeal before the High Court. The High Court allowed the appeal in part. It held that the service of notice was duly proved. As a consequence it restored the conviction entered by the learned Magistrate in reversal of the judgment of the first appellate court. However, the High Court held that it could only restore the fine of Rs 2000 imposed by the Magistrate with the default sentence but not the direction for payment of compensation under Section 357(3) of the Code, as it could not coexist with the imposition of fine. Therefore, the direction for payment of compensation was not restored. The said judgment is challenged in this appeal by special leave.

4. The appellant contends that Sections 29 and 357 of the Code and Section 138 of the Act should be read harmoniously and complementary to each other; and if so done, compensation could be awarded in cases under Section 138 of the Act to meet the loss sustained by the dishonour and that if compensation could not be awarded for any reason, fine could be levied up to twice the cheque amount; and therefore the High Court ought to have restored the direction for payment of Rs 20,000 to the appellant either by way of compensation under Section 357(3) or from the fine under Section 357(1)(b) of the Code, by increasing the fine.

5. Section 138 of the Act provided that where a cheque is dishonoured, the person drawing the cheque shall be deemed to have committed an offence and shall, without prejudice to any other provision of the Act, be punished with imprisonment for a term which may extend to one year or with fine which may extend to twice the amount of the cheque or with both. It may be mentioned that subsequent to the judgment of the learned Magistrate, the said Section 138 was amended (with effect from 6-2-2003) increasing the period of imprisonment imposable to two years.

6. Section 357 relates to order to pay compensation:

a “**357. Order to pay compensation.**—(1) When a court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the court, recoverable by such person in a civil court;

(c)-(d) * * *

(2) * * *

c (3) When a court imposes a sentence, of which fine does not form a part, the court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an appellate court or by the High Court or Court of Session when exercising its powers of revision.

d (5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this section.”

Sub-section (3) of Section 357 is categorical that the compensation can be awarded only where fine does not form part of the sentence.

e **7.** Section 357(3) has been the subject-matter of judicial interpretation by this Court in several decisions. In *State of Punjab v. Gurmej Singh*¹ this Court held: (SCC p. 669, para 9)

“9. ... A reading of sub-section (3) of Section 357 would show that the question of award of compensation would arise where the court imposes a sentence of which fine does not form a part.”

This Court also held that Section 357(3) will not apply where a sentence of fine has been imposed.

f **8.** In *Sivasuriyan v. Thangavelu*² this Court held: (SCC p. 796, para 4)

“4. In view of the submissions made, the only question that arises for consideration is whether the court can direct payment of compensation in exercise of power under sub-section (3) of Section 357 in a case where fine already forms a part of the sentence. Apart from sub-section (3) of Section 357 there is no other provision under the Code whereunder the court can exercise such power.”

g After extracting Section 357(3) of the Code, the Court proceeded to hold thus: (SCC p. 796, para 5)

“5. On a plain reading of the aforesaid provision, it is crystal clear that the power can be exercised only when the court imposes sentence by

h ¹ (2002) 6 SCC 663 : 2002 SCC (Cri) 1460

² (2004) 13 SCC 795 : (2006) 1 SCC (Cri) 532

which fine does not form a part. In the case in hand, a court having sentenced to imprisonment, as also fine, the power under sub-section (3) of Section 357 could not have been exercised. In that view of the matter, the impugned direction of the High Court directing payment of compensation to the tune of Rs one lakh by the appellant is set aside.” a

9. It is evident from sub-section (3) of Section 357 of the Code, that where the sentence imposed does not include a fine, that is, where the sentence relates to only imprisonment, the court, when passing judgment, can direct the accused to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced. The reason for this is obvious. Sub-section (1) of Section 357 provides that where the court imposes a sentence of fine or a sentence of which fine forms a part, the court may direct the fine amount to be applied in the payment to any person of compensation for any loss or injury caused by the offence, when the compensation is, in the opinion of the court, recoverable by such person in a civil court. Thus, if compensation could be paid from out of the fine, there is no need to award separate compensation. Only where the sentence does not include fine but only imprisonment and the court finds that the person who has suffered any loss or injury by reason of the act of the accused person, requires to be compensated, it is permitted to award compensation under Section 357(3). b c d

10. The difficulty arises in this case because of two circumstances. The fine levied is only Rs 2000. The compensation required to cover the loss/injury on account of the dishonour of the cheque is Rs 20,000. The learned Magistrate having levied fine of Rs 2000, it is impermissible to levy any compensation having regard to Section 357(3) of the Code. The question is whether the fine can be increased to cover the sum of Rs 20,000 which was the loss suffered by the complainant, so that the said amount could be paid as compensation under Section 357(1)(b) of the Code. e

11. As noticed above, Section 138 of the Act authorises the learned Magistrate to impose by way of fine, an amount which may extend to twice the amount of the cheque, with or without imprisonment. Section 29 of the Code deals with the sentences which the Magistrates may pass. The Chief Judicial Magistrate is empowered to pass any sentence authorised by law (except sentence of death or imprisonment for life or imprisonment for a term exceeding seven years). On the other hand, sub-section (2) of Section 29 empowers a Court of a Magistrate of First Class to pass a sentence of imprisonment for a term not exceeding three years or fine not exceeding Rs 5000 or of both. (Note: By Act 25 of 2005, sub-section (2) of Section 29 was amended with effect from 23-6-2006 and the maximum fine that could be levied by the Magistrate of First Class, was increased to Rs 10,000.) At the relevant point of time, the maximum fine that the First Class Magistrate could impose was Rs 5000. Therefore, it is also not possible to increase the fine to Rs 22,000 so that Rs 20,000 could be awarded as compensation, from the amount recovered as fine. f g h

12. The first respondent was a widow and policewoman. On the facts and circumstances the learned Magistrate thought fit to impose only a fine and not imprisonment. When the conviction was set aside, the appellant filed a revision, challenging the non-grant of compensation of Rs 20,000. He did not however challenge the non-imposition of sentence of imprisonment. The High Court was, therefore, justified in holding that once the sentence consists of only fine, the power under Section 357(3) could not be invoked for directing payment of compensation. The High Court was also justified in not converting the sentence from fine to imprisonment, so as to enable itself to award compensation, as the facts and circumstances of the case did not warrant imprisonment. Therefore, we are of the view that the order of the High Court does not call for interference.

13. It is of some interest to note, though may not be of any assistance in this case, that the difficulty caused by the ceiling imposed by Section 29(2) of the Code has been subsequently solved by insertion of Section 143 in the Act (by Amendment Act 55 of 2002) with effect from 6-2-2003. Section 143(1) provides that notwithstanding anything contained in the Code, all offences under Chapter XVII of the Act should be tried by a Judicial Magistrate of the First Class or by a Metropolitan Magistrate and the provisions of Sections 262 to 265 of the Code (relating to summary trials) shall, as far as may be, apply to such trials. The proviso thereto provides that it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term extending one year and an amount of fine exceeding Rs 5000, in case of conviction in a summary trial under that section. In view of conferment of such special power and jurisdiction upon the First Class Magistrate, the ceiling as to the amount of fine stipulated in Section 29(2) of the Code is removed. Consequently, in regard to any prosecution for offences punishable under Section 138 of the Act, a First Class Magistrate may impose a fine exceeding Rs 5000, the ceiling being twice the amount of the cheque.

14. This case relates to dishonour of cheque in the year 1995. Though the appellant complainant has succeeded in obtaining a conviction, he has virtually lost in the sense he did not get compensation to recover the amount of the dishonoured cheque. As the limitation for filing a civil suit expired during the pendency of the appeal before the Sessions Court, the appellant has also lost the opportunity of recovering the amount by way of civil suit. In view of this peculiar position, we requested Dr. Rajeev Dhavan, Senior Counsel, to assist us as an amicus curiae to suggest methods to improve the disposal of cases under Section 138 of the Act and also improve the relief that could be granted in such cases.

15. In the meantime a three-Judge Bench of this Court in *Damodar S. Prabhu v. Sayed Babalal H.*³ addressed the question of reluctance of offenders to compound the cases at earlier stages of the case prosecution leading to a huge pendency of cheque dishonour cases, and issued the following guidelines proposing levy of “a graded scale of fine” to encourage compounding at earlier stages of the case: (SCC pp. 672-73, paras 21 & 25)

³ (2010) 5 SCC 663 : (2010) 2 SCC (Cri) 1328 : (2010) 2 SCC (Civ) 520

“21. ... (i) ... (a) That directions can be given that the writ of summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

a

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the court deems fit.

b

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

c

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.

* * *

25. The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the court is spent on the trial of these cases and the parties are not liable to pay any court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. Even though the imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance. Bona fide litigants should of course contest the proceedings to their logical end.”

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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*³. 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:

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(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)

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thereby rendering Section 357(3) virtually infructuous insofar as cheque dishonour cases are concerned.

- a* (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.

- b* (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.

- c* 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.

- f* 18. Having reached that stage, if some Magistrates go by the traditional view that the criminal proceedings are for imposing punishment on the accused, either imprisonment or fine or both, and there is no need to compensate the complainant, particularly if the complainant is not a “victim” in the real sense, but is a well-to-do financier or financing institution, difficulties and complications arise. In those cases where the discretion to direct payment of compensation is not exercised, it causes considerable difficulty to the complainant, as invariably, by the time the criminal case is decided, the limitation for filing civil cases would have expired. As the provisions of Chapter XVII of the Act strongly lean towards grant of reimbursement of the loss by way of compensation, the courts should, unless
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there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine up to twice the cheque amount (keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss) and direct payment of such amount as compensation. Direction to pay compensation by way of restitution in regard to the loss on account of dishonour of the cheque should be practical and realistic, which would mean not only the payment of the cheque amount but interest thereon at a reasonable rate. Uniformity and consistency in deciding similar cases by different courts, not only increase the credibility of cheque as a negotiable instrument, but also the credibility of courts of justice. a

19. We are conscious of the fact that proceedings under Section 138 of the Act cannot be treated as civil suits for recovery of the cheque amount with interest. We are also conscious of the fact that compensation awarded under Section 357(1)(b) is not intended to be an elaborate exercise taking note of interest, etc. Our observations are necessitated due to the need to have uniformity and consistency in decision making. In same type of cheque dishonour cases, after convicting the accused, if some courts grant compensation and if some other courts do not grant compensation, the inconsistency, though perfectly acceptable in the eye of the law, will give rise to certain amount of uncertainty in the minds of litigants about the functioning of courts. Citizens will not be able to arrange or regulate their affairs in a proper manner as they will not know whether they should simultaneously file a civil suit or not. The problem is aggravated having regard to the fact that in spite of Section 143(3) of the Act requiring the complaints in regard to cheque dishonour cases under Section 138 of the Act to be concluded within six months from the date of the filing of the complaint, such cases seldom reach finality before three or four years let alone six months. These cases give rise to complications where civil suits have not been filed within three years on account of the pendency of the criminal cases. While it is not the duty of criminal courts to ensure that successful complainants get the cheque amount also, it is their duty to have uniformity and consistency with other courts dealing with similar cases. b

20. One other solution is a further amendment to the provisions of Chapter XVII so that in all cases where there is a conviction, there should be a consequential levy of fine of an amount sufficient to cover the cheque amount and interest thereon at a fixed rate of 9% per annum interest, followed by award of such sum as compensation from the fine amount. This would lead to uniformity in decisions, avoid multiplicity of proceedings (one for enforcing civil liability and another for enforcing criminal liability) and achieve the object of Chapter XVII of the Act, which is to increase the credibility of the instrument. This is however a matter for the Law Commission of India to consider. c

21. The appeal is dismissed. We place on record our appreciation for the assistance rendered by Dr. Rajeev Dhavan as amicus curiae. d

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R. MOHAN v. A.K. VIJAYA KUMAR

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(2012) 8 Supreme Court Cases 721

(BEFORE AFTAB ALAM AND RANJANA P. DESAI, JJ.)

a

Criminal Appeal No. 883 of 2012[†]

R. MOHAN

.. Appellant;

Versus

A.K. VIJAYA KUMAR

.. Respondent.

b

And

Criminal Appeal No. 884 of 2012[‡]

A.K. VIJAYA KUMAR

.. Appellant;

Versus

R. MOHAN

.. Respondent.

c

Criminal Appeals No. 883 of 2012 with No. 884 of 2012,
decided on July 3, 2012

d **A. Criminal Procedure Code, 1973 — Ss. 357(3), 421 and 431 — Imposition of separate sentence of imprisonment for default in payment of compensation — Permissibility of — Reasons therefor, reiterated — Penology — Deterrent punishment — Object of imposing — Victimology — Restorative and reparative approach — Penal Code, 1860, S. 64**

Held :

e The idea behind directing the accused to pay compensation to the complainant is to give him immediate relief so as to alleviate his grievance. In terms of Section 357(3) CrPC compensation is awarded for the loss or injury suffered by the person due to the act of the accused for which he is sentenced. If merely an order directing compensation is passed, it would be totally ineffective. It could be an order without any deterrence or apprehension of immediate adverse consequences in case of its non-observance. The whole purpose of giving relief to the complainant under Section 357(3) CrPC would be frustrated if he is driven to take recourse to Section 421 CrPC. Order under Section 357(3) CrPC must have potentiality to secure its observance. Deterrence can only be infused into the order by providing for a default sentence. If Section 421 CrPC puts compensation ordered to be paid by the court on a par with fine so far as mode of recovery is concerned, then there is no reason why the court cannot impose a sentence in default of payment of compensation as it can be done in case of default in payment of fine under Section 64 IPC. The conclusion, therefore, is that the order to pay compensation may be enforced by awarding sentence of imprisonment in default. (Para 29)

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Suganthi Suresh Kumar v. Jagdeeshan, (2002) 2 SCC 420 : 2002 SCC (Cri) 344; *K.A. Abbas v. Sabu Joseph*, (2010) 6 SCC 230 : (2010) 3 SCC (Cri) 127 : (2010) 3 SCC (Civ) 744; *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551 : 1988 SCC (Cri) 984; *Vijayan v. Sadanandan K.*, (2009) 6 SCC 652 : (2009) 3 SCC (Cri) 296; *K. Bhaskaran v. Sankaran Vaidhyan Balan*, (1999) 7 SCC 510 : 1999 SCC (Cri) 1284, *followed*

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[†] Arising out of SLP (Crl.) No. 2299 of 2012. From the Judgment and Order dated 15-12-2011 of the High Court of Judicature of Madras in Crl. R.C. No. 2007 of 2004

[‡] Arising out of SLP (Crl.) No. 3327 of 2012

B. Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — S. 138 — Dishonour of cheque — Conviction and sentence for — Separate sentence for default in payment of compensation — Justifiability of — Held, imposition of separate sentence would secure the very object of payment of compensation — Hence, conviction and sentence for dishonour of cheque and further imposition of sentence for default in payment of compensation, justified — Criminal Procedure Code, 1973, Ss. 200, 357, 421 and 431

C. Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — S. 138 — Dishonour of cheque — Cheque issued to repay advance made via promissory note — Appreciation of evidence — Materials to be relied on — Conviction confirmed

The respondent complainant alleged that he had given Rs 5,00,000 to the appellant-accused and his wife by executing a promissory note (Ext. P-1) and in turn he had been given a cheque. As the appellant-accused had failed to repay the loan amount, a cheque was presented and it was dishonoured for insufficiency of funds. After completion of trial, the appellant-accused was sentenced. The trial court further directed him to pay compensation to the respondent complainant and imposed separate sentence for default of payment of compensation. The Sessions Court confirmed the order of the trial court while the High Court confirmed the sentence imposed on the appellant-accused but it set aside separate sentence for default of payment of compensation.

Allowing the appeal of the complainant, the Supreme Court

Held :

The appellant-accused did not lead any evidence to show that the promissory note (Ext. P-1) was a got-up document nor did he take such stand anywhere in his reply to the notice. The stand of the appellant-accused that he had taken only Rs 3,00,000 as loan was rejected in view of the promissory note. The respondent complainant was running a chit fund scheme and he had financed the appellant-accused several times before. Entries made by the respondent complainant in the diary (Ext. D-1) maintained by the appellant-accused related to transactions pertaining to the chit fund scheme and not related to Rs 5,00,000 given by the respondent complainant. Moreover, the respondent complainant admitted that it was his handwriting in the dairy, Ext. D-1 and thus he turned out to be truthful witness. The appellant-accused nowhere in his reply stated that only Rs 90,101 was outstanding. Therefore, the claim of the appellant-accused that only Rs 90,101 was outstanding balance was rejected. The income tax records summoned by the High Court indicate that returns filed by the respondent complainant showed that a sum of Rs 5,00,000 was due from the appellant-accused. As imposition of separate sentence would secure the very object of payment of compensation, hence the conviction and sentence and further imposition of sentence on the appellant-accused for default in payment of compensation was justified. (Paras 10 to 14 and 30)

R. Mohan v. A.K. Vijaya Kumar, Criminal Revision No. 2007 of 2004, order dated 15-12-2011 (Mad), partly reversed

G-D/50105/CVR

Advocates who appeared in this case :

Jayanth Muth Raj (for P. Soma Sundaram), R. Nedumaran and S. Beno Bencigar (for Sureshan P.), Advocates, for the appearing parties.

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| | 3. (2009) 6 SCC 652 : (2009) 3 SCC (Cri) 296, <i>Vijayan v. Sadanandan K.</i> | 728e, 729d |
| | 4. (2002) 2 SCC 420 : 2002 SCC (Cri) 344, <i>Suganthi Suresh Kumar v. Jagdeeshan</i> | 724g, 727a-b |
| b | 5. (1999) 7 SCC 510 : 1999 SCC (Cri) 1284, <i>K. Bhaskaran v. Sankaran Vaidhyan Balan</i> | 728f |
| | 6. (1988) 4 SCC 551 : 1988 SCC (Cri) 984, <i>Hari Singh v. Sukhbir Singh</i> | 726c-d, 726d-e, 726f-g, 727a-b, 729d-e |

The Judgment of the Court was delivered by

RANJANA P. DESAI, J.— Leave granted. These two appeals can be disposed of by a common judgment as they arise out of the same facts and challenge the same judgment and order dated 15-12-2011¹ of the Madras High Court. Special Leave Petition (Crl.) No. 2299 of 2012 is filed by accused, R. Mohan (“the accused”, for convenience) and Special Leave Petition (Crl.) No. 3327 of 2012 is filed by complainant, A.K. Vijaya Kumar (“the complainant”, for convenience).

2. The accused was tried by the Vth Metropolitan Magistrate Court, Egmore, Chennai for an offence under Section 138 of the Negotiable Instruments Act, 1881 (for short “the said Act”) and, by an order dated 16-4-2004 he was sentenced to undergo 3 months’ simple imprisonment and to pay compensation of Rs 5 lakhs to the complainant under Section 357(3) of the Code of Criminal Procedure (for short “the Code”), in default, to undergo two months’ simple imprisonment. In appeal, the IIIrd Additional Fast Track District and Sessions Judge, Chennai confirmed the conviction and sentence.

3. In revision, the High Court confirmed the order of conviction and sentence of three months’ simple imprisonment and to pay compensation of Rs 5 lakhs, however, the High Court was of the opinion that no separate sentence could be awarded in default of payment of compensation when substantive sentence of imprisonment is independently awarded. The High Court, therefore, set aside the sentence in default of payment of compensation. Being aggrieved by the said order of conviction and sentence, the accused has approached this Court by way of Special Leave Petition (Crl.) No. 2299 of 2012. The complainant has filed Special Leave Petition No. 3327 of 2012 being aggrieved by the order of the High Court to the extent it sets aside the order of sentence in default of payment of compensation.

4. The brief facts are as under: the case of the complainant is that on 10-9-2001, the accused and his wife jointly borrowed a sum of Rs 5 lakhs from him and executed a promissory note in his favour. The accused also

¹ *R. Mohan v. A.K. Vijaya Kumar*, Criminal Revision No. 2007 of 2004, order dated 15-12-2011 (Mad)

issued a cheque dated 14-5-2002 in favour of the complainant towards the principal amount. When the cheque was presented by the complainant with his banker for payment, it was dishonoured with the bank's remark "insufficient funds". a

5. The complainant, thereafter, issued a statutory notice under Section 133 of the said Act. The accused in his reply stated that he had borrowed only Rs 3,00,000; that he had paid the said amount and that the cheque was issued only as a security and that it was not returned though demanded. The complainant then filed a complaint under Section 200 of the Code. During the trial, the complainant examined himself. The accused did not examine any witness in support of his case. He denied the complainant's case. He relied on an entry from a diary maintained by him showing that as of April 2002, only a sum of Rs 90,101 was due and payable by him to the complainant. b

6. On these facts, the accused was sent up for trial before the Vth Metropolitan Magistrate, Egmore, Chennai, who convicted him as aforesaid. We have already noted how the matter travelled up to this Court. c

7*. We have heard Mr R. Nedumaran, learned counsel appearing for the accused. He submitted that the courts below have fallen into a serious error in convicting the accused. He submitted that the importance of the diary entry (Ext. D-1) showing that as of April 2002 only a sum of Rs 90,101 was due and payable by the accused to the complainant was completely overlooked by all the courts including the High Court. He pointed out that the complainant has accepted that in the said diary entry, he had, in his own handwriting, acknowledged that only Rs 90,101 was payable by the accused to him. The counsel submitted that the accused had borrowed only Rs 3,00,000 and had issued a blank cheque as security. He had repaid that amount. But the complainant misused the cheque. The counsel submitted that the promissory note was not executed by the accused. The counsel submitted that the order directing payment of Rs 5,00,000 as compensation to the complainant is also illegal and unjust. d

8*. Mr Jayanth Muth Raj, learned counsel for the complainant submitted that the High Court was in error in observing that no sentence could have been awarded to the accused in default of payment of compensation when substantive sentence of imprisonment was awarded. In support of his submissions the counsel relied on *Suganthi Suresh Kumar v. Jagdeeshan*² and *K.A. Abbas v. Sabu Joseph*³. The counsel submitted that the impugned order of the High Court be set aside only to that extent. e

9. So far as the merits of the case are concerned, we have no hesitation in recording that the High Court was perfectly justified in confirming the conviction and sentence. f

* Paras 7 and 8 corrected vide Official Corrigendum No. F.3/Ed.B.J./40/2012 dated 12-7-2012. g

2 (2002) 2 SCC 420 : 2002 SCC (Cri) 344

3 (2010) 6 SCC 230 : (2010) 3 SCC (Cri) 127 : (2010) 3 SCC (Civ) 744 h

10. Ext. P-1 is the promissory note in the sum of Rs 5 lakhs executed by the accused and his wife in favour of the complainant. The accused has not led any evidence to prove that the promissory note (Ext. P-1) is a got-up document. In his reply, he has nowhere taken such a stand. The cheque (Ext. P-2) is also on record. According to the accused, he had borrowed only Rs 3 lakhs from the complainant and a blank cheque was offered as security to the complainant. It is suggested in the notice that the said cheque was misused by the complainant. This story has to be rejected in view of the promissory note (Ext. P-1).

11. The accused has relied on xerox copy of some pages from a diary maintained by him (Ext. D-1). There is an entry in Ext. D-1 that as of April 2002, an amount of Rs 90,101 was payable by the accused to the complainant. The complainant has honestly admitted that the said acknowledgment is in his handwriting. It is contended by the accused that this disproves the complainant's case that an amount of Rs 5 lakhs was due from him to the complainant and in discharge of that debt cheque (Ext. P-2) was given to him. It is not possible to accept this submission.

12. We have carefully examined Ext. D-1. Several chit transactions are noted in Ext. D-1. As stated by the complainant in his evidence, he has been carrying on several businesses since 1990. The accused had borrowed various amounts from him on different occasions and he had repaid those amounts except the amount involved in the transaction in question. The complainant has stated that he finances people and collects interest at 18% per annum. The reference to "chit" in Ext. D-1 indicates that he was running a chit fund scheme. The entries in Ext. D-1 appear to be entries in connection with the said chit fund scheme. The transaction reflected in Ext. D-1 cannot be confused with the loan of Rs 5 lakhs given by the complainant to the accused evidenced by the promissory note (Ext. P-1) and the cheque (Ext. P-2).

13. The complainant's evidence is wholly satisfactory. By admitting that entry in Ext. D-1 is in his handwriting, he comes out as a truthful witness. If he had dishonest motive he would have never admitted that the said entry was in his handwriting. Moreover, if the case of the accused is that as of April 2002, only an amount of Rs 90,101 was due from him to the complainant, in his reply dated 24-5-2002, he should have said so. This statement is conspicuously absent in the said reply.

14. It is pertinent to note that in order to satisfy itself, the High Court, while hearing the revision, directed the complainant to produce his income tax returns of the relevant period. The High Court wanted to see whether the instant loan transaction is reflected in the complainant's income tax returns. The complainant produced the income tax returns. The High Court found that in the Assessment Year 2002-2003 and also for the subsequent assessment years, there is an entry of a sum of Rs 5 lakhs as due from the accused to the complainant. The complainant could not have manufactured the income tax returns.

15. Thus, the promissory note (Ext. P-1), the cheque (Ext. P-2), reply dated 24-5-2002 sent by the accused to the complainant (Ext. P-8) and the income tax returns to which a reference is made by the High Court lead us to

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concur with the High Court that the conviction and sentence awarded to the accused is perfectly justified and no interference is called for with the same.

16. That takes us to the legal question whether the court can award a sentence in default of payment of compensation. a

17. Under Section 357 of the Code the court can pass order to pay compensation. Sub-section (1) of Section 357 of the Code empowers the court to award compensation to the victim of offence out of the sentence of fine imposed on the accused. Section 357(3) is relevant. It reads thus:

“357. Order to pay compensation.—(1)-(2) * * * b

(3) When a court imposes a sentence, of which fine does not form a part, the court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.”

Thus, if a fine is not a part of the order of sentence, the court may order the accused to pay compensation to the person who has suffered any loss or injury because of the act of the accused for which he is sentenced. c

18. In *Hari Singh v. Sukhbir Singh*⁴, the accused were convicted and sentenced under Section 325 read with Section 149, Section 323 read with Section 149 and Section 148 IPC. They were released on probation of good conduct. Each of them was ordered to pay compensation of Rs 2500 to the injured. In default of payment of compensation, they were directed to serve their sentence. d

19. This Court in *Hari Singh case*⁴ inter alia considered whether the compensation awarded to the injured could be legally sustained. This Court observed that the power of the court under Section 357(3) to award compensation is not ancillary to other sentences, but it is in addition thereto and is intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. This Court further observed that it is a measure of responding appropriately to crime as well as of reconciling the victim with the offender. Describing it as a constructive approach to crime, this Court recommended to all courts to exercise this power liberally so as to meet the ends of justice in a better way. It was clarified that the order to pay compensation may be enforced by awarding sentence in default. e

20. The relevant observations of this Court may be advantageously quoted. (*Hari Singh case*⁴, SCC p. 558, para 11) f

“11. The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of the accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment g

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⁴ (1988) 4 SCC 551 : 1988 SCC (Cri) 984

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of compensation, if necessary by instalments, may also be given. The court may enforce the order by imposing sentence in default.”

a **21.** While dealing with a case under Section 138 of the said Act in *Suganthi Suresh Kumar*² relying on *Hari Singh*⁴, this Court reiterated the same view and held that the court can impose a sentence of imprisonment on the accused in default of payment of compensation ordered under Section 357(3) of the Code.

b **22.** Undoubtedly, there is no specific provision in the Code which enables the court to sentence a person who commits breach of the order of payment of compensation. Section 421 of the Code provides for the action which the court can take for the recovery of the fine where the accused has been sentenced to pay a fine. The proviso thereto states how to deal with a situation where default sentence is prescribed.

23. Section 421 reads thus:

c “**421. Warrant for levy of fine.**—(1) When an offender has been sentenced to pay a fine, the court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

(*a*) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

d (*b*) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under Section 357.

e (2) The State Government may make rules regulating the manner in which warrants under clause (*a*) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

f (3) Where the court issues a warrant to the Collector under clause (*b*) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.”

g **24.** Section 431 of the Code provides for recovery of any money (other than a fine) payable by virtue of any order made under the Code and the recovery of which is not otherwise expressly provided for. Compensation awarded by a court can fall in this category. Section 431 says that such money shall be recoverable as if it were a fine.

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² *Suganthi Suresh Kumar v. Jagdeeshan*, (2002) 2 SCC 420 : 2002 SCC (Cri) 344

⁴ *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551 : 1988 SCC (Cri) 984

25. Section 431 of the Code reads thus:

“431. Money ordered to be paid recoverable as a fine.—Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine:

Provided that Section 421 shall, in its application to an order under Section 359, by virtue of this section, be construed as if in the proviso to sub-section (1) of Section 421, after the words and figures ‘under Section 357’, the words and figures ‘or an order for payment of costs under Section 359’ had been inserted.”

Thus, one has to again fall back on Section 421 of the Code for recovery of compensation directed to be paid by the court. For the purpose of mode of recovery, compensation is put on a par with fine (see *K.A. Abbas*³).

26. Section 64 IPC also needs to be quoted because it provides for sentence of imprisonment for non-payment of fine. It reads thus:

“64. Sentence of imprisonment for non-payment of fine.—In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine, it shall be competent to the court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.”

27. The above provisions were examined by this Court in *Vijayan v. Sadanandan K.*⁵ (SCC p. 659, para 32). After quoting them, this Court rejected the submission that where there is default in payment of compensation ordered by the court, recourse can only be had to Section 421 of the Code because there is no provision enabling the court to award a default sentence. This Court observed that if such a view is taken,

“the very object of sub-section (3) of Section 357 would be frustrated and the relief contemplated therein would be rendered somewhat illusory”.

28. We respectfully concur with this view. In *K. Bhaskaran v. Sankaran Vaidhyan Balan*⁶ (SCC p. 521, para 30) while considering Section 357(3) of the Code this Court expressed that if the

“Judicial Magistrate of the First Class were to order compensation to be paid to the complainant from out of the fine realised the complainant will be the loser when the cheque amount exceeded the said limit.”

In such a case a complainant would get only the maximum amount of rupees five thousand because the Judicial Magistrate, First Class can as per Section 29(2) of the Code pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding Rs 5000, or of both (the said

³ *K.A. Abbas v. Sabu Joseph*, (2010) 6 SCC 230 : (2010) 3 SCC (Cri) 127 : (2010) 3 SCC (Civ) 744

⁵ (2009) 6 SCC 652 : (2009) 3 SCC (Cri) 296

⁶ (1999) 7 SCC 510 : 1999 SCC (Cri) 1284

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amount is now increased to Rs 10,000). This Court clarified that in such cases the Magistrate can alleviate the grievance of the complainant by taking resort to Section 357(3) of the Code.

29. The idea behind directing the accused to pay compensation to the complainant is to give him immediate relief so as to alleviate his grievance. In terms of Section 357(3) compensation is awarded for the loss or injury suffered by the person due to the act of the accused for which he is sentenced. If merely an order directing compensation is passed, it would be totally ineffective. It could be an order without any deterrence or apprehension of immediate adverse consequences in case of its non-observance. The whole purpose of giving relief to the complainant under Section 357(3) of the Code would be frustrated if he is driven to take recourse to Section 421 of the Code. Order under Section 357(3) must have potentiality to secure its observance. Deterrence can only be infused into the order by providing for a default sentence. If Section 421 of the Code puts compensation ordered to be paid by the court on a par with fine so far as mode of recovery is concerned, then there is no reason why the court cannot impose a sentence in default of payment of compensation as it can be done in case of default in payment of fine under Section 64 IPC. It is obvious that in view of this, in *Vijayan*⁵, this Court stated that the abovementioned provisions enabled the court to impose a sentence in default of payment of compensation and rejected the submission that the recourse can only be had to Section 421 of the Code for enforcing the order of compensation. Pertinently, it was made clear that observations made by this Court in *Hari Singh*⁴ are as important today as they were when they were made. The conclusion, therefore, is that the order to pay compensation may be enforced by awarding sentence in default.

30. In view of the above, we find no illegality in the order passed by the learned Magistrate and confirmed by the Sessions Court in awarding sentence in default of payment of compensation. The High Court was in error in setting aside the sentence imposed in default of payment of compensation.

31. In the result, we dismiss the appeal arising out of Special Leave Petition (Crl.) No. 2299 of 2012 filed by the accused and allow the appeal arising out of Special Leave Petition (Crl.) No. 3327 of 2012 filed by the complainant.

32. We set aside the impugned order¹ of the High Court to the extent it quashes the sentence in default of payment of compensation. We restore the order passed by the learned Magistrate dated 16-4-2004 awarding two months' simple imprisonment in default of payment of compensation of Rs 5 lakhs under Section 357(3) of the Code.

33. We grant two months' time to the accused to pay the said amount of compensation to the complainant from the date of receipt of this order.

⁵ *Vijayan v. Sadanandan K.*, (2009) 6 SCC 652 : (2009) 3 SCC (Cri) 296

⁴ *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551 : 1988 SCC (Cri) 984

¹ *R. Mohan v. A.K. Vijaya Kumar*, Criminal Revision No. 2007 of 2004, order dated 15-12-2011 (Mad)

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(BEFORE R.M. LODHA, T.S. THAKUR AND ANIL R. DAVE, JJ.)

a MSR LEATHERS . . . Appellant;

Versus

S. PALANIAPPAN AND ANOTHER . . . Respondents.

Criminal Appeals Nos. 261-64 of 2002[†], decided on September 26, 2012

b **A. Negotiable Instruments Act, 1881 — Ss. 138 proviso and 142(b) — Dishonour of cheque — Repeated presentation/dishonour of cheque — Multiple causes of action/Cause of action if arises afresh each time — Held, prosecution based upon second or successive dishonour of cheque is permissible so long as it satisfies all the requirements stipulated in proviso to S. 138**

c — Hence, every time a cheque is presented in the manner and within time stipulated under proviso to S. 138 followed by a notice within meaning of cl. (b) of proviso to S. 138 and drawer fails to make payment of amount within stipulated period of fifteen days after date of receipt of such notice, a fresh cause of action accrues every time to holder of cheque to institute proceedings for prosecution of drawer — There is no real or qualitative difference between a case where default is committed and prosecution launched immediately after very first dishonour of cheque and where prosecution is deferred till cheque presented again gets dishonoured for the second or successive time — *Sadanandan Bhadran*, (1998) 6 SCC 514, comprehensively overruled — Multiple causes of action accrue to holder of cheque upon failure of drawer to make payment of cheque amount —

e Failure to prosecute on basis of first default in payment does not result in forfeiture of payee's right to institute such proceedings on a subsequent default that satisfies all three requirements of S. 138 proviso — Words and Phrases — "Cause of action" — Meaning of

f **B. Negotiable Instruments Act, 1881 — S. 138 proviso — Dishonour of cheque — Conditions precedent to constitute offence under — Cumulative nature of — Held, only upon satisfaction of all three conditions enumerated under cls. (a), (b) and (c) of proviso to S. 138 can an offence under S. 138 be said to have been committed by person issuing cheque**

g **C. Negotiable Instruments Act, 1881 — S. 138 proviso cl. (a) — Offence of dishonour of cheque — A dishonour whether based on a second or any successive presentation of a cheque for encashment would be a dishonour within the meaning of S. 138 and cl. (a) to proviso thereof — There is nothing in S. 138 proviso to even remotely suggest that cl. (a) would have no application to a cheque presented for the second time or any successive time if the same has already been dishonoured once — So long as cheque remains valid and unpaid there is a continuing obligation of drawer to make good the same**

h

[†] From the Judgment and Order dated 19-1-2001 of the High Court of Judicature of Madras in Crl. Revision Petitions Nos. 618, 624, 664 and 665 of 2000

D. Negotiable Instruments Act, 1881 — Ss. 138 and 142(b) — Failure to file complaint within limitation period after first notice issued — Prosecution based on subsequent or successive dishonour — Permissibility of — Held, by reason of a fresh presentation of a cheque followed by a fresh notice in terms of S. 138 proviso cl. (b), drawer gets an extended period to make payment and gets a further opportunity to pay, to avoid prosecution — Such fresh opportunity cannot help defaulter get a complete absolution from prosecution — So long as cheque is valid and so long as it is dishonoured upon presentation to bank, holder's right to prosecute drawer for default committed by drawer remains valid and exercisable

E. Negotiable Instruments Act, 1881 — Ss. 138 proviso and 142(b) — Interpretation of, in a manner so as to reduce litigation — Holder/payee of a dishonoured cheque, held, not obliged to necessarily file a complaint upon very first dishonour of cheque — Interpretation which defers launch of prosecution on first default, prescribed — Reasons for deferment of prosecution may be based on financial accommodation given to drawer to arrange payments covered by the cheques or financial accommodation given in trade and business dealings — This would render time-consuming and generally expensive legal recourse unnecessary — Hence, by a process of interpretation, parties should not be forced to launch complaints where they can or may like to defer such action for good and valid reasons — Decision in *Sadanandan Bhadran*, (1998) 6 SCC 514 which held that first default itself must result in filing of prosecution or else result in forfeiture of right to bring prosecution, by which avoidable litigation would become an inevitable bane of legislation, overruled — Interpretation of Statutes — Basic Rules — Purposive construction/interpretation — Avoidance of interpretation resulting in immediate institution of unnecessary proceedings/prosecution

Answering the reference in terms below, the Supreme Court

Held :

Neither Section 138 nor Section 142 or any other provision contained in the NI Act forbids the holder or payee of the cheque from presenting the cheque for encashment on any number of occasions within a period of six months of its issue or within the period of its validity, whichever is earlier. (Para 15)

The proviso to Section 138 is all important and stipulates three distinct conditions precedent which must be satisfied before the dishonour of a cheque can constitute an offence and become punishable. The *first condition* is that the cheque ought to have 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. The *second condition* is that the payee or the holder in due course of the cheque, as the case may be, ought to make 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. The *third condition* is that the drawer of such a cheque should have failed to make 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. It is only upon the satisfaction of all

the three conditions mentioned above and enumerated under the proviso to Section 138 as clauses (a), (b) and (c) thereof that an offence under Section 138 can be said to have been committed by the person issuing the cheque.

a (Paras 12, 16 and 21)

The expression “cause of action” has been universally understood to mean the bundle of facts which the plaintiff must prove in order to entitle him to succeed in the suit. (Para 20)

State of Madras v. C.P. Agencies, AIR 1960 SC 1309; *Mohd. Khalil Khan v. Mahbub Ali Mian*, (1947-48) 75 IA 121 : AIR 1949 PC 78, *relied on*

b *Rajasthan High Court Advocates’ Assn. v. Union of India*, (2001) 2 SCC 294, *affirmed*

As per Section 142 of the NI Act, a complaint under Section 138 can be filed only after cause of action to do so has accrued in terms of clause (c) of the proviso to Section 138 (provided the other two conditions specified above are also satisfied) which right remains legally enforceable for a period of 30 days counted from the date on which the cause of action accrued to him. There is nothing in the provisions of the Act that forbids the holder/payee of the cheque to demand by service of a fresh notice under clause (b) of the proviso to Section 138 of the Act, the amount covered by the cheque, should there be a second or a successive dishonour of the cheque on its presentation.

(Paras 13 to 16 and 21)

d Every time a cheque is presented in the manner and within the time stipulated under the proviso to Section 138 followed by a notice within the meaning of clause (b) of the proviso to Section 138 and the drawer fails to make the payment of the amount within the stipulated period of fifteen days after the date of receipt of such notice, a cause of action accrues to the holder of the cheque to institute proceedings for the prosecution of the drawer. (Para 22)

e There is nothing either in Section 138 or Section 142 of the NI Act to curtail the said right of the payee, leave alone a forfeiture of the said right for no better reason than the failure of the holder of the cheque to institute prosecution against the drawer when the cause of action to do so had first arisen. Simply because the prosecution for an offence under Section 138, must, on the language of Section 142 be instituted within one month from the date of the failure of the drawer to make the payment does not militate against the accrual of multiple causes of action to the holder of the cheque upon failure of the drawer to make the payment of the cheque amount. In the absence of any juristic principle on which such failure to prosecute on the basis of the first default in payment should result in forfeiture, it cannot be held that the payee would lose his right to institute such proceedings on a subsequent default that satisfies all the three requirements of Section 138. (Para 23)

g The holder of the cheque can present it before a bank any number of times within the period of six months or during the period of its validity, whichever is earlier. This right of the holder to present the cheque for encashment carries with it a corresponding obligation on the part of the drawer to ensure that the cheque drawn by him is honoured by the bank which stands in the capacity of an agent of the drawer vis-à-vis the holder of the cheque. If the holder of the cheque has a right there is no reason why the corresponding obligation of the drawer should also not continue every time the cheque is presented for encashment if it satisfies the requirements stipulated in clause (a) of the proviso to Section 138. There is

nothing in that proviso to even remotely suggest that clause (a) would have no application to a cheque presented for the second time if the same has already been dishonoured once. Indeed if the legislative intent was to restrict prosecution only to cases arising out of the first dishonour of a cheque nothing prevented the legislature from stipulating so in clause (a) itself. In the absence of any such provision, a dishonour whether based on a second or any successive presentation of a cheque for encashment would be a “dishonour” within the meaning of Section 138 and clause (a) of the proviso thereto. Hence, so long as the cheque remains unpaid it is the continuing obligation of the drawer to make good the same by either arranging the funds in the account on which the cheque is drawn or liquidating the liability otherwise. It is true that a dishonour of the cheque can be made a basis for prosecution of the offender but once, but that is far from saying that the holder of the cheque does not have the discretion to choose out of several such defaults, one default, on which to launch such a prosecution. The omission or the failure of the holder to institute prosecution does not, therefore, give any immunity to the drawer so long as the cheque is dishonoured within its validity period and the conditions precedent for prosecution in terms of the proviso to Section 138 are satisfied. (Para 24)

There is nothing in Section 142(b) to suggest that prosecution based on subsequent or successive dishonour is impermissible. While a complaint based on a default and notice to pay must be filed within a period of one month from the date the cause of action accrues, which implies the date on which the period of 15 days granted to the drawer to arrange the payment expires, there is nothing in Section 142 to suggest that expiry of any such limitation would absolve the drawer of his criminal liability should the cheque continue to get dishonoured by the bank on subsequent presentations. So long as the cheque is valid and so long as it is dishonoured upon presentation to the bank, the holder’s right to prosecute the drawer for the default committed by him remains valid and exercisable. The argument that the holder takes advantage by not filing a prosecution is unacceptable. By reason of a fresh presentation of a cheque followed by a fresh notice in terms of Section 138 proviso clause (b), the drawer gets an extended period to make the payment and thereby benefits in terms of further opportunity to pay to avoid prosecution. Such fresh opportunity cannot help the defaulter on any juristic principle, to get a complete absolution from prosecution. (Para 25)

A prosecution based on a second or successive default in payment of the cheque amount should not be impermissible simply because no prosecution based on the first default which was followed by a statutory notice and a failure to pay had not been launched. If the entire purpose underlying Section 138 of the Negotiable Instruments Act is to compel the drawers to honour their commitments made in the course of their business or other affairs, there is no reason why a person who has issued a cheque which is dishonoured and who fails to make payment despite statutory notice served upon him should be immune to prosecution simply because the holder of the cheque has not rushed to the court with a complaint based on such default or simply because the drawer has made the holder defer prosecution promising to make arrangements for funds or for any other similar reason. There is no real or qualitative difference between a case where default is committed and prosecution immediately launched and another where the prosecution is deferred till the cheque presented again gets

- a dishonoured for the second or successive time. The prosecution based upon second or successive dishonour of the cheque is permissible so long as the same satisfies the requirements stipulated in the proviso to Section 138 of the Negotiable Instruments Act. (Paras 33 and 35)

- b There is nothing in the proviso to Section 138 or Section 142 for that matter, to oblige the holder/payee of a dishonoured cheque to necessarily file a complaint even when he has acquired an indefeasible right to do so. The fact that an offence is complete need not necessarily lead to launch of prosecution especially when the offence is not a cognizable one. It follows that the complainant may, even when he has the immediate right to institute criminal proceedings against the drawer of the cheque, either at the request of the holder/payee of the cheque or on his own volition, refrain from instituting the proceedings based on the cause of action that has accrued to him. Such a decision to defer prosecution may be impelled by several considerations but more importantly it may be induced by an assurance which the drawer extends to the holder of the cheque that given some time, the payment covered by the cheques would be arranged, in the process rendering a time-consuming and generally expensive legal recourse unnecessary. It may also be induced by a belief that a fresh presentation of the cheque may result in encashment for a variety of reasons including the vicissitudes of trade and business dealings where financial accommodation given by the parties to each other is not an unknown phenomenon. There is no reason why the parties should, by a process of interpretation, be forced to launch complaints where they can or may like to defer such action for good and valid reasons. After all, neither the courts nor the parties stand to gain by institution of proceedings which may become unnecessary if cheque amount is paid by the drawer. The Magistracy in this country is overburdened by an avalanche of cases under Section 138 of the Negotiable Instruments Act. If the first default itself must, in terms of the decision in *Sadanandan Bhadran*, (1998) 6 SCC 514, result in filing of prosecution, avoidable litigation would become an inevitable bane of the legislation that was intended only to bring solemnity to cheques without forcing the parties to resort to proceedings in the courts of law. While there is no empirical data to suggest that the problems of overburdened Magistracy and judicial system at the district level is entirely because of the compulsions arising out of the decisions in *Sadanandan case*, it is difficult to say that the law declared in that decision has not added to court congestion. (Paras 16 and 34)

- g Hence, *Sadanandan case*, erroneously held that the second or subsequent dishonour of the cheque would not entitle the holder/payee to issue a statutory notice to the drawer nor would it entitle him to institute legal proceedings against the drawer in the event he fails to arrange the payment. It was erroneously held therein that while a cheque is presented afresh the right to prosecute the drawer, if the cheque is dishonoured, is forfeited only because the previous dishonour had not resulted in immediate prosecution of the offender even when a notice under clause (b) of the proviso to Section 138 had been served upon the drawer. Hence *Sadanandan case* is overruled. (Paras 17 to 19 and 35)

- h *Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd.*, (2006) 3 SCC 658 : (2006) 2 SCC (Cri) 98, affirmed

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C.C. Alavi Haji v. Palapetty Muhammed, (2007) 6 SCC 555 : (2007) 3 SCC (Cri) 236;
Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 :
(2010) 2 SCC (Cri) 1328, *relied on*

S.K.D. Lakshmanan Fireworks Industries v. K.V. Sivarama Krishnan, 1995 Cri LJ 1384
(Ker), *impliedly affirmed*

Sadanandan Bhadrans v. Madhavan Sunil Kumar, (1998) 6 SCC 514 : 1998 SCC (Cri) 1471,
overruled

Kumaresan v. Ameerappa, (1991) 1 KLT 893; *SIL Import, USA v. Exim Aides Silk Exporters*, (1999) 4 SCC 567 : 1999 SCC (Cri) 600; *Uniplas India Ltd. v. State (Govt. of NCT of Delhi)*, (2001) 6 SCC 8 : 2001 SCC (Cri) 955; *Dalmia Cement (Bharat) Ltd. v. Galaxy Traders & Agencies Ltd.*, (2001) 6 SCC 463 : 2001 SCC (Cri) 1163; *Prem Chand Vijay Kumar v. Yashpal Singh*, (2005) 4 SCC 417 : 2005 SCC (Cri) 1153; *S.L. Constructions v. Alapati Srinivasa Rao*, (2009) 1 SCC 500 : (2009) 1 SCC (Civ) 236 : (2009) 1 SCC (Cri) 558; *Tameeshwar Vaishnav v. Ramvishal Gupta*, (2010) 2 SCC 329 : (2010) 1 SCC (Civ) 411 : (2010) 2 SCC (Cri) 1033, *impliedly overruled*

F. Negotiable Instruments Act, 1881 — Ss. 138, 142(b) and S. 142(b) proviso (inserted in 2002) — Failure of payee to file a complaint against defaulting drawer within prescribed period, held, does not provide “absolution” to drawer simply because period of 30 days has expired or payee for other reasons deferred filing of complaint against the defaulter — By amendment, S. 142(b) proviso now permits payee to institute prosecution proceedings against a defaulting drawer even after expiry of period of one month — Hence, if failure of payee to file a complaint within prescribed period was to result in “absolution” under S. 142(b), proviso would not have been added to negate that consequence — Words and Phrases — “Absolution” — Interpretation of Statutes — Basic Rules — Purposive construction/interpretation — Object of legislation — Consideration of

Held :

Absolution is, at any rate, a theological concept which implies an act of forgiving the sinner of his sins upon confession. The expression has no doubt been used in some judicial pronouncements, but the same stop short of recognising absolution as a juristic concept. It has always been used or understood in common parlance to convey “setting free from guilt” or “release from a penalty”. The use of the expression “absolution” in *Sadanandan*, (1998) 6 SCC 514, at any rate came at a time when the proviso to Section 142(b) had not found a place on the statute book. Section 142(b) proviso (w.e.f. 6-2-2003) now permits the payee to institute prosecution proceedings against a defaulting drawer even after the expiry of the period of one month upon showing sufficient cause. If a failure of the payee to file a complaint within a period of one month from the date of expiry of the period of 15 days allowed for this purpose was to result in “absolution”, the proviso would not have been added to negate that consequence. The statute as it exists today, therefore, does not provide for “absolution” simply because the period of 30 days has expired or the payee has for some other reasons deferred the filing of the complaint against the defaulter.

(Paras 26 and 28)

Sadanandan Bhadrans v. Madhavan Sunil Kumar, (1998) 6 SCC 514 : 1998 SCC (Cri) 1471,
overruled

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Subodh S. Salaskar v. Jayprakash M. Shah, (2008) 13 SCC 689 : (2009) 3 SCC (Cri) 834, affirmed

- a** G. Negotiable Instruments Act, 1881 — S. 138 — Object of, reiterated — Mode of construction of S. 138 — Interpretation that strengthens faith in financial system and at the same time discourages practice of rushing to courts of law — Held, while interpreting statutory provisions adoption of an interpretation which promotes and advances the object sought to be achieved by legislation, is preferred to an interpretation which defeats such object — Purposive interpretation is a sound principle for courts to adopt while interpreting statutory provisions — Interpretation of Statutes — Basic Rules — Purposive construction/interpretation

Held :

- c** One of the salutary principles of interpretation of statutes is to adopt an interpretation which promotes and advances the object sought to be achieved by the legislation, in preference to an interpretation which defeats such object. Purposive interpretation as a sound principle for the courts to adopt while interpreting statutory provisions. (Para 29)

New India Sugar Mills Ltd. v. CST, AIR 1963 SC 1207; *Custodian v. Official Receiver*, AIR 1965 SC 951; *Nathi Devi v. Radha Devi Gupta*, (2005) 2 SCC 271; *S.P. Jain v. Krishna Mohan Gupta*, (1987) 1 SCC 191, applied

- d** *Busching Schmitz (P) Ltd. v. P.T. Menghani*, (1977) 2 SCC 835, affirmed

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Advocates who appeared in this case :

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K.K. Mani, Advocate, for the Respondents.

- e** *Chronological list of cases cited* *on page(s)*
1. (2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328, *Damodar S. Prabhu v. Sayed Babalal H.* 194e-f
 2. (2010) 2 SCC 329 : (2010) 1 SCC (Civ) 411 : (2010) 2 SCC (Cri) 1033, *Tameeshwar Vaishnav v. Ramvishal Gupta (impliedly overruled)* 190g
 - f** 3. (2009) 1 SCC 500 : (2009) 1 SCC (Civ) 236 : (2009) 1 SCC (Cri) 558, *S.L. Constructions v. Alapati Srinivasa Rao (impliedly overruled)* 190g
 4. (2008) 13 SCC 689 : (2009) 3 SCC (Cri) 834, *Subodh S. Salaskar v. Jayprakash M. Shah* 193g
 5. (2007) 6 SCC 555 : (2007) 3 SCC (Cri) 236, *C.C. Alavi Haji v. Palapetty Muhammed* 194e-f
 - g** 6. (2006) 3 SCC 658 : (2006) 2 SCC (Cri) 98, *Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd.* 194e
 7. (2005) 4 SCC 417 : 2005 SCC (Cri) 1153, *Prem Chand Vijay Kumar v. Yashpal Singh (impliedly overruled)* 190g
 8. (2005) 2 SCC 271, *Nathi Devi v. Radha Devi Gupta* 195d-e
 9. (2001) 6 SCC 463 : 2001 SCC (Cri) 1163, *Dalmia Cement (Bharat) Ltd. v. Galaxy Traders & Agencies Ltd. (impliedly overruled)* 190g
 - h** 10. (2001) 6 SCC 8 : 2001 SCC (Cri) 955, *Uniplas India Ltd. v. State (Govt. of NCT of Delhi) (impliedly overruled)* 190f-g

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13.	(1998) 6 SCC 514 : 1998 SCC (Cri) 1471, <i>Sadanandan Bhadran v. Madhavan Sunil Kumar (overruled)</i>	184d-e, 184f-g, 185a-b, 185b-c, 185c-d, 185d, 186a, 186a-b, 186e-f, 186f, 186f-g, 186g, 186g-h, 187f-g, 189a, 189h, 190b-c, 190d, 190e, 190f, 191a, 192c, 193a, 193e, 196c, 196e-f, 196f-g, 196g b
14.	1995 Cri LJ 1384 (Ker), <i>S.K.D. Lakshmanan Fireworks Industries v. K.V. Sivarama Krishnan</i>	186e
15.	(1991) 1 KLT 893, <i>Kumaresan v. Ameerappa (impliedly overruled)</i>	184h, 185a, 186d-e
16.	(1987) 1 SCC 191, <i>S.P. Jain v. Krishna Mohan Gupta</i>	195e-f c
17.	(1977) 2 SCC 835, <i>Busching Schmitz (P) Ltd. v. P.T. Menghani</i>	195g
18.	AIR 1965 SC 951, <i>Custodian v. Official Receiver</i>	195a-b
19.	AIR 1963 SC 1207, <i>New India Sugar Mills Ltd. v. CST</i>	194f-g
20.	AIR 1960 SC 1309, <i>State of Madras v. C.P. Agencies</i>	191b-c
21.	(1947-48) 75 IA 121 : AIR 1949 PC 78, <i>Mohd. Khalil Khan v. Mahbub Ali Mian</i>	191c d

The Judgment of the Court was delivered by

T.S. THAKUR, J.— In *Sadanandan Bhadran v. Madhavan Sunil Kumar*¹ this Court was dealing with a case under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “the Act”) in which the complainant had, after dishonour of a cheque issued in his favour, taken steps to serve upon the accused drawer of the cheque a notice under clause (b) of proviso to Section 138 of the Act. No complaint was, however, filed by the complainant despite failure of the accused to arrange the payment of the amount covered by the cheque. Instead, the complainant payee of the cheque had presented the cheque for collection once again, which was dishonoured a second time for want of sufficient funds. Another notice was served on the drawer of the cheque to arrange payment within fifteen days of receipt of said notice. Only after failure of drawer to do so did the payee file a complaint against the former under Section 138 of the Act. **e**

2. After entering appearance, the drawer in *Sadanandan case*¹ filed an application seeking discharge on the ground that the payee could not create more than one cause of action in respect of a single cheque and the complaint in question having been filed on the basis of the second presentation and resultant second cause of action was not maintainable. The Magistrate accepted that contention relying upon a Division Bench decision of the Kerala High Court in *Kumaresan v. Ameerappa*² and dismissed the complaint. **f**

¹ (1998) 6 SCC 514 : 1998 SCC (Cri) 1471

² (1991) 1 KLT 893

3. The order passed by the Magistrate was then questioned before the High Court of Kerala which relying upon *Kumaresan case*² upheld the order passed by the Magistrate. The matter was eventually brought up to this Court by special leave. This Court in *Sadanandan case*¹ formulated the following question for determination: (SCC p. 516, para 2)

- a “Whether the payee or holder of a cheque can initiate prosecution for an offence under Section 138 of the Negotiable Instruments Act, 1881 for its dishonour for the second time, if he had not initiated any action on the earlier cause of action?”

- b Answering the question in the negative this Court held¹ that a combined reading of Sections 138 and 142 of the Act left no room for doubt that the cause of action under Section 142(b) can arise only once. The conclusion, observed the Court was supported not only by Sections 138 and 142 but also by the fact that the dishonour of cheque gives rise to the commission of offence only on the failure to pay money when a notice is served upon the drawer in accordance with clause (b) of the proviso to Section 138.

- c 4. The Court in *Sadanandan case*¹ further held that if the concept of successive causes of action were to be accepted the same would make the limitation under Section 142(b) otiose. The Court observed¹: (SCC p. 519, paras 7-8)

- d “7. Besides the language of Sections 138 and 142 which clearly postulates only one cause of action, there are other formidable impediments which negate the concept of successive causes of action. One of them is that for dishonour of one cheque, there can be only one offence and such offence is committed by the drawer immediately on his failure to make the payment within fifteen days of the receipt of the notice served in accordance with clause (b) of the proviso to Section 138. That necessarily means that for similar failure after service of fresh notice on subsequent dishonour, the drawer cannot be liable for any offence nor can the first offence be treated as non est so as to give the payee a right to file a complaint treating the second offence as the first one. At that stage, it will not be a question of waiver of the right of the payee to prosecute the drawer but of absolution of the drawer of an offence, which stands already committed by him and which cannot be committed by him again.

- e 8. The other impediment to the acceptance of the concept of successive causes of action is that it will make the period of limitation under clause (b) of Section 142 otiose, for, a payee who failed to file his complaint within one month and thereby forfeited his right to prosecute the drawer, can circumvent the above limitative clause by filing a complaint on the basis of a fresh presentation of the cheque and its dishonour. Since in the interpretation of statutes, the court always presumes that the legislature inserted every part thereof for a purpose and the legislative intention is that every part should have effect, the above

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² *Kumaresan v. Ameerappa*, (1991) 1 KLT 893

¹ *Sadanandan Bhadrar v. Madhavan Sunil Kumar*, (1998) 6 SCC 514 : 1998 SCC (Cri) 1471

conclusion cannot be drawn for that will make the provision for limiting the period of making the complaint nugatory.”

5. The Court in *Sadanandan case*¹ then tried to reconcile the apparently conflicting provisions of the Act—one enabling the payee to present the cheque and the other giving him opportunity to file a complaint within one month and observed¹: (SCC pp. 519-20, para 9)

“9. ... Having given our anxious consideration to this question, we are of the opinion that the above two provisions can be harmonised, with the interpretation that on each presentation of the cheque and its dishonour, a fresh right—and not cause of action—accrues in his favour. He may, therefore, without taking pre-emptory action in exercise of his such right under clause (b) of the proviso to Section 138, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. But once he gives a notice under clause (b) of the proviso to Section 138, he forfeits such right for in case of failure of the drawer to pay the money within the stipulated time, he would be liable for offence and the cause of action for filing the complaint will arise. Needless to say, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days from the date of the receipt of the notice by the drawer expires.”

The Court accordingly dismissed the appeal while affirming the decision of the Kerala High Court in *Kumaresan case*², no matter the same had been in the meantime overruled by a decision of the Full Bench of that Court in *S.K.D. Lakshmanan Fireworks Industries v. K.V. Sivarama Krishnan*³.

6. When the present appeal first came up for hearing before a Bench comprising Markandey Katju and B. Sudershan Reddy, JJ., reliance on behalf of the respondents was placed upon the decision of this Court in *Sadanandan case*¹ to argue that the complaint in the instant case had also been filed on the basis of the second dishonour of a cheque after the payee of the cheque had issued a notice to the drawer under clause (b) of the proviso to Section 138 of the Act based on an earlier dishonour. On the ratio of *Sadanandan case*¹ such a complaint was not maintainable, argued the respondents. The Court, however, expressed its reservation about the correctness of the view taken in *Sadanandan case*¹ especially in para 9 thereof and accordingly referred the matter to a larger Bench. That is precisely how the present appeal has come up for hearing before us. It is, therefore, evident that this Court has repeatedly followed the view taken in *Sadanandan case*¹. But a careful reading of these decisions reveals that in these subsequent decisions there had been no addition to the ratio underlying the conclusion in *Sadanandan case*¹.

7. Before advertng to the submissions that were urged at the Bar we may briefly summarise the facts in the backdrop of which the issue arises for our

1 *Sadanandan Bhadran v. Madhavan Sunil Kumar*, (1998) 6 SCC 514 : 1998 SCC (Cri) 1471

2 *Kumaresan v. Ameerappa*, (1991) 1 KLT 893

3 1995 Cri LJ 1384 (Ker)

determination. Four cheques for a total sum of rupees ten lakhs were issued by the respondent Company on 14-8-1996 in favour of the appellant which
a were presented to the bank for collection on 21-11-1996. The cheques were dishonoured in terms of memo dated 22-11-1996 for insufficiency of funds. A notice under clause (b) of the proviso to Section 138 was then issued by the appellant to the respondent on 8-1-1997 demanding payment of the amount covered by the cheques. Despite receipt of the notice by the respondent the payment was not arranged.

b 8. The appellant's case is that the respondent assured the appellant that the funds necessary for the encashment of the cheques shall be made available by the respondent, for which purpose the cheques could be presented again to the bank concerned. The cheques were accordingly presented for the second time to the bank on 21-1-1997 and were dishonoured for a second time in terms of a memo dated 22-1-1997 once
c again on the ground of insufficiency of funds. A statutory notice issued by the appellant under clause (b) of the proviso to Section 138 of the Act on 28-1-1997 called upon the respondent drawer of the cheques to arrange payment of the amount within 15 days. Despite receipt of the said notice on 3-2-1997, no payment was arranged which led to the filing of Complaint Cases Nos. 1556-57 of 1997 by the appellant before the IIInd Metropolitan
d Magistrate, Madras for the offence punishable under Section 138 read with Section 142 of the Act.

9. The Magistrate took cognizance and issued summons to the respondents in response where to the respondents entered appearance and sought discharge primarily on the ground that the complaint had not been filed within 30 days of the expiry of the notice based on the first dishonour of the cheque. It was also alleged that the statutory notice which formed the
e basis of the complaint had not been served upon the accused persons. The Magistrate upon consideration dismissed the applications for discharge which order was then assailed by the respondents before the High Court of Madras in Criminal Appeals Nos. 618, 624, 664 and 665 of 2000.

f 10. The High Court has, by the order impugned in this appeal, allowed the revision and quashed the orders passed by the Magistrate relying upon the decision of this Court in *Sadanandan case*¹ according to which a complaint based on a second or successive dishonour of the cheque was not maintainable if no complaint based on an earlier dishonour, followed by the statutory notice issued on the basis thereof, had been filed.

g 11. Section 138 of the Negotiable Instruments Act, 1881, constituting Chapter XVII of the Act which was introduced by Act 66 of 1988, inter alia, provides:

h "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

¹ *Sadanandan Bhadrar v. Madhavan Sumil Kumar*, (1998) 6 SCC 514 : 1998 SCC (Cri) 1471

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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 be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both.”

12. The proviso to Section 138, however, is all important and stipulates three distinct conditions precedent, which must be satisfied before the dishonour of a cheque can constitute an offence and become punishable. The *first condition* is that the cheque ought to have 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. The *second condition* is that the payee or the holder in due course of the cheque, as the case may be, ought to make 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. The *third condition* is that the drawer of such a cheque should have failed to make 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. It is only upon the satisfaction of all the three conditions mentioned above and enumerated under the proviso to Section 138 as clauses (a), (b) and (c) thereof that an offence under Section 138 can be said to have been committed by the person issuing the cheque.

13. Section 142 of the Negotiable Instruments Act governs taking of cognizance of the offence and starts with a non obstante clause. It provides that 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, by the holder in due course and 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. In terms of clause (c) to Section 142, no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class is competent to try any offence punishable under Section 138.

14. A careful reading of the above provisions makes it manifest that a complaint under Section 138 can be filed only after cause of action to do so has accrued in terms of clause (c) of the proviso to Section 138 which, as noticed earlier, happens no sooner than when the drawer of the cheque fails to make the payment of the cheque amount to the payee or the holder of the cheque within 15 days of the receipt of the notice required to be sent in terms of clause (b) of the proviso to Section 138 of the Act.

15. What is important is that neither Section 138 nor Section 142 or any other provision contained in the Act forbids the holder or payee of the cheque from presenting the cheque for encashment on any number of occasions within a period of six months of its issue or within the period of its validity, whichever is earlier. That such presentation will be perfectly legal and justified was not disputed before us even at the Bar by the learned counsel

appearing for the parties and rightly so in the light of the judicial pronouncements on that question which are all unanimous. Even
a *Sadanandan case*¹ the correctness whereof we are examining, recognised that the holder or the payee of the cheque has the right to present the same any number of times for encashment during the period of six months or during the period of its validity, whichever is earlier.

16. The presentation of the cheque and dishonour thereof within the period of its validity or a period of six months is just one of the three
b requirements that constitutes “cause of action” within the meaning of Sections 138 and 142(b) of the Act, an expression that is more commonly used in civil law than in penal statutes. For a dishonour to culminate into the commission of an offence of which a court may take cognizance, there are two other requirements, namely, (a) service of a notice upon the drawer of the cheque to make payment of the amount covered by the cheque, and (b)
c failure of the drawer to make any such payment within the stipulated period of 15 days of the receipt of such a notice. It is only when the said two conditions are superadded to the dishonour of the cheque that the holder/payee of the cheque acquires the right to institute proceedings for prosecution under Section 138 of the Act, which right remains legally enforceable for a period of 30 days counted from the date on which the cause
d of action accrued to him. There is, however, nothing in the proviso to Section 138 or Section 142 for that matter, to oblige the holder/payee of a dishonoured cheque to necessarily file a complaint even when he has acquired an indefeasible right to do so. The fact that an offence is complete need not necessarily lead to launch of prosecution especially when the offence is not a cognizable one. It follows that the complainant may, even
e when he has the immediate right to institute criminal proceedings against the drawer of the cheque, either at the request of the holder/payee of the cheque or on his own volition, refrain from instituting the proceedings based on the cause of action that has accrued to him. Such a decision to defer prosecution may be impelled by several considerations but more importantly it may be induced by an assurance which the drawer extends to the holder of the
f cheque that given some time the payment covered by the cheques would be arranged, in the process rendering a time-consuming and generally expensive legal recourse unnecessary. It may also be induced by a belief that a fresh presentation of the cheque may result in encashment for a variety of reasons including the vicissitudes of trade and business dealings where financial accommodation given by the parties to each other is not an unknown phenomenon. Suffice it to say that there is nothing in the provisions of the
g Act that forbids the holder/payee of the cheque to demand by service of a fresh notice under clause (b) of the proviso to Section 138 of the Act, the amount covered by the cheque, should there be a second or a successive dishonour of the cheque on its presentation.

17. *Sadanandan case*¹ holds that while a second or successive
h presentation of the cheque is legally permissible so long as such presentation

¹ *Sadanandan Bhadrar v. Madhavan Sumil Kumar*, (1998) 6 SCC 514 : 1998 SCC (Cri) 1471

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is within the period of six months or the validity of the cheque whichever is earlier, the second or subsequent dishonour of the cheque would not entitle the holder/payee to issue a statutory notice to the drawer nor would it entitle him to institute legal proceedings against the drawer in the event he fails to arrange the payment. The decision gives three distinct reasons why that should be so: a

17.1. The first and the foremost of these reasons is the use of the expression “cause of action” in Section 142(b) of the Act which according to the Court has been used in a restrictive sense and must therefore be understood to mean that cause of action under Section 142(b) can arise but once. b

17.2. The second reason cited for the view taken in *Sadanandan case*¹ is that dishonour of a cheque will lead to commission of only one offence and that the offence is complete no sooner the drawer fails to make the payment of the cheque amount within a period of 15 days of the receipt of the notice served upon him. The Court has not pressed into service the doctrine of “waiver of the right to prosecute” but held that the failure of the holder to institute proceedings would tantamount to “absolution” of the drawer of the offence committed by him. c

17.3. The third and the only other reason is that successive causes of action will militate against the provisions of Section 142(b) and make the said provision otiose. The Court in *Sadanandan case*¹ held that the failure of the drawer/payee to file a complaint within one month resulted in forfeiture of the complainant’s right to prosecute the drawer/payee which forfeiture cannot be circumvented by him by presenting the cheque afresh and inviting a dishonour to be followed by a fresh notice and a delayed complaint on the basis thereof. d

18. With utmost respect to the Judges who decided *Sadanandan case*¹ we regret our inability to fall in line with the above line of reasoning to hold that while a cheque is presented afresh the right to prosecute the drawer, if the cheque is dishonoured, is forfeited only because the previous dishonour had not resulted in immediate prosecution of the offender even when a notice under clause (b) of the proviso to Section 138 had been served upon the drawer. We are conscious of the fact that *Sadanandan case*¹ has been followed in several subsequent decisions of this Court such as in *SIL Import, USA v. Exim Aides Silk Exporters*⁴, *Uniplas India Ltd. v. State (Govt. of NCT of Delhi)*⁵, *Dalmia Cement (Bharat) Ltd. v. Galaxy Traders & Agencies Ltd.*⁶, *Prem Chand Vijay Kumar v. Yashpal Singh*⁷, *S.L. Constructions v. Alapati Srinivasa Rao*⁸, *Tameeshwar Vaishnav v. Ramvishal Gupta*⁹. e
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1 *Sadanandan Bhadrans v. Madhavan Sunil Kumar*, (1998) 6 SCC 514 : 1998 SCC (Cri) 1471

4 (1999) 4 SCC 567 : 1999 SCC (Cri) 600

5 (2001) 6 SCC 8 : 2001 SCC (Cri) 955

6 (2001) 6 SCC 463 : 2001 SCC (Cri) 1163

7 (2005) 4 SCC 417 : 2005 SCC (Cri) 1153

8 (2009) 1 SCC 500 : (2009) 1 SCC (Civ) 236 : (2009) 1 SCC (Cri) 558

9 (2010) 2 SCC 329 : (2010) 1 SCC (Civ) 411 : (2010) 2 SCC (Cri) 1033 h

19. All these decisions have without disturbing or making any addition to the rationale behind the decision in *Sadanandan case*¹ followed the conclusion drawn in the same. We, therefore, propose to deal with the three dimensions that have been highlighted in that case while holding that successive causes of action are not within the comprehension of Sections 138 and 142 of the Act.

20. The expression “cause of action” is more commonly and easily understood in the realm of civil laws. The expression is not defined anywhere in the Code of Civil Procedure to which it generally bears relevance but has been universally understood to mean the bundle of facts which the plaintiff must prove in order to entitle him to succeed in the suit. (See *State of Madras v. C.P. Agencies*¹⁰, *Rajasthan High Court Advocates’ Assn. v. Union of India*¹¹ and *Mohd. Khalil Khan v. Mahbub Ali Mian*¹².)

21. Section 142 of the Negotiable Instruments Act is perhaps the only penal provision in a statute which uses the expression “cause of action” in relation to the commission of an offence or the institution of a complaint for the prosecution of the offender. A careful reading of Sections 138 and 142, as noticed above, makes it abundantly clear that the cause of action to institute a complaint comprises the three different factual prerequisites for the institution of a complaint to which we have already referred in the earlier part of this order. None of these prerequisites is in itself sufficient to constitute a complete cause of action for an offence under Section 138. For instance if a cheque is not presented within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier, no cause of action would accrue to the holder of the cheque even when the remaining two requirements, namely, service of a notice and failure of the drawer to make the payment of the cheque amount are established on facts. So also presentation of the cheque within the stipulated period without service of a notice in terms of Section 138 proviso clause (b) would give no cause of action to the holder to prosecute the drawer just as the failure of the drawer to make the payment demanded on the basis of a notice that does not satisfy the requirements of clause (b) of the proviso to Section 138 would not constitute a complete cause of action.

22. The expression “cause of action” appearing in Section 142(b) of the Act cannot therefore be understood to be limited to any given requirement out of the three requirements that are mandatory for launching a prosecution on the basis of a dishonoured cheque. Having said that, every time a cheque is presented in the manner and within the time stipulated under the proviso to Section 138 followed by a notice within the meaning of clause (b) of the proviso to Section 138 and the drawer fails to make the payment of the amount within the stipulated period of fifteen days after the date of receipt of such notice, a cause of action accrues to the holder of the cheque to institute proceedings for the prosecution of the drawer.

¹ *Sadanandan Bhadrans v. Madhavan Sumil Kumar*, (1998) 6 SCC 514 : 1998 SCC (Cri) 1471

¹⁰ AIR 1960 SC 1309

¹¹ (2001) 2 SCC 294 : AIR 2001 SC 416

¹² (1947-48) 75 IA 121 : AIR 1949 PC 78

23. There is, in our view, nothing either in Section 138 or Section 142 to curtail the said right of the payee, leave alone a forfeiture of the said right for no better reason than the failure of the holder of the cheque to institute prosecution against the drawer when the cause of action to do so had first arisen. Simply because the prosecution for an offence under Section 138 must on the language of Section 142 be instituted within one month from the date of the failure of the drawer to make the payment does not in our view militate against the accrual of multiple causes of action to the holder of the cheque upon failure of the drawer to make the payment of the cheque amount. In the absence of any juristic principle on which such failure to prosecute on the basis of the first default in payment should result in forfeiture, we find it difficult to hold that the payee would lose his right to institute such proceedings on a subsequent default that satisfies all the three requirements of Section 138.

24. That brings us to the question whether an offence punishable under Section 138 can be committed only once as held by this Court in *Sadanandan case*¹. The holder of a cheque as seen earlier can present it before a bank any number of times within the period of six months or during the period of its validity, whichever is earlier. This right of the holder to present the cheque for encashment carries with it a corresponding obligation on the part of the drawer to ensure that the cheque drawn by him is honoured by the bank who stands in the capacity of an agent of the drawer vis-à-vis the holder of the cheque. If the holder of the cheque has a right, as indeed is in the unanimous opinion expressed in the decisions on the subject, there is no reason why the corresponding obligation of the drawer should also not continue every time the cheque is presented for encashment if it satisfies the requirements stipulated in clause (a) of the proviso to Section 138. There is nothing in that proviso to even remotely suggest that clause (a) would have no application to a cheque presented for the second time if the same has already been dishonoured once. Indeed if the legislative intent was to restrict prosecution only to cases arising out of the first dishonour of a cheque nothing prevented it from stipulating so in clause (a) itself. In the absence of any such provision a dishonour whether based on a second or any successive presentation of a cheque for encashment would be a dishonour within the meaning of Section 138 and clause (a) of the proviso thereto. We have, therefore, no manner of doubt that so long as the cheque remains unpaid it is the continuing obligation of the drawer to make good the same by either arranging the funds in the account on which the cheque is drawn or liquidating the liability otherwise. It is true that a dishonour of the cheque can be made a basis for prosecution of the offender but once, but that is far from saying that the holder of the cheque does not have the discretion to choose out of several such defaults, one default, on which to launch such a prosecution. The omission or the failure of the holder to institute prosecution does not, therefore, give any immunity to the drawer so long as the cheque is dishonoured within its validity period and the conditions precedent for prosecution in terms of the proviso to Section 138 are satisfied.

¹ *Sadanandan Bhadran v. Madhavan Sunil Kumar*, (1998) 6 SCC 514 : 1998 SCC (Cri) 1471

- 25.** Coming then to the question whether there is anything in Section 142(b) to suggest that prosecution based on subsequent or successive dishonour is impermissible, we need only mention that the limitation which *Sadanandan case*¹ reads into that provision does not appear to us to arise. We say so because while a complaint based on a default and notice to pay must be filed within a period of one month from the date the cause of action accrues, which implies the date on which the period of 15 days granted to the drawer to arrange the payment expires, there is nothing in Section 142 to suggest that expiry of any such limitation would absolve him of his criminal liability should the cheque continue to get dishonoured by the bank on subsequent presentations. So long as the cheque is valid and so long as it is dishonoured upon presentation to the bank, the holder's right to prosecute the drawer for the default committed by him remains valid and exercisable. The argument that the holder takes advantage by not filing a prosecution against the drawer has not impressed us. By reason of a fresh presentation of a cheque followed by a fresh notice in terms of Section 138 proviso clause (b), the drawer gets an extended period to make the payment and thereby benefits in terms of further opportunity to pay to avoid prosecution. Such fresh opportunity cannot help the defaulter on any juristic principle, to get a complete absolution from prosecution.
- 26.** Absolution is, at any rate, a theological concept which implies an act of forgiving the sinner of his sins upon confession. The expression has no doubt been used in some judicial pronouncements, but the same stop short of recognising absolution as a juristic concept. It has always been used or understood in common parlance to convey "setting free from guilt" or "release from a penalty". The use of the expression "absolution" in *Sadanandan case*¹ at any rate came at a time when the proviso to Section 142(b) had not found a place on the statute book. That proviso was added by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 which read as under:
- "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."
- 27.** The Statement of Objects and Reasons appended to the Amendment Bill, 2002 suggests that the introduction of this proviso was recommended by the Standing Committee on Finance and other representatives so as to provide discretion to the court to waive the period of one month, which has been prescribed for taking cognizance of a case under the Act. This was so recognised judicially also by this Court in *Subodh S. Salaskar v. Jayprakash M. Shah*¹³ wherein this Court observed: (SCC pp. 695 & 700, paras 11 & 26)
- "11. The [Negotiable Instruments] Act was amended in the year 2002 whereby additional powers have been conferred upon the court to take cognizance even after expiry of the period of limitation by conferring on it a discretion to waive the period of one month.

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¹ *Sadanandan Bhadrans v. Madhavan Sunil Kumar*, (1998) 6 SCC 514 : 1998 SCC (Cri) 1471
¹³ (2008) 13 SCC 689 : (2009) 3 SCC (Cri) 834

26. ... The provisions of the Act being special in nature, in terms thereof the jurisdiction of the court to take cognizance of an offence under Section 138 of the Act was limited to the period of thirty days in terms of the proviso appended thereto. Parliament only with a view to obviate the aforementioned difficulties on the part of the complainant inserted proviso to clause (b) of Section 142 of the Act in 2002. It confers a jurisdiction upon the court to condone the delay.”

28. The proviso referred to above now permits the payee to institute prosecution proceedings against a defaulting drawer even after the expiry of the period of one month. If a failure of the payee to file a complaint within a period of one month from the date of expiry of the period of 15 days allowed for this purpose was to result in “absolution”, the proviso would not have been added to negate that consequence. The statute as it exists today, therefore, does not provide for “absolution” simply because the period of 30 days has expired or the payee has for some other reasons deferred the filing of the complaint against the defaulter.

29. It is trite that the object underlying Section 138 of the Act is to promote and inculcate faith in the efficacy of banking system and its operations, giving credibility to negotiable instruments in business transactions and to create an atmosphere of faith and reliance by discouraging people from dishonouring their commitments which are implicit when they pay their dues through cheques. The provision was intended to punish those unscrupulous persons who issued cheques for discharging their liabilities without really intending to honour the promise that goes with the drawing up of such a negotiable instrument. It was intended to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case the cheque was dishonoured and to safeguard and prevent harassment of honest drawers. (See *Mosaraj Hossain Khan v. Bhagheeratha Engg. Ltd.*¹⁴, *C.C. Alavi Haji v. Palapetty Muhammed*¹⁵ and *Damodar S. Prabhu v. Sayed Babalal H.*¹⁶, SCC pp. 665-66, para 3) Having said that, we must add that one of the salutary principles of interpretation of statutes is to adopt an interpretation which promotes and advances the object sought to be achieved by the legislation, in preference to an interpretation which defeats such object. This Court has in a long line of decisions recognised purposive interpretation as a sound principle for the courts to adopt while interpreting statutory provisions. We may only refer to the decision of this Court in *New India Sugar Mills Ltd. v. CST*¹⁷, wherein this Court observed: (AIR p. 1213, para 8)

“8. ... It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning the court

14 (2006) 3 SCC 658 : (2006) 2 SCC (Cri) 98

15 (2007) 6 SCC 555 : (2007) 3 SCC (Cri) 236

16 (2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328

17 AIR 1963 SC 1207

would be justified in assuming that the legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its power invalid.”

30. Reference may also be made to the decision of this Court in *Custodian v. Official Receiver*¹⁸ wherein this Court observed: (AIR p. 955, para 8)

“8. ... The rules of grammar may suggest that when the section says that the property is evacuee property, it prima facie indicates that the property should bear that character at the time when the opinion is formed. But Mr Ganapathy Iyer for the appellants has strenuously contended that the construction of Section 7(1) should not be based solely or primarily on the mechanical application of the rules of grammar. He argues that the construction for which Mr Pathak contents and which, in substance, has been accepted by the High Court, would lead to very anomalous results; and his argument is that it is open to the court to take into account the obvious aim and object of the statutory provision when attempting the task of construing its words. If it appears that the obvious aim and object of the statutory provision would be frustrated by accepting the literal construction suggested by the respondent, then it may be open to the court to enquire whether an alternative construction which would serve the purpose of achieving the aim and object of the Act, is reasonably possible.”

31. The decision of this Court in *Nathi Devi v. Radha Devi Gupta*¹⁹ reiterates the rule of purposive construction in the following words: (SCC p. 277, para 17)

“17. Even if there exists some ambiguity in the language or the same is capable of two interpretations, it is trite the interpretation which serves the object and purport of the Act must be given effect to. In such a case the doctrine of purposive construction should be adopted.”

32. To the same effect is the decision of this Court in *S.P. Jain v. Krishna Mohan Gupta*²⁰ wherein this Court observed: (SCC p. 201, para 18)

“18. We are of the opinion that law should take [a] pragmatic view of the matter and respond to the purpose for which it was made and also take cognizance of the current capabilities of technology and lifestyle of the community. It is well settled that the purpose of law provides a good guide to the interpretation of the meaning of the Act. We agree with the views of Krishna Iyer, J. in *Busching Schmitz (P) Ltd. case*²¹ that legislative futility is to be ruled out so long as interpretative possibility permits.”

33. Applying the above rule of interpretation and the provisions of Section 138, we have no hesitation in holding that a prosecution based on a second or successive default in payment of the cheque amount should not be impermissible simply because no prosecution based on the first default which

¹⁸ AIR 1965 SC 951

¹⁹ (2005) 2 SCC 271

²⁰ (1987) 1 SCC 191

²¹ *Busching Schmitz (P) Ltd. v. P.T. Menghani*, (1977) 2 SCC 835

was followed by a statutory notice and a failure to pay had not been launched. If the entire purpose underlying Section 138 of the Negotiable Instruments Act is to compel the drawers to honour their commitments made in the course of their business or other affairs, there is no reason why a person who has issued a cheque which is dishonoured and who fails to make payment despite statutory notice served upon him should be immune to prosecution simply because the holder of the cheque has not rushed to the court with a complaint based on such default or simply because the drawer has made the holder defer prosecution promising to make arrangements for funds or for any other similar reason. There is in our opinion no real or qualitative difference between a case where default is committed and prosecution immediately launched and another where the prosecution is deferred till the cheque presented again gets dishonoured for the second or successive time.

34. The controversy, in our opinion, can be seen from another angle also. If the decision in *Sadanandan case*¹ is correct, there is no option for the holder to defer institution of judicial proceedings even when he may like to do so for so simple and innocuous a reason as to extend certain accommodation to the drawer to arrange the payment of the amount. Apart from the fact that an interpretation which curtails the right of the parties to negotiate a possible settlement without prejudice to the right of holder to institute proceedings within the outer period of limitation stipulated by law should be avoided we see no reason why the parties should, by a process of interpretation, be forced to launch complaints where they can or may like to defer such action for good and valid reasons. After all, neither the courts nor the parties stand to gain by institution of proceedings which may become unnecessary if cheque amount is paid by the drawer. The Magistracy in this country is overburdened by an avalanche of cases under Section 138 of the Negotiable Instruments Act. If the first default itself must in terms of the decision in *Sadanandan case*¹ result in filing of prosecution, avoidable litigation would become an inevitable bane of the legislation that was intended only to bring solemnity to cheques without forcing the parties to resort to proceedings in the courts of law. While there is no empirical data to suggest that the problems of overburdened Magistracy and judicial system at the district level is entirely because of the compulsions arising out of the decisions in *Sadanandan case*¹, it is difficult to say that the law declared in that decision has not added to court congestion.

35. In the result, we overrule the decision in *Sadanandan case*¹ and hold that the prosecution based upon second or successive dishonour of the cheque is also permissible so long as the same satisfies the requirements stipulated in the proviso to Section 138 of the Negotiable Instruments Act. The reference is answered accordingly. The appeals shall now be listed before the regular Bench for hearing and disposal in the light of the observations made above.

1 *Sadanandan Bhadran v. Madhavan Sunil Kumar*, (1998) 6 SCC 514 : 1998 SCC (Cri) 1471

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(BEFORE ADARSH KUMAR GOEL AND UDAY U. LALIT, JJ.)

Criminal Appeal No. 1731 of 2017

METERS AND INSTRUMENTS PRIVATE

LIMITED AND ANOTHER

.. Appellants;

Versus

KANCHAN MEHTA

.. Respondent.

Criminal Appeals No. 1731 of 2017[†] with Nos. 1732 of
2017[‡] and 1733 of 2017^{††}, decided on October 5, 2017

Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — Ss. 138, 142 to 147 [as amended by Negotiable Instruments (Amendment & Misc. Provisions) Act, 2002] — Trial proceedings — Object, scheme and procedure contemplated under — How proceedings for offence under S. 138 can be regulated where accused willing to deposit cheque amount

— Offence under S. 138 primarily in nature of civil wrong and proceedings primarily compensatory in nature — Summary procedure should normally be followed except where exercise of power under second proviso to S. 143 considered necessary — Court has jurisdiction under S. 357(3) CrPC to award suitable compensation with default sentence under S. 64 IPC with further powers of recovery under S. 431 CrPC — Court may close proceedings if accused deposits amount as assessed by it having regard to cheque amount, interest/costs, etc. within stipulated period — Compounding at initial stage and even at later stage acceptable — Certain proceedings can be conducted online

— Issuance of summons in terms of S. 144 — Burden, nature and standard of proof and nature of evidence required — Affidavit evidence can be received as evidence at all stages of trial or proceedings — When can accused's appearance before court be exempted — In case trial proceeds, court may explore possibility of settlement and plea bargaining — Criminal Procedure Code, 1973 — Ss. 258, 431, 264 and 357(3) — Penal Code, 1860, S. 64

The respondent filed a complaint alleging that the appellants were to pay a monthly amount to her under an agreement, that a cheque given by the appellants in discharge of the legal liability was returned unpaid for want of sufficient funds and that in spite of service of legal notice, the amount having not been paid, the appellants committed the offence under the Negotiable Instruments Act. The Magistrate, after considering the complaint and the preliminary evidence, summoned the appellants. The Magistrate observed that the case could not be tried summarily as sentence of more than one year may have to be passed and be tried as summons case. Notice of accusation was served under Section 251

[†] Arising out of SLP (Crl.) No. 5451 of 2017. Arising from the Judgment and Order in *Meters and Instruments (P) Ltd. v. Rakesh Kumar Midha*, 2017 SCC OnLine P&H 2709 [Punjab and Haryana High Court, Chandigarh Bench, Criminal No. M-13631 of 2017 (O&M), dt. 21-4-2017]

[‡] Arising out of SLP (Crl.) No. 5441 of 2017

^{††} Arising out of SLP (Crl.) No. 5449 of 2017

- CrPC. Appellant 2, who is the Director of Appellant 1, made a statement that he was ready to make the payment of the cheque amount. However, the complainant
- a* declined to accept the demand draft. The case was adjourned for evidence. The appellants filed an application under Section 147 of the Act but the same was dismissed for want of consent of complainant for compounding. The High Court declined to interfere with the order of the Magistrate, by rejecting the prayer of the appellants for compounding the offence on payment of the cheque amount and in the alternative for exemption from personal appearance.
- b* When the matter came up for hearing before the Supreme Court earlier, notice was issued to consider the question as to how proceedings for an offence under Section 138 of the Act can be regulated where the accused is willing to deposit the cheque amount. Whether in such a case, the proceedings can be closed or exemption granted from personal appearance or any other order can be passed.
- Disposing of the appeals, the Supreme Court
- c* *Held :*
- The object of introducing Section 138 and other provisions of Chapter XVII in the Act in the year 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
- d* 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. The object of the statute was to facilitate smooth functioning of business transactions. (Paras 6 and 7)
- e* 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
- f* 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. 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
- g* or the court. 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. (Paras 18.1, 18.2 and 18.3)
- Although 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
- h* 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

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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. (Para 18.4)

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 (Para 18.5)

In every complaint under Section 138 of the Act, it may be desirable that the complainant gives his bank account number and if possible e-mail ID of the accused. If e-mail ID is available with the bank where the accused has an account, such bank, on being required, should furnish such e-mail ID to the payee of the cheque. In every summons issued to the accused, it may be indicated that if the accused deposits the specified amount, which should be assessed by the court having regard to the cheque amount and interest/cost, by a specified date, the accused need not appear unless required and proceedings may be closed subject to any valid objection of the complainant. If the accused complies with such summons and informs the court and the complainant by e-mail, the court can ascertain the objection, if any, of the complainant and close the proceedings unless it becomes necessary to proceed with the case. In such a situation, the accused's presence can be required, unless the presence is otherwise exempted subject to such conditions as may be considered appropriate. The accused, who wants to contest the case, must be required to disclose specific defence for such contest. It is open to the court to ask specific questions to the accused at that stage. In case the trial is to proceed, it will be open to the court to explore the possibility of settlement. It will also be open to the court to consider the provisions of plea bargaining. Subject to this, the trial can be on day-to-day basis and endeavour must be to conclude it within six months. The guilty must be punished at the earliest as per law and the one who obeys the law need not be held up in proceedings for long unnecessarily. (Para 20)

It will be open to the High Courts to consider and lay down category of cases where proceedings or part thereof can be conducted online by designated courts or otherwise. The High Courts may also consider issuing any further updated directions for dealing with Section 138 cases in the light of judgments of. (Para 21)

Goa Plast (P) Ltd. v. Chico Ursula D'Souza, (2004) 2 SCC 235 : 2004 SCC (Cri) 499; *Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd.*, (2008) 2 SCC 305 : (2008) 1 SCC (Civ) 542 : (2008) 1 SCC (Cri) 351; *Rangappa v. Sri Mohan*, (2010) 11 SCC 441 : (2010) 4 SCC

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- a* (Civ) 477 : (2011) 1 SCC (Cri) 184; *R. Vijayan v. Baby*, (2012) 1 SCC 260 : (2012) 1 SCC (Civ) 79 : (2012) 1 SCC (Cri) 520; *Lafarge Aggregates & Concrete India (P) Ltd. v. Sukarsh Azad*, (2014) 13 SCC 779 : (2014) 5 SCC (Cri) 818; *D. Vinod Shivappa v. Nanda Belliappa*, (2006) 6 SCC 456 : (2006) 3 SCC (Cri) 114; *C.C. Alavi Haji v. Palapetty Muhammed*, (2007) 6 SCC 555 : (2007) 3 SCC (Cri) 236; *M.P. State Legal Services Authority v. Prateek Jain*, (2014) 10 SCC 690 : (2015) 1 SCC (Civ) 74 : (2015) 1 SCC (Cri) 211; *Rajneesh Aggarwal v. Amit J. Bhalla*, (2001) 1 SCC 631 : 2001 SCC (Cri) 229; *Mandvi Coop. Bank Ltd. v. Nimesh B. Thakore*, (2010) 3 SCC 83 : (2010) 1 SCC (Civ) 625 : (2010) 2 SCC (Cri) 1; *J.V. Baharuni v. State of Gujarat*, (2014) 10 SCC 494 : (2015) 1 SCC (Cri) 1; *TGN Kumar v. State of Kerala*, (2011) 2 SCC 772 : (2011) 1 SCC (Civ) 560 : (2011) 1 SCC (Cri) 893; *b Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd.*, (2001) 7 SCC 401 : 2001 SCC (Cri) 1254; *Hussain v. Union of India*, (2017) 5 SCC 702 : (2017) 2 SCC (Cri) 638; *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551 : 1988 SCC (Cri) 984; *Suganthi Suresh Kumar v. Jagdeeshan*, (2002) 2 SCC 420 : 2002 SCC (Cri) 344; *K.A. Abbas v. Sabu Joseph*, (2010) 6 SCC 230 : (2010) 3 SCC (Civ) 744 : (2010) 3 SCC (Cri) 127; *R. Mohan v. A.K. Vijaya Kumar*, (2012) 8 SCC 721 : (2012) 4 SCC (Civ) 585 : (2012) 3 SCC (Cri) 1013; *Kumaran v. State of Kerala*, (2017) 7 SCC 471 : (2017) 3 SCC (Civ) 431, *relied on*
- c* *Indian Bank Assn. v. Union of India*, (2014) 5 SCC 590 : (2014) 3 SCC (Civ) 233 : (2014) 2 SCC (Cri) 652, *clarified and relied on*
- Meters and Instruments (P) Ltd. v. Rakesh Kumar Midha*, 2017 SCC OnLine P&H 2709; *Meters and Instruments (P) Ltd. v. Rakesh Kumar Midha*, SLP (Cri) No. 5441 of 2017, order dated 31-7-2017 (SC); *Damodar S. Prabhu v. Sayed Babalal H.*, (2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328; *JIK Industries Ltd. v. Amaral V. Jumani*, (2012) 3 SCC 255 : (2012) 2 SCC (Civ) 82 : (2012) 2 SCC (Cri) 125; *Subramaniam Sethuraman v. State of Maharashtra*, (2004) 13 SCC 324 : 2005 SCC (Cri) 242; *KSL and Industries Ltd. v. Mannalal Khandelwal*, 2005 SCC OnLine Bom 89 : 2005 Cri LJ 1201; *Indo International Ltd. v. State of Maharashtra*, 2005 SCC OnLine Bom 864 : 2006 Cri LJ 208 : (2005) 44 Civil CC; *Harischandra Biyani v. Stock Holding Corpn. of India Ltd.*, 2005 SCC OnLine Bom 1216 : (2006) 4 Mah LJ 381; *Magma Leasing Ltd. v. State of W.B.*, 2007 SCC OnLine Cal 375 : (2007) 3 CHN 574; *Rajesh Agarwal v. State*, 2010 SCC OnLine Del 2511 : ILR (2010) 6 Del 610, *referred to*
- e*

R-D/59194/CVR

Advocates who appeared in this case :

K.V. Viswanathan (Amicus Curiae), Senior Advocate (Rishi Malhotra, Ravi Raghunath, Dhananjay Ray, Siddhant Buxy, Jaishree Viswanathan, Rakesh Kumar, Gaurav Manhotia, Anurag, Ms B. Sunita Rao, Akshat Goel, Liaqat Ali and Dushyant Tiwari, Advocates) for the appearing parties.

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Chronological list of cases cited

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| | 3. SLP (Cri) No. 5441 of 2017, order dated 31-7-2017 (SC), <i>Meters and Instruments (P) Ltd. v. Rakesh Kumar Midha</i> | 565a |
| <i>g</i> | 4. 2017 SCC OnLine P&H 2709, <i>Meters and Instruments (P) Ltd. v. Rakesh Kumar Midha</i> | 564g-h |
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10.	(2012) 3 SCC 255 : (2012) 2 SCC (Civ) 82 : (2012) 2 SCC (Cri) 125, <i>JK Industries Ltd. v. Amarlal V. Jumani</i>	565f a
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12.	(2011) 2 SCC 772 : (2011) 1 SCC (Civ) 560 : (2011) 1 SCC (Cri) 893, <i>TGN Kumar v. State of Kerala</i>	570c
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15.	(2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328, <i>Damodar S. Prabhu v. Sayed Babalal H.</i>	565e-f, 567a, 567a-b
16.	(2010) 3 SCC 83 : (2010) 1 SCC (Civ) 625 : (2010) 2 SCC (Cri) 1, <i>Mandvi Coop. Bank Ltd. v. Nimesh B. Thakore</i>	567c-d, 568c
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18.	(2008) 2 SCC 305 : (2008) 1 SCC (Civ) 542 : (2008) 1 SCC (Cri) 351, <i>Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd.</i>	566c
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20.	2007 SCC OnLine Cal 375 : (2007) 3 CHN 574, <i>Magma Leasing Ltd. v. State of W.B.</i>	569b d
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29.	(2001) 1 SCC 631 : 2001 SCC (Cri) 229, <i>Rajneesh Aggarwal v. Amit J. Bhalla</i>	567b
30.	(1988) 4 SCC 551 : 1988 SCC (Cri) 984, <i>Hari Singh v. Sukhbir Singh</i>	569a

The Judgment of the Court was delivered by

ADARSH KUMAR GOEL, J.— Leave granted. These appeals have been preferred against the order dated 21-4-2017 of the High Court of Punjab and Haryana at Chandigarh in *Meters and Instruments (P) Ltd. v. Rakesh Kumar Midha*¹. The High Court rejected the prayer of the appellants for compounding the offence under Section 138 of the Negotiable Instruments Act, 1881 (the Act) on payment of the cheque amount and in the alternative, for exemption from personal appearance.

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- 2.** When the matters came up for hearing before this Court earlier, notice was issued² to consider the question “as to how proceedings for an offence under Section 138 of the Act can be regulated where the accused is willing to deposit the cheque amount. Whether in such a case, the proceedings can be closed or exemption granted from personal appearance or any other order can be passed.” The Court also appointed Mr K.V. Viswanathan, learned Senior Counsel to assist the Court as Amicus and Mr Rishi Malhotra, learned counsel to assist the Amicus. Accordingly, the learned Amicus has made his submissions and also filed written submissions duly assisted by S/Shri Rishi Malhotra, Ravi Raghunath, Dhananjay Ray and Sidhant Buxy, Advocates. We place on record our appreciation for the services rendered by the learned Amicus and his team.

Few facts

- 3.** The respondent Kanchan Mehta filed complaint dated 15-7-2016 alleging that the appellants were to pay a monthly amount to her under an agreement. Cheque dated 31-3-2016 was given for Rs 29,319 in discharge of legal liability but the same was returned unpaid for want of sufficient funds. In spite of service of legal notice, the amount having not been paid, the appellants committed the offence under Section 138 of the Act. The Magistrate vide order dated 24-8-2016, after considering the complaint and the preliminary evidence, summoned the appellants. The Magistrate in the order dated 9-11-2016 observed that the case could not be tried summarily as sentence of more than one year may have to be passed and be tried as summons case. Notice of accusation dated 9-11-2016 was served under Section 251 CrPC.
- 4.** Appellant 2, who is the Director of Appellant 1, made a statement that he was ready to make the payment of the cheque amount. However, the complainant declined to accept the demand draft. The case was adjourned for evidence. The appellants filed an application under Section 147 of the Act on 12-1-2017 relying upon the judgment of this Court in *Damodar S. Prabhu v. Sayed Babalal H.*³ The application was dismissed in view of the judgment of this Court in *JK Industries Ltd. v. Amarlal V. Jumani*⁴ which required consent of the complainant for compounding. The High Court did not find any ground to interfere with the order of the Magistrate. Facts of other two cases are identical. Hence, these appeals.

- 5.** We have heard the learned counsel for the parties and the learned Amicus who has been duly and ably assisted by S/Shri Rishi Malhotra, Ravi Raghunath, Dhananjay Ray and Sidhant Buxy, Advocates. We proceed to consider the question.

² *Meters and Instruments (P) Ltd. v. Rakesh Kumar Midha*, SLP (Cri) No. 5441 of 2017, order dated 31-7-2017 (SC)

³ (2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328

⁴ (2012) 3 SCC 255 : (2012) 2 SCC (Civ) 82 : (2012) 2 SCC (Cri) 125

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6. The object of introducing Section 138 and other provisions of Chapter XVII in the Act in the year 1988⁵ 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.⁶ 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.⁷ 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”.⁸ 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.⁹ 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.¹⁰

8. In view of the above scheme, this Court held that the accused could make an application for compounding at the first or second hearing in which case the court ought to allow the same. If such application is made later, the accused

5 Vide the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988

6 *Goa Plast (P) Ltd. v. Chico Ursula D’Souza*, (2004) 2 SCC 235, p. 248, para 26 : 2004 SCC (Cri) 499

7 *Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd.*, (2008) 2 SCC 305 : (2008) 1 SCC (Civ) 542 : (2008) 1 SCC (Cri) 351

8 *Rangappa v. Sri Mohan*, (2010) 11 SCC 441, p. 454, para 28 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184

9 *R. Vijayan v. Baby*, (2012) 1 SCC 260, p. 264, para 9 : (2012) 1 SCC (Civ) 79 : (2012) 1 SCC (Cri) 520

10 *Lafarge Aggregates & Concrete India (P) Ltd. v. Sukarsh Azad*, (2014) 13 SCC 779, p. 781, para 7 : (2014) 5 SCC (Cri) 818

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- was required to pay higher amount towards cost, etc.³ This Court has also laid down that even if the payment of the cheque amount, in terms of proviso (b) to Section 138 of the Act was not made, the court could permit such payment being made immediately after receiving notice/summons of the court.¹¹ The guidelines in *Damodar*³ have been held to be flexible as may be necessary in a given situation.¹² Since the concept of compounding involves consent of the complainant, this Court held that compounding could not be permitted merely by unilateral payment, without the consent of both the parties.¹³
- 9.** While the object of the provision was to lend credibility to cheque transactions, the effect was that it put enormous burden on the courts' dockets. The Law Commission in its 213th Report, submitted on 24-11-2008 noted that out of total pendency of 1.8 crore cases in the country (at that time), 38 lakh cases (about 20% of total pendency) related to Section 138 of the Act. This Court dealt with the issue of interpretation of the 2002 Amendment which was incorporated for simplified and speedy trials. It was held that the said provision laid down a special code to do away with all stages and processes in regular criminal trial.¹⁴ This Court held that once evidence was given on affidavit, the extent and nature of examination of such witness was to be determined by the Court. The object of Section 145(2) was simpler and swifter trial procedure. Only requirement is that the evidence must be admissible and relevant. The affidavit could also prove documents.¹⁵ The scheme of Sections 143 to 147 of the Act was a departure from the provisions of CrPC and the Evidence Act and complaints could be tried in a summary manner except where the Magistrate feels that sentence of more than one year may have to be passed. Even in such cases, the procedure to be followed may not be exactly the same as in CrPC. The expression "as far as possible" in Section 143 leaves sufficient flexibility for the Magistrate so as not to affect the quick flow of the trial process. The trial has to proceed on day-to-day basis with endeavour to conclude the same within six months. Affidavit of the complainant can be read as evidence. Bank's slip or memo of cheque dishonour can give rise to the presumption of dishonour of the cheque, unless and until that fact was disproved.
- 10.** Again, this Court considered the matter in *J.V. Baharuni v. State of Gujarat*¹⁶ and observed that the procedure prescribed for cases under Section 138 of the Act was flexible and applicability of Section 326(3) CrPC in not acting on the evidence already recorded in a summary trial did not

- ³ *Damodar S. Prabhu v. Sayed Babalal H.*, (2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328
- ¹¹ *D. Vinod Shivappa v. Nanda Belliappa*, (2006) 6 SCC 456 : (2006) 3 SCC (Cri) 114; *C.C. Alavi Haji v. Palapetty Muhammed*, (2007) 6 SCC 555 : (2007) 3 SCC (Cri) 236
- ¹² *M.P. State Legal Services Authority v. Prateek Jain*, (2014) 10 SCC 690, p. 701, para 23 : (2015) 1 SCC (Civ) 74 : (2015) 1 SCC (Cri) 211
- ¹³ *Rajneesh Aggarwal v. Amit J. Bhalla*, (2001) 1 SCC 631 : 2001 SCC (Cri) 229
- ¹⁴ *Mandvi Coop. Bank Ltd. v. Nimesh B. Thakore*, (2010) 3 SCC 83, pp. 95-96, paras 25, 26 : (2010) 1 SCC (Civ) 625 : (2010) 2 SCC (Cri) 1
- ¹⁵ *Mandvi Coop. Bank Ltd. v. Nimesh B. Thakore*, (2010) 3 SCC 83, para 41
- ¹⁶ (2014) 10 SCC 494 : (2015) 1 SCC (Cri) 1

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strictly apply to the scheme of Section 143 of the Act.¹⁷ This Court observed that the procedure being followed by the Magistrates was not commensurate with the summary trial provisions and a successor Magistrate ought not to mechanically order de novo trial. This Court observed that the court should make endeavour to expedite hearing of cases in a time-bound manner. The Magistrate should make attempts to encourage compounding of offence at an early stage of litigation. The compensatory aspect of remedy should be given priority over the punitive aspect.¹⁸

11. While it is true that in *Subramaniam Sethuraman v. State of Maharashtra*¹⁹ this Court observed that once the plea of the accused is recorded under Section 252 CrPC, the procedure contemplated under Chapter XX CrPC has to be followed to take the trial to its logical conclusion, the said judgment was rendered as per statutory provisions prior to the 2002 Amendment. The statutory scheme post-2002 Amendment as considered in *Mandvi Coop. Bank*¹⁴ and *J.V. Baharuni*¹⁶ has brought about a change in law and it needs to be recognised. After the 2002 Amendment, Section 143 of the Act confers implied power on the Magistrate to discharge the accused if the complainant is compensated to the satisfaction of the court, where the accused tenders the cheque amount with interest and reasonable cost of litigation as assessed by the court. Such an interpretation was consistent with the intention of legislature. The court has to balance the rights of the complainant and the accused and also to enhance access to justice. Basic object of the law is to enhance credibility of the cheque transactions by providing speedy remedy to the complainant without intending to punish the drawer of the cheque whose conduct is reasonable or where compensation to the complainant meets the ends of justice. Appropriate order can be passed by the court in exercise of its inherent power under Section 143 of the Act which is different from compounding by consent of parties. Thus, Section 258 CrPC which enables proceedings to be stopped in a summons case, even though strictly speaking is not applicable to complaint cases, since the provisions of CrPC are applicable “so far as may be”, the principle of the said provision is applicable to a complaint case covered by Section 143 of the Act which contemplates applicability of summary trial provisions, as far as possible i.e. with such deviation as may be necessary for speedy trial in the context.

12. The sentence prescribed under Section 138 of the Act is up to two years or with fine which may extend to twice the amount or with both. What needs to be noted is the fact that power under Section 357(3) CrPC to direct payment of compensation is in addition to the said prescribed sentence, if sentence of fine is not imposed. The amount of compensation can be fixed having regard to the extent of loss suffered by the action of the accused as assessed by the

17 *J.V. Baharuni v. State of Gujarat*, (2014) 10 SCC 494, para 43

18 *Ibid*, para 60

19 (2004) 13 SCC 324 : 2005 SCC (Cri) 242

14 *Mandvi Coop. Bank Ltd. v. Nimesh B. Thakore*, (2010) 3 SCC 83, pp. 95-96, paras 25, 26 : (2010) 1 SCC (Civ) 625 : (2010) 2 SCC (Cri) 1

16 *J.V. Baharuni v. State of Gujarat*, (2014) 10 SCC 494 : (2015) 1 SCC (Cri) 1

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court. The direction to pay compensation can be enforced by default sentence under Section 64 IPC and by recovery procedure prescribed under Section 431 CrPC.²⁰

a

13. This Court in *Indian Bank Assn. v. Union of India*²¹ approved the directions of the Bombay High Court, Calcutta High Court and Delhi High Court in *KSL and Industries Ltd. v. Mannalal Khandelwal*²², *Indo International Ltd. v. State of Maharashtra*²³, *Harischandra Biyani v. Stock Holding Corpn. of India Ltd.*²⁴, *Magma Leasing Ltd. v. State of W.B.*²⁵ and *Rajesh Agarwal v. State*²⁶ laying down simpler procedure for disposal of cases under Section 138 of the Act. This Court directed as follows: (*Indian Bank Assn. case*²¹, SCC p. 602, paras 23-24)

b

c

“23. Many of the directions given by the various High Courts, in our view, are worthy of emulation by the criminal courts all over the country dealing with cases under Section 138 of the Negotiable Instruments Act, for which the following directions are being given:

d

23.1. The Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinise the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.

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23.2. The MM/JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address got from the complainant. The court, in appropriate cases, may take the assistance of the police or the nearby court to serve notice on the accused. For notice of appearance, a short date be fixed. If the summons is received back unserved, immediate follow-up action be taken.

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23.3. The court may indicate in the summons that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, the court may pass appropriate orders at the earliest.

23.4. The court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251 CrPC to enable him to enter his plea of defence and fix

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²⁰ *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551 : 1988 SCC (Cri) 984; *Suganthi Suresh Kumar v. Jagdeeshan*, (2002) 2 SCC 420 : 2002 SCC (Cri) 344; *K.A. Abbas v. Sabu Joseph*, (2010) 6 SCC 230 : (2010) 3 SCC (Civ) 744 : (2010) 3 SCC (Cri) 127; *R. Mohan v. A.K. Vijaya Kumar*, (2012) 8 SCC 721 : (2012) 4 SCC (Civ) 585 : (2012) 3 SCC (Cri) 1013 and *Kumaran v. State of Kerala*, (2017) 7 SCC 471 : (2017) 3 SCC (Civ) 431

²¹ (2014) 5 SCC 590 : (2014) 3 SCC (Civ) 233 : (2014) 2 SCC (Cri) 652

²² 2005 SCC OnLine Bom 89 : 2005 Cri LJ 1201

²³ 2005 SCC OnLine Bom 864 : 2006 Cri LJ 208 : (2005) 44 Civil CC

h

²⁴ 2005 SCC OnLine Bom 1216 : (2006) 4 Mah LJ 381

²⁵ 2007 SCC OnLine Cal 375 : (2007) 3 CHN 574

²⁶ 2010 SCC OnLine Del 2511 : ILR (2010) 6 Del 610

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the case for defence evidence, unless an application is made by the accused under Section 145(2) for recalling a witness for cross-examination.

23.5. The court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The court has option of accepting affidavits of the witnesses instead of examining them in the court. The witnesses to the complaint and the accused must be available for cross-examination as and when there is direction to this effect by the court.

24. We, therefore, direct all the criminal courts in the country dealing with Section 138 cases to follow the abovementioned procedures for speedy and expeditious disposal of cases falling under Section 138 of the Negotiable Instruments Act. The writ petition is, accordingly, disposed of, as above.”

14. We may, however, note that this Court in *Indian Bank case*²¹ held that general directions ought not to be issued which may deprive the Magistrate to exercise power under Section 205 CrPC.²⁷ We need to clarify that the judgment of this Court is not a bar to issue directions which do not affect the exercise of power under Section 205, to require personal attendance wherever necessary. Needless to say that the judgment cannot be read as affecting the power of the High Court under Article 225 of the Constitution read with Articles 227 and 235 to issue directions to subordinate courts without affecting the prevailing statutory scheme.

15. In *Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd.*²⁸, this Court considered the issue of hardship caused in personal attendance by an accused particularly where accused is located far away from the jurisdiction of the court where the complaint is filed. This Court held that even in absence of the accused, evidence can be recorded in presence of counsel under Section 273 CrPC and Section 317 CrPC permitted trial to be held in absence of accused. Section 205 CrPC specifically enabled the Magistrate to dispense with the personal appearance. Having regard to the nature of offence under Section 138, this Court held that the Magistrates ought to consider exercise of the jurisdiction under Section 205 CrPC to relieve the accused of the hardship without prejudice to the prosecution proceedings. It was observed: (SCC p. 407, para 15)

“15. These are days when prosecutions for the offence under Section 138 are galloping up in criminal courts. Due to the increase of inter-State transactions through the facilities of the banks it is not uncommon that when prosecutions are instituted in one State the accused might belong to a different State, sometimes a far distant State. Not very rarely, such accused would be ladies also. For prosecution under Section 138 of the NI Act, the trial should be that of a summons case. When a Magistrate

21 *Indian Bank Assn. v. Union of India*, (2014) 5 SCC 590 : (2014) 3 SCC (Civ) 233 : (2014) 2 SCC (Cri) 652

27 *TGN Kumar v. State of Kerala*, (2011) 2 SCC 772 : (2011) 1 SCC (Civ) 560 : (2011) 1 SCC (Cri) 893

28 (2001) 7 SCC 401 : 2001 SCC (Cri) 1254

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a feels that insistence of personal attendance of the accused in a summons case, in a particular situation, would inflict enormous hardship and cost to a particular accused, it is open to the Magistrate to consider how he can relieve such an accused of the great hardships, without causing prejudice to the prosecution proceedings.”

b 16. It is, thus, clear that the trials under Chapter XVII of the Act are expected normally to be summary trial. Once the complaint is filed which is accompanied by the dishonoured cheque and the bank's slip and the affidavit, the court ought to issue summons. The service of summons can be by post/e-mail/courier and ought to be properly monitored. The summons ought to indicate that the accused could make specified payment by deposit in a particular account before the specified date and inform the court and the complainant by e-mail. In such a situation, he may not be required to appear if the court is satisfied that the payment has not been duly made and c if the complainant has no valid objection. If the accused is required to appear, his statement ought to be recorded forthwith and the case fixed for defence evidence, unless the complainant's witnesses are recalled for examination.

d 17. Having regard to magnitude of challenge posed by cases filed under Section 138 of the Act, which constitute about 20% of the total number of cases filed in the courts (as per 213th Report of the Law Commission) and earlier directions of this Court in this regard, it appears to be necessary that the situation is reviewed by the High Courts and updated directions are issued. Interactions, action plans and monitoring are continuing steps mandated by Articles 39-A and 21 of the Constitution to achieve the goal of access to justice²⁹. Use of modern technology needs to be considered not only for paperless courts but also to reduce overcrowding of courts. e There appears to be need to consider categories of cases which can be partly or entirely concluded “online” without physical presence of the parties by simplifying procedures where seriously disputed questions are not required to be adjudicated. Traffic challans may perhaps be one such category. At least some number of Section 138 cases can be decided online. If complaint with f affidavits and documents can be filed online, process issued online and the accused pays the specified amount online, it may obviate the need for personal appearance of the complainant or the accused. Only if the accused contests, need for appearance of parties may arise which may be through counsel and wherever viable, videoconferencing can be used. Personal appearances can be dispensed with on suitable self-operating conditions. This is a matter to be considered by the High Courts and wherever viable, appropriate directions can g be issued.

18. From the above discussion the following aspects emerge:

h 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

²⁹ *Hussain v. Union of India*, (2017) 5 SCC 702 : (2017) 2 SCC (Cri) 638

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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.

19. In view of the above, we hold that where the cheque amount with interest and cost as assessed by the court is paid by a specified date, the court is entitled to close the proceedings in exercise of its powers under Section 143 of the Act read with Section 258 CrPC. As already observed, normal rule for trial of cases under Chapter XVII of the Act is to follow the summary procedure and summons trial procedure can be followed where sentence exceeding one year may be necessary taking into account the fact that compensation under Section 357(3) CrPC with sentence of less than one year will not be adequate, having regard to the amount of cheque, conduct of the accused and other circumstances.

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- 20.** In every complaint under Section 138 of the Act, it may be desirable that the complainant gives his bank account number and if possible e-mail ID of the accused. If e-mail ID is available with the bank where the accused has an account, such bank, on being required, should furnish such e-mail ID to the payee of the cheque. In every summons issued to the accused, it may be indicated that if the accused deposits the specified amount, which should be assessed by the court having regard to the cheque amount and interest/cost, by a specified date, the accused need not appear unless required and proceedings may be closed subject to any valid objection of the complainant. If the accused complies with such summons and informs the court and the complainant by e-mail, the court can ascertain the objection, if any, of the complainant and close the proceedings unless it becomes necessary to proceed with the case. In such a situation, the accused's presence can be required, unless the presence is otherwise exempted subject to such conditions as may be considered appropriate. The accused, who wants to contest the case, must be required to disclose specific defence for such contest. It is open to the court to ask specific questions to the accused at that stage. In case the trial is to proceed, it will be open to the court to explore the possibility of settlement. It will also be open to the court to consider the provisions of plea bargaining. Subject to this, the trial can be on day-to-day basis and endeavour must be to conclude it within six months. The guilty must be punished at the earliest as per law and the one who obeys the law need not be held up in proceedings for long unnecessarily.

- 21.** It will be open to the High Courts to consider and lay down category of cases where proceedings or part thereof can be conducted online by designated courts or otherwise. The High Courts may also consider issuing any further updated directions for dealing with Section 138 cases in the light of judgments of this Court. The appeals are disposed of. It will be open to the appellants to move the trial court afresh for any further order in the light of this judgment.

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(BEFORE ASHOK BHUSHAN AND K.M. JOSEPH, JJ.)

BASALINGAPPA

.. Appellant;

a

Versus

MUDIBASAPPA

.. Respondent.

Criminal Appeal No. 636 of 2019[†], decided on April 9, 2019

A. Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — Ss. 118, 138 and 139 — Drawing of presumption under, and how said presumption can be rebutted — Standard of proof — While prosecution must establish its case beyond reasonable doubt, accused to prove a defence must only meet standard of preponderance of probabilities — Principles summarised

b

— Evidence Act, 1872 — Ss. 4 and 114 — Words and Phrases — “Presume”, “presumption”, “may presume”, “shall presume”, “proof”, “proved”, “disproved” and “conclusive proof”

c

Held :

The meaning of the expressions “may presume” and “shall presume” have been explained in Section 4 of the Evidence Act, 1872, from a perusal whereof it would be evident that whenever it is directed that the court shall presume a fact it shall regard such fact as proved unless disproved. In terms of the said provision, thus, the expression “shall presume” cannot be held to be synonymous with “conclusive proof”. (Para 14)

d

M.S. Narayana Menon v. State of Kerala, (2006) 6 SCC 39 : (2006) 3 SCC (Cri) 30, *relied on*
Union of India v. Pramod Gupta, (2005) 12 SCC 1, *cited*

Applying the said definitions of “proved” or “disproved” to the principle behind Section 118(a) of the Act, the court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon. (Para 15)

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M.S. Narayana Menon v. State of Kerala, (2006) 6 SCC 39 : (2006) 3 SCC (Cri) 30, *relied on*

Whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is “preponderance of probabilities”. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which accused relies. (Paras 16 to 18)

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M.S. Narayana Menon v. State of Kerala, (2006) 6 SCC 39 : (2006) 3 SCC (Cri) 30; *Krishna Janardhan Bhat v. Dattatraya G. Hegde*, (2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166, *relied on*

[†] Arising out of SLP (Crl.) No. 8641 of 2018. Arising from the Judgment and Order in *Mudibasappa v. Basalingappa*, 2018 SCC OnLine Kar 3625 (Karnataka High Court, Kalaburagi Bench, Criminal Appeal No. 200042 of 2015, dt. 4-7-2018)

h

- a** Applying the definition of the word “proved” in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists. (Para 19)
Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513 : (2009) 1 SCC (Civ) 629 : (2009) 1 SCC (Cri) 823, *relied on*
- b** The use of the phrase “until the contrary is proved” in Section 118 of the Act and use of the words “unless the contrary is proved” in Section 139 of the Act read with definitions of “may presume” and “shall presume” as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over. (Para 19)
Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513 : (2009) 1 SCC (Civ) 629 : (2009) 1 SCC (Cri) 823, *relied on*
- c** The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. (Para 19)
Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513 : (2009) 1 SCC (Civ) 629 : (2009) 1 SCC (Cri) 823, *relied on*
- d** Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability. (Para 25.1)
- e** The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities. (Para 25.2)
- f**
- g**
- h**

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To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely. (Para 25.3)

a

It is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposes an evidentiary burden and not a persuasive burden. (Para 25.4)

It is not necessary for the accused to come in the witness box to support his defence. (Para 25.5)

b

Kali Ram v. State of H.P., (1973) 2 SCC 808 : 1973 SCC (Cri) 1048, *followed*

Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal, (1999) 3 SCC 35; *Rangappa v. Sri Mohan*, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184, *relied on*

Mohan v. Rangappa, 2005 SCC OnLine Kar 783; *Shankargouda v. Kishan Rao*, 2016 SCC OnLine Kar 8467, *cited*

c

B. Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — Ss. 139 and 138 — Rebuttal of presumption under S. 139 — If made out — Accused disputing financial capacity of complainant to pay amount and leading evidence to prove it — Held, accused led probable defence — Under such conditions, burden would be on complainant to establish his financial capacity, which he was unable to do — Hence, acquittal restored

d

— Alleged financial transaction of Rs 6,00,000 between respondent-complainant and appellant-accused — To repay money borrowed from respondent-complainant, appellant-accused issued a cheque — It was dishonoured for insufficient funds and notice under S. 138 was issued — As repayment was not made, complaint under S. 138 NI Act was filed — Trial court acquitted appellant-accused — However, High Court convicted him in appeal preferred by respondent-complainant

e

— Held, presumption under S. 139 of the Act shall be raised — In cross-examination of respondent-complainant (PW 1), it was suggested that transaction amount was Rs 25,000 and he replied that he did not remember — He admitted that he retired from service in 1997 and encashed Rs 8 lakhs monetary benefits — It was on record that he paid Rs 4,50,000 towards sale consideration to one BG in 2010 — Ext. D-2 showed that respondent-complainant filed civil suit for recovery of Rs 50,000 — He admitted to having made payment of Rs 18 lakhs — Reply given in cross-examination was not satisfactory about his financial capacity and other facts — Evidence also indicated that there was suit for recovery of Rs 7 lakhs given to the said BG in December 2009 — During period from 2009 to 2011, total sum of Rs 18 lakhs was given by respondent-complainant to different persons — It put heavy burden on his financial capacity

f

g

— Further, date on which sum of Rs 6 lakhs was paid to appellant-accused was not mentioned in complaint or in examination-in-chief — In cross-examination it was stated that sum was paid in November 2011 — Cheque date being 27-2-2012, it is not compatible with case of

h

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- a** respondent-complainant — There are contradictions in evidence of respondent-complainant and they have not been satisfactorily explained — High Court was unduly influenced by failure to reply to demand notice — When respondent-complainant had given about Rs 18 lakhs in two years to several persons, it was incumbent upon him to establish how he could afford to give another Rs 6 lakhs to appellant-accused in the same period, as alleged — Court cannot insist on person to lead negative evidence — Trial court finding was not perverse — Interference by High Court was not justified — Acquittal restored (Paras 26 to 32)

Mudibasappa v. Basalingappa, 2018 SCC OnLine Kar 3625, *reversed*

Kishan Rao v. Shankargouda, (2018) 8 SCC 165 : (2018) 4 SCC (Civ) 37 : (2018) 3 SCC (Cri) 544, *distinguished*

- c** **C. Criminal Procedure Code, 1973 — Ss. 386 and 378 — Powers of appellate court — Interference with perverse judgement — “Perverse” meaning of**

— Held, word “perverse” in terms as understood in law has been defined to mean “against the weight of evidence” — Words and Phrases — “Perverse” (Para 31)

Gamini Bala Koteswara Rao v. State of A.P., (2009) 10 SCC 636 : (2010) 1 SCC (Cri) 372, *applied*

- d** Appeal allowed G-D/62126/CR

Advocates who appeared in this case :

S.N. Bhat, Priyank Jain, D.P. Chaturvedi and Tarun Thakur, Advocates, for the Appellant;
N.R. Sharma and Naresh Kumar, Advocates, for the Respondent.

Chronological list of cases cited

on page(s)

- e** 1. (2018) 8 SCC 165 : (2018) 4 SCC (Civ) 37 : (2018) 3 SCC (Cri) 544, *Kishan Rao v. Shankargouda* 423f, 431c, 432e-f
2. 2018 SCC OnLine Kar 3625, *Mudibasappa v. Basalingappa (reversed)* 422a, 434a, 434a-b
3. 2016 SCC OnLine Kar 8467, *Shankargouda v. Kishan Rao* 431e-f
- f** 4. (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184, *Rangappa v. Sri Mohan* 429f, 430b, 430b-c, 430e, 430e-f, 431f
5. (2009) 10 SCC 636 : (2010) 1 SCC (Cri) 372, *Gamini Bala Koteswara Rao v. State of A.P.* 435b
6. (2009) 2 SCC 513 : (2009) 1 SCC (Civ) 629 : (2009) 1 SCC (Cri) 823, *Kumar Exports v. Sharma Carpets* 428f-g
- g** 7. (2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166, *Krishna Janardhan Bhat v. Dattatraya G. Hegde* 428b-c, 428d-e, 430c-d, 432a
8. (2006) 6 SCC 39 : (2006) 3 SCC (Cri) 30, *M.S. Narayana Menon v. State of Kerala* 427b, 427f, 428a
9. (2005) 12 SCC 1, *Union of India v. Pramod Gupta* 427c-d
10. 2005 SCC OnLine Kar 783, *Mohan v. Rangappa* 429f-g, 430a
11. (1999) 3 SCC 35, *Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal* 426c-d
- h** 12. (1973) 2 SCC 808 : 1973 SCC (Cri) 1048, *Kali Ram v. State of H.P.* 425g-h

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.— This is an appeal by the accused challenging the judgment of the High Court of Karnataka dated 4-7-2018¹ by which judgment the criminal appeal filed by the complainant against the acquittal of the accused has been allowed and the accused has been convicted under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to fine of Rs 8,00,000, in default of which to undergo simple imprisonment for three months.

2. The brief facts of the case for deciding the appeal are:

2.1. The complainant gave a notice dated 12-3-2012 to the accused-appellant stating dishonour of cheque dated 27-2-2012 for an amount of Rs 6,00,000 for want of sufficient funds. Thereafter, on non-payment of the amount, a complaint dated 25-4-2012 was filed by the complainant under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “the 1881 Act”).

2.2. Allegation in the complaint was that the accused requested the complainant to lend a hand loan to meet out urgent and family necessary for a sum of Rs 6,00,000. Complainant lent a hand loan of Rs 6,00,000 dated 27-2-2012 in favour of the accused. A cheque dated 27-2-2012 for Rs 6,00,000 was given by the accused, but the same was returned by the bank with the endorsement “Funds Insufficient” on 1-3-2012.

2.3. After notice dated 12-3-2012, which was served on the accused on 13-3-2012, a complaint was filed. PW 1 filed his examination-in-chief and was also cross-examined on behalf of the accused. The complainant in support of the complaint filed original cheque dated 27-2-2012, original cheque return memo dated 1-3-2012, office copy of the notice dated 12-3-2012, postal receipt dated 12-3-2012, acknowledgment letter issued by the Department of Post dated 16-4-2012 and letter to Head Post Office dated 11-4-2012. The accused in support of his defence filed Ext. D-1, certified copy of plaint in OS No. 148 of 2011, Ext. D-2, certified copy of the private Complaint No. 119/2012 in CC No. 2298 of 2012 and in Ext. D-3, certified copy of registered sale agreement.

2.4. The trial court framed the following two questions:

1. Whether the complainant proves beyond all reasonable doubts that, the accused had issued a cheque bearing No. 839374 dated 27-2-2012 for Rs 6,00,000 of Pragathi Gramin Bank, Nijalingappa Colony Branch, Raichur in favour of the complainant, towards discharge of legally enforceable debt or liability and the same was dishonoured for ‘Funds Insufficient’ and even after deemed legal notice the accused has not paid the debt covered under the abovesaid cheque and thereby committed an offence punishable Under Section 138 of the Negotiable Instruments Act?

2. What order?

2.5. The trial court after considering the evidence and material on record held that if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can

¹ *Mudibasappa v. Basalingappa*, 2018 SCC OnLine Kar 3625

a fail. By judgment dated 20-2-2015, the accused was acquitted for the offence under Section 138. Complainant aggrieved by the said judgment filed a criminal appeal under Section 378(4) of the Code of Criminal Procedure, 1973. The High Court set aside the judgment of the trial court and convicted the accused for the offence under Section 138. Accused aggrieved by the judgment of the High Court has come up in this appeal.

b 3. Shri S.N. Bhat, learned counsel for the appellant submits that the accused has successfully rebutted the presumption under Section 139 and has raised probable defence, which was accepted by the trial court after considering the material on record. The High Court erred in setting aside the acquittal order. The accused has questioned the financial capacity of the complainant and without there being any proof of financial capacity, the High Court erred in observing that judgment of the trial court is perverse. It is submitted that the burden of proof on the accused under Section 138 is not a heavy burden as is on the
c prosecution to prove the offence beyond reasonable doubt. It is submitted that the complainant being a retired employee of Karnataka State Road Transport Corporation, who having retired in 1977 and encashed his retirement benefits of Rs 8,00,000, there was no financial capacity. It is submitted that the complainant has filed cases under Section 138 against other persons also. The complainant had also made a payment of Rs 4,50,000 for the agreement of
d sale. The complainant was also a witness of a sale agreement executed by accused, where he received an amount of Rs 15 lakhs as consideration. There was sufficient material on record to discharge the burden and the High Court erred in setting aside the acquittal order.

e 4. The learned counsel for the complainant refuting the submissions of the learned counsel for the appellant contends that signature on the cheque having been admitted by the accused, a presumption has rightly been raised that cheque was given in discharge of a debt or liability. The accused has not been able to prove any probable defence and the High Court has rightly convicted the accused. No case was taken by the accused that the complainant has no other source of income. The learned counsel for the complainant has relied on judgment of this Court in *Kishan Rao v. Shankargouda*².

f 5. We have considered the submissions of the counsel for the parties and have perused the records.

g 6. To recapitulate facts again, the cheque dated 27-2-2012 was presented for encashment by the complainant, which was returned on 1-3-2012. Signature on the cheque is not denied by the accused, due to which presumption shall be raised that the cheque was issued in discharge of any debt or liability. The
h complainant gave his evidence to prove his case. In the examination-in-chief, he stated that a loan of Rs 6,00,000 was a hand loan and in discharge of the same, the accused had given a cheque dated 27-2-2012. Neither in the complaint nor in examination-in-chief, has the complainant stated the date of giving the loan to the accused, however, in his cross-examination, he stated that in the month of November 2011, the accused availed a loan of Rs 6,00,000. In cross-

² (2018) 8 SCC 165 : (2018) 4 SCC (Civ) 37 : (2018) 3 SCC (Cri) 544

examination, he further stated that except the accused, he has not lent loan to any other person. He denied having filed a suit for recovery of money against one Balana Gouda. However, he admitted that the suit was filed on the basis of promissory note with interest at the rate of 18% per month. He further admitted that he has filed a criminal case under Section 138 of Negotiable Instruments Act, 1881 against one Siddesh bearing CC No. 2298 of 2012. When a suggestion was given that the complainant had lent Rs 25,000 to the accused, he said that he does not remember the accused has borrowed Rs 25,000 from him. In his cross-examination, he has admitted that he has signed as a witness to the agreement to transfer the lease hold rights of the accused in favour of one M/s Sri Lakshmi Narasimha Industries. Further on question, whether the accused received Rs 15 lakhs from the said transaction, he showed his ignorance. Suggestion was also put that a blank cheque was issued at the time of availing loan of Rs 25,000. Suggestion was also put in his cross-examination that he was not having Rs 6,00,000 on hand on the date of loan.

7. Now, we look into the facts alleged by the defence. In the cross-examination, although the complainant denied that he has filed any case under Section 138 against any person but Ext. D-2 is the certified copy of the complaint filed by the complainant against Shri Siddesh under Section 138 of Act, 1881 for punishing the accused. Further the date of cheque, which was alleged to be issued by Shri Siddesh was also 27-2-2012. Ext. D-3 was an agreement of sale dated 7-1-2010, by which the complainant paid Rs 4,50,000 to Balana Gouda towards sale consideration. In the document transferring the leasehold rights by the accused to one M/s Sri Lakshmi Narasimha Industries, the complainant was a witness, who admitted his signature on the deed. In his cross-examination, the accused's case was that by virtue of such transfer of leasehold rights, he had received Rs 15 lakhs.

8. The trial court after marshalling the evidence made the following observations in para 17:

“17. In the instant case the cheque amount involved is Rs 6,00,000 and the complainant is a retired bus conductor and he had retired from service in the year 1997 and has received the entire retirement monetary benefits of Rs 8,00,000 and the same was deposited in the account of the complainant and it was encashed by the complainant. It is observed that the complainant is silent as to his source of income at present. He has nowhere specified as to where is he working and his earning, to show his position to lend the amount as specified in the cheque. There is no single document to show his earning nor has the complainant executed any document for having lent such heavy amount of Rs 6,00,000 to the accused.

Further, it is the suggestion of the accused to PW 1 that, the accused by transferring his interest to lease hold to one M/s Sri Lakshmi Narasimha Industries has received a sum of Rs 15,00,000 and it is also admitted by PW 1 that he was the witness to the said transaction. From the above, it raises doubt on the very cheque Ext. P-1 held by the complainant and the non-production of any document by the complainant to show his earning,

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a and the complainant has not executed any document before lending such huge amount to the accused. Such circumstance raises serious doubt on the transaction as claimed by the complainant. The Hon'ble High Court of Karnataka has clearly established that, the accused need not enter the witness box and rebut the presumptions.

b I am of the opinion that the whole transaction is at a doubt and the circumstance does not give rise to the lending of loan amount of Rs 6,00,000 as claimed by the complainant. Accordingly, Point 1 in the negative."

9. We having noticed the facts of the case and the evidence on the record, we need to note the legal principles regarding nature of presumptions to be drawn under Section 139 of the Act and the manner in which it can be rebutted by an accused. We need to look into the relevant judgments of this Court, where these aspects have been considered and elaborated.

c 10. Chapter XIII of the 1881 Act contains a heading "Special Rules of Evidence". Section 118 provides for presumptions as to negotiable instruments. Section 118 is as follows:

"118. *Presumptions as to negotiable instruments.*—Until the contrary is proved, the following presumptions shall be made:

d (a) **of consideration:** that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) **as to date:** that every negotiable instrument bearing a date was made or drawn on such date;"

e 11. Next provision, which needs to be noticed is Section 139, which provides for presumption in favour of holder. Section 139 lays down:

f "139. *Presumption in favour of holder.*—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability."

g 12. The complainant being holder of cheque and the signature on the cheque having not been denied by the accused, presumption shall be drawn that cheque was issued for the discharge of any debt or other liability. The presumption under Section 139 is a rebuttable presumption. Before we refer to judgments of this Court considering Sections 118 and 139, it is relevant to notice the general principles pertaining to burden of proof on an accused especially in a case where some statutory presumption regarding guilt of the accused has to be drawn. A three-Judge Bench of this Court in *Kali Ram v. State of H.P.*³ laid down following: (SCC p. 819, para 23)

h "23. ... One of the cardinal principles which has always to be kept in view in our system of administration of justice for criminal cases is that

3 (1973) 2 SCC 808 : 1973 SCC (Cri) 1048

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a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused. There are certain cases in which statutory presumptions arise regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to prove the existence of facts which have to be present before the presumption can be drawn. Once those facts are shown by the prosecution to exist, the court can raise the statutory presumption and it would, in such an event, be for the accused to rebut the presumption. The onus even in such cases upon the accused is not as heavy as is normally upon the prosecution to prove the guilt of the accused. If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal.”

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13. This Court in *Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal*⁴ had occasion to consider Section 118(a) of the Act. This Court held that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable and defendant can prove the non-existence of a consideration by raising a probable defence. In para 12, the following has been laid down: (SCC pp. 50-51)

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“12. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon his failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and

4 (1999) 3 SCC 35

a even if led, is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist.”

b 14. S.B. Sinha, J. in *M.S. Narayana Menon v. State of Kerala*⁵ had considered Sections 118(a), 138 and 139 of the Act, 1881. It was held that presumptions both under Sections 118(a) and 139 are rebuttable in nature. Explaining the expressions “may presume” and “shall presume” referring to an earlier judgment, the following was held in para 28: (SCC p. 49)

c “28. What would be the effect of the expressions “may presume”, “shall presume” and “conclusive proof” has been considered by this Court in *Union of India v. Pramod Gupta*⁶, in the following terms: (SCC pp. 30-31, para 52)

d ‘52. ... It is true that the legislature used two different phraseologies “shall be presumed” and “may be presumed” in Section 42 of the Punjab Land Revenue Act and furthermore although provided for the mode and manner of rebuttal of such presumption as regards the right to mines and minerals said to be vested in the Government vis-à-vis the absence thereof in relation to the lands presumed to be retained by the landowners but the same would not mean that the words “shall presume” would be conclusive. The meaning of the expressions “may presume” and “shall presume” have been explained in Section 4 of the Evidence Act, 1872, from a perusal whereof it would be evident that whenever it is directed that the court shall presume a fact it shall regard such fact as proved unless disproved. In terms of the said provision, thus, the expression “shall presume” cannot be held to be synonymous with “conclusive proof”.’ ”

f 15. It was noted in *M.S. Narayana Menon case*⁵, that the expression “shall presume” cannot be held to be synonymous with conclusive proof. Referring to definition of words “proved” and “disproved” under Section 3 of the Evidence Act, 1872 the following was laid down in para 30: (SCC p. 50)

g “30. Applying the said definitions of “proved” or “disproved” to the principle behind Section 118(a) of the Act, the court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not

h 5 (2006) 6 SCC 39 : (2006) 3 SCC (Cri) 30
6 (2005) 12 SCC 1

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exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon.”

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16. This Court in *M.S. Narayana Menon case*⁵ held that what is needed is to raise a probable defence, for which it is not necessary for the accused to disprove the existence of consideration by way of direct evidence and even the evidence adduced on behalf of the complainant can be relied upon. Dealing with standard of proof, the following was observed in para 32: (SCC p. 51)

“32. The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which he relies.”

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17. In *Krishna Janardhan Bhat v. Dattatraya G. Hegde*⁷, this Court held that an accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. The following was laid down in para 32: (SCC p. 62)

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“32. An accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. An accused has a constitutional right to maintain silence. Standard of proof on the part of an accused and that of the prosecution in a criminal case is different.”

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18. This Court in *Krishna Janardhan Bhat case*⁷ again reiterated that whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is “preponderance of probabilities”. In para 34, the following was laid down: (SCC p. 63)

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“34. Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is “preponderance of probabilities”. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which he relies.”

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19. In *Kumar Exports v. Sharma Carpets*⁸, this Court again examined as to when the complainant discharges the burden to prove that the instrument was executed and when the burden shall be shifted. In paras 18 to 20, the following has been laid down: (SCC p. 520)

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“18. Applying the definition of the word “proved” in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn

5 *M.S. Narayana Menon v. State of Kerala*, (2006) 6 SCC 39 : (2006) 3 SCC (Cri) 30

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7 (2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166

8 (2009) 2 SCC 513 : (2009) 1 SCC (Civ) 629 : (2009) 1 SCC (Cri) 823

a for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.

b 19. The use of the phrase “until the contrary is proved” in Section 118 of the Act and use of the words “unless the contrary is proved” in Section 139 of the Act read with definitions of “may presume” and “shall presume” as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over.

c 20. ... The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist.”

d 20. A three-Judge Bench of this Court in *Rangappa v. Sri Mohan*⁹ had occasion to elaborately consider the provisions of Sections 138 and 139. In the above case, the trial court had acquitted the accused in a case relating to dishonour of cheque under Section 138. The High Court had reversed¹⁰ the judgment of the trial court convicting the accused. In the above case, the accused had admitted signatures on the cheque. This Court held that where the fact of signature on the cheque is acknowledged, a presumption has to be raised that the cheque pertained to a legally enforceable debt or liability, however, this presumption is of a rebuttal nature and the onus is then on the accused to raise a *probable defence*. In para 13, the following has been laid down: (SCC p. 446)

h ⁹ (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184
¹⁰ *Mohan v. Rangappa*, 2005 SCC OnLine Kar 783

“13. The High Court in its order¹⁰ noted that in the course of the trial proceedings, the accused had admitted that the signature on the impugned cheque (No. 0886322 dated 8-2-2001) was indeed his own. Once this fact has been acknowledged, Section 139 of the Act mandates a presumption that the cheque pertained to a legally enforceable debt or liability. This presumption is of a rebuttal nature and the onus is then on the accused to raise a probable defence. With regard to the present facts, the High Court found that the defence raised by the accused was not probable.”

21. After referring to various other judgments of this Court, this Court in *Rangappa case*⁹ held that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability, which, of course, is in the nature of a rebuttable presumption. In para 26, the following was laid down: (*Rangappa case*⁹, SCC p. 453)

“26. In light of these extracts, we are in agreement with the respondent-claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in *Krishna Janardhan Bhat*⁷ may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.”

22. Elaborating further, this Court in *Rangappa case*⁹ held that Section 139 of the Act is an example of a reverse onus and the test of proportionality should guide the construction and interpretation of reverse onus clauses on the defendant-accused and the defendant-accused cannot be expected to discharge an unduly high standard of proof. In paras 27 and 28, the following was laid down: (*Rangappa case*⁹, SCC pp. 453-54)

“27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse

¹⁰ *Mohan v. Rangappa*, 2005 SCC OnLine Kar 783

⁹ *Rangappa v. Sri Mohan*, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184

⁷ *Krishna Janardhan Bhat v. Dattatraya G. Hegde*, (2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166

onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard of proof.

- a 28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of “preponderance of probabilities”. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.”
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- c 23. We may now notice the judgment relied on by the learned counsel for the complainant i.e. judgment of this Court in *Kishan Rao v. Shankargouda*². This Court in the above case has examined Section 139 of the Act. In the above case, the only defence which was taken by the accused was that cheque was stolen by the appellant. The said defence was rejected by the trial court. In paras 21 to 23, the following was laid down: (SCC pp. 173-74)

- d “21. In the present case, the trial court as well as the appellate court having found that cheque contained the signatures of the accused and it was given to the appellant to present in the Bank, the presumption under Section 139 was rightly raised which was not rebutted by the accused. The accused had not led any evidence to rebut the aforesaid presumption. The accused even did not come in the witness box to support his case. In the reply to the notice which was given by the appellant, the accused took the defence that the cheque was stolen by the appellant. The said defence was rejected by the trial court after considering the evidence on record with regard to which no contrary view has also been expressed¹¹ by the High Court.
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- f 22. Another judgment which needs to be looked into is *Rangappa v. Sri Mohan*⁹. A three-Judge Bench of this Court had occasion to examine the presumption under Section 139 of the 1881 Act. This Court in the aforesaid case has held that in the event the accused is able to raise a probable defence which creates doubt with regard to the existence of a debt or liability, the presumption may fail. The following was laid down in paras 26 and 27: (SCC pp. 453-54)

- g ‘26. In light of these extracts, we are in agreement with the respondent-claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in *Krishna*

h ² (2018) 8 SCC 165 : (2018) 4 SCC (Civ) 37 : (2018) 3 SCC (Cri) 544

¹¹ *Shankargouda v. Kishan Rao*, 2016 SCC OnLine Kar 8467

⁹ (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184

*Janardhan Bhat*⁷ may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.

27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard of proof.

23. No evidence was led by the accused. The defence taken in the reply to the notice that cheque was stolen having been rejected by the two courts below, we do not see any basis for the High Court coming to the conclusion that the accused has been successful in creating doubt in the mind of the Court with regard to the existence of the debt or liability. How the presumption under Section 139 can be rebutted on the evidence of PW 1, himself has not been explained by the High Court.”

24. The above *Kishan Rao case*² was a case where this Court did not find the defence raised by the accused probable. The only defence raised was that cheque was stolen having been rejected by the trial court and no contrary opinion having been expressed by the High Court, this Court reversed the judgment of the High Court restoring the conviction. The respondent cannot take any benefit of the said judgment, which was on its own facts.

25. We having noticed the ratio laid down by this Court in the above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:

25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

⁷ *Krishna Janardhan Bhat v. Dattatraya G. Hegde*, (2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166

² *Kishan Rao v. Shankargouda*, (2018) 8 SCC 165 : (2018) 4 SCC (Civ) 37 : (2018) 3 SCC (Cri) 544

- 25.2.** The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.
- 25.3.** To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.
- 25.4.** That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.
- 25.5.** It is not necessary for the accused to come in the witness box to support his defence.
- 26.** Applying the preposition of law as noted above, in facts of the present case, it is clear that signature on the cheque having been admitted, a presumption shall be raised under Section 139 that the cheque was issued in discharge of debt or liability. The question to be looked into is as to whether any probable defence was raised by the accused. In cross-examination of PW 1, when the specific question was put that cheque was issued in relation to loan of Rs 25,000 taken by the accused, PW 1 said that he does not remember. PW 1 in his evidence admitted that he retired in 1997 on which date he received monetary benefit of Rs 8 lakhs, which was encashed by the complainant. It was also brought in the evidence that in the year 2010, the complainant entered into a sale agreement for which he paid an amount of Rs 4,50,000 to Balana Gouda towards sale consideration. Payment of Rs 4,50,000 being admitted in the year 2010 and further payment of loan of Rs 50,000 with regard to which Complaint No. 119 of 2012 was filed by the complainant, copy of which complaint was also filed as Ext. D-2, there was burden on the complainant to prove his financial capacity. In the year 2010-2011, as per own case of the complainant, he made payment of Rs 18 lakhs. During his cross-examination, when financial capacity to pay Rs 6 lakhs to the accused was questioned, there was no satisfactory reply given by the complainant. The evidence on record, thus, is a probable defence on behalf of the accused, which shifted the burden on the complainant to prove his financial capacity and other facts.
- 27.** There was another evidence on the record i.e. copy of plaint in OS No. 148 of 2011 filed by the complainant for recovery of loan of Rs 7 lakhs given to one Balana Gouda in December 2009. Thus, there was evidence on record to indicate that in December 2009, he gave Rs 7 lakhs in sale agreement, in 2010, he made payment of Rs 4,50,000 towards sale consideration and further he gave a loan of Rs 50,000 for which complaint was filed in 2012 and further loan of Rs 6 lakhs in November 2011. Thus, during the period from 2009 to November 2011, amount of Rs 18 lakhs was given by the complainant to different persons including the accused, which put a heavy burden to prove the financial capacity when it was questioned on behalf of the accused, the accused being a retired employee of State Transport Corporation, who retired in

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1997 and total retirement benefits, which were encashed were Rs 8 lakhs only. The High Court observed that though the complainant is retired employee, the accused did not even suggest that pension is the only means of survival of the complainant. Following observations were made in para 17 of the judgment¹ of the High Court: (*Mudibasappa case*¹, SCC OnLine Kar)

“17. Though the complainant is retired employee, the accused did not even suggest that pension is the only means for survival of the complainant. Under these circumstances, the trial court’s finding that the complainant failed to discharge his initial burden of proof of lending capacity is perverse.”

28. There is one more aspect of the matter which also needs to be noticed. In the complaint filed by the complainant as well as in examination-in-chief the complainant has not mentioned as to on which date, the loan of Rs 6 lakhs was given to the accused. It was during cross-examination, he gave the date as November 2011. Under Section 118(b), a presumption shall be made as to date that every negotiable instrument was made or drawn on such date. Admittedly, the cheque is dated 27-2-2012, there is not even a suggestion by the complainant that a post-dated cheque was given to him in November 2011 bearing the date 27-2-2012. Giving of a cheque on 27-2-2012, which was deposited on 1-3-2012 is not compatible with the case of the complainant when we read the complaint submitted by the complainant especially para 1 of the complaint, which is extracted as below:

“1. The accused is a very good friend of the complainant. The accused requested the complainant a hand loan to meet out urgent and family necessary a sum of Rs 6,00,000 (Rupees Six lakhs) and on account of long standing friendship and knowing the difficulties, which is being faced by the accused the complainant agreed to lent hand loan to meet out the financial difficulties of the accused and accordingly the complainant lent hand loan Rs 6,00,000 (Rupees Six lakhs) dated 27-2-2012 in favour of the complainant stating that on its presentation it will be honoured. But to the surprise of the complainant on presentation of the same for collection through his bank the cheque was returned by the bank with an endorsement “Funds Insufficient” on 1-3-2012.”

29. Thus, there is a contradiction in what was initially stated by the complainant in the complaint and in his examination-in-chief regarding date on which loan was given on one side and what was said in cross-examination in other side, which has not been satisfactorily explained. The High Court was unduly influenced by the fact that the accused did not reply to the notice denying the execution of cheque or legal liability. Even before the trial court, appellant-accused has not denied his signature on the cheque.

30. We are of the view that when evidence was led before the court to indicate that apart from loan of Rs 6 lakhs given to the accused, within 2 years, amount of Rs 18 lakhs have been given out by the complainant and his

¹ *Mudibasappa v. Basalingappa*, 2018 SCC OnLine Kar 3625

a financial capacity being questioned, it was incumbent on the complainant to have explained his financial capacity. Court cannot insist on a person to lead negative evidence. The observation of the High Court that trial court's finding that the complainant failed to prove his financial capacity of lending money is perverse, cannot be supported. We fail to see that how the trial court's findings can be termed as perverse by the High Court when it was based on consideration of the evidence, which was led on behalf of the defence.

b **31.** This Court had occasion to consider the expression "perverse" in *Gamini Bala Koteswara Rao v. State of A.P.*¹², this Court held that although High Court can reappraise the evidence and conclusions drawn by the trial court but judgment of acquittal can be interfered with only (*sic* when the) judgment is against the weight of evidence. In para 14 following has been held: (SCC p. 639)

c "14. We have considered the arguments advanced and heard the matter at great length. It is true, as contended by Mr Rao, that interference in an appeal against an acquittal recorded by the trial court should be rare and in exceptional circumstances. It is, however, well settled by now that it is open to the High Court to reappraise the evidence and conclusions drawn by the trial court but only in a case when the judgment of the trial court is stated to be perverse. The word "perverse" in terms as understood in law
d has been defined to mean "against the weight of evidence". We have to see accordingly as to whether the judgment of the trial court which has been found perverse by the High Court was in fact so."

e **32.** The High Court without discarding the evidence, which was led by defence could not have held that the finding of trial court regarding financial capacity of the complainant is perverse. We are, thus, satisfied that the accused has raised a probable defence and the findings of the trial court that the complainant failed to prove his financial capacity are based on evidence led by the defence. The observations of the High Court that findings of the trial court are perverse are unsustainable. We, thus, are of the view that judgment of the High Court is unsustainable.

f **33.** In result, the appeal is allowed and the judgment of the High Court is set aside and that of the trial court is restored.

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12 (2009) 10 SCC 636 : (2010) 1 SCC (Cri) 372

BIRENDRA PRASAD SAH v. STATE OF BIHAR

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(BEFORE DR D.Y. CHANDRACHUD AND HEMANT GUPTA, JJ.)

a BIRENDRA PRASAD SAH . . . Appellant;

Versus

STATE OF BIHAR AND ANOTHER . . . Respondents.

Criminal Appeal No. 868 of 2019[†], decided on May 8, 2019

- b* **Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — Ss. 142 and 138 — Cognizance after prescribed period upon showing sufficient cause — Presumption of service of notice if dispatched in due course — Accused evading service of notice — Complainant showing adequate and sufficient reasons for not being able to institute complaint in time, enough to overcome effect of presumption of service of notice if dispatched in due course**
c **— Quashment of proceedings, held, was erroneous — Proceedings restored**

d — Appellant issued legal notice on 31-12-2015, within thirty days of receipt of memo of dishonour on 4-12-2015 — Consequently, requirement stipulated in proviso (b) to S. 138 fulfilled — Proviso (c) requires that drawer of cheque has to fail to make payment to holder in due course or payee within fifteen days of receipt of notice — R-2 did not admit that legal notice dt. 31-12-2015 was served on him — Appellant in complaint specifically narrated that despite repeated requests to Postal Department, no acknowledgment was furnished — Appellant issued second notice dt. 26-2-2016 as required in S. 138 proviso (b) within thirty days of receipt of memo of dishonour, Supreme Court presumed that first notice dt. 31-12-2015 constituted cause of action for complaint under S. 138 — Complaint was instituted on 11-5-2016
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f — Under S. 142(1), complaint has to be instituted within one month of cause of action under S. 138 proviso (c) — Which however stipulates that cognizance may be taken after prescribed period, if complainant satisfies court about sufficient cause — Both in Paras 7 and 8 of complaint, appellant complainant, held, indicated adequate and sufficient reasons for not being able to institute complaint within stipulated period and CJM, held, rightly condoned delay — High Court has merely adverted to presumption that first notice would be deemed to have been served if it was dispatched in ordinary course — Even if that presumption applies, sufficient cause was shown by appellant for condoning delay in instituting complaint taking basis of complaint as issuance of first legal notice dt. 31-12-2015 — Impugned judgment of High Court is unsustainable and set aside — Complaint restored to file of trial court — Criminal Procedure Code, 1973 — S. 482 — Evidence Act, 1872 — Ss. 16 and 114 Ill. (g) — Statute Law — General Clauses Act, 1897, S. 27 (Paras 7 to 10)
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Subodh Kumar Singh v. State of Bihar, 2018 SCC OnLine Pat 4431, *reversed*

h [†] Arising out of SLP (Crl.) No. 10811 of 2018. Arising from the Judgment and Order in *Subodh Kumar Singh v. State of Bihar*, 2018 SCC OnLine Pat 4431 (Patna High Court, Crl. Miscellaneous No. 27495 of 2017, dt. 10-5-2018)

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MSR Leathers v. S. Palaniappan, (2013) 1 SCC 177 : (2013) 1 SCC (Civ) 424 : (2013) 2 SCC (Cri) 458, referred to

Appeal allowed SB-D/62502/CVR a

Advocates who appeared in this case :

Nagendra Rai, Senior Advocate (Ms Purna Singh, Shantanu Sagar, Aakash and Ms Priya Ranjan, Advocates) for the Appellant;

Jay Savla, Senior Advocate (Keshav Mohan, Rishi K. Awasthi, Santosh Kumar-I, Arvind Gupta and Sanjeev Kr. Verma, Advocates) for the Respondents.

Chronological list of cases cited on page(s) b

1. 2018 SCC OnLine Pat 4431, *Subodh Kumar Singh v. State of Bihar* (reversed) 274c-d, 277b
2. (2013) 1 SCC 177 : (2013) 1 SCC (Civ) 424 : (2013) 2 SCC (Cri) 458, *MSR Leathers v. S. Palaniappan* 274g, 275c-d

The Judgment of the Court was delivered by

DR D.Y. CHANDRACHUD, J.— Delay condoned. Leave granted. This appeal arises from a judgment of a learned Single Judge of the High Court of Judicature at Patna dated 10-5-2018¹ by which an order taking cognizance of an offence under Section 138 of the Negotiable Instruments Act, 1881 (“the Act”) has been quashed. c

2. The facts, briefly stated, are thus: the dispute arises over two cheques drawn on State Bank of India in the amount of Rs 36,00,000 and Rs 13,00,000 which were returned unpaid under a memo issued by UCO Bank, Begusarai on 20-11-2015. The appellant received the memo on 4-12-2015. Following this, a legal notice was issued on 31-12-2015 intimating the dishonour of the cheque. According to the appellant, between 14-2-2016 and 23-2-2016, he made queries with the Postal Department but no proof of service was provided. Accordingly, on 26-2-2016, a second legal notice was issued. This was replied to by the second respondent on 2-3-2016. Eventually, a complaint under Section 138 was instituted on 11-5-2016. d e

3. The Chief Judicial Magistrate, Begusarai by an order dated 14-7-2016, condoned the delay in filing the complaint. While taking cognizance, the CJM issued summons to the second respondent. The second respondent instituted revisional proceedings before the Sessions Judge which were rejected on 8-3-2017. In a further recourse to the High Court under Section 482 CrPC, the learned Single Judge held that the complaint under Section 138 was not filed within the statutory period of thirty days prescribed under Section 138 as a result of which the proceedings were quashed. f

4. Assailing the judgment of the High Court, Mr Nagendra Rai, learned Senior Counsel submitted that in *MSR Leathers v. S. Palaniappan*² a three-Judge Bench of this Court has taken the view that the issuance of successive notices is permissible under the provisions of Section 138 having regard to the object of the legislation. Moreover, the learned Senior Counsel submitted that the delay in the institution of the complaint was condoned by g

¹ *Subodh Kumar Singh v. State of Bihar*, 2018 SCC OnLine Pat 4431

² (2013) 1 SCC 177 : (2013) 1 SCC (Civ) 424 : (2013) 2 SCC (Cri) 458 h

BIRENDRA PRASAD SAH v. STATE OF BIHAR (*Dr Chandrachud, J.*) 275

the CJM under Section 142. Hence, there was an error on the part of the High Court in quashing the proceedings.

a 5. On the other hand, Mr Jay Savla, learned Senior Counsel appearing on behalf of the second respondent submitted that:

5.1. The second legal notice dated 26-2-2016 was sent beyond a period of thirty days of the receipt of the memo of dishonour on 4-12-2015 and hence cannot be the basis of a valid institution of a criminal complaint.

b 5.2. If at all, the complaint could have only been instituted on the basis of the first legal notice dated 31-12-2015 which was within thirty days of the receipt of the memo of dishonour.

5.3. The complaint which was lodged on 11-5-2016 was beyond the stipulated period from the date of issuance of the first notice.

c 5.4. The CJM had condoned the delay which had occurred in the institution of the complaint only for the period after 6-4-2016 after the issuance of the second notice.

5.5. In the decision of the three-Judge Bench in *MSR Leathers*², there was a representation of the cheque as a result of which, a fresh notice was held to be within the ambit of the law.

6. Section 138 provides thus:

d “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 ³[a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

f Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months⁴ from the date on which it is drawn or within the period of its validity, whichever is earlier;

g (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

2 *MSR Leathers v. S. Palaniappan*, (2013) 1 SCC 177 : (2013) 1 SCC (Civ) 424 : (2013) 2 SCC (Cri) 458

3 Subs. by Act 55 of 2002, Section 7, for “a term which may be extended to one year” (w.e.f. 6-2-2003).

h 4 The period has been reduced from “six months” to “three months” vide RBI Notification No. RBI/2011-12/251, DBOD.AML BC. No. 47/14.01.001/2011-2012, dated 4-11-2011 (w.e.f. 1-4-2012).

by giving a notice in writing, to the drawer of the cheque, ⁵[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.”

7. In the present case, the facts narrated above indicate that the appellant issued a legal notice on 31-12-2015. This was within a period of thirty days of the receipt of the memo of dishonour on 4-12-2015. Consequently, the requirement stipulated in proviso (b) to Section 138 was fulfilled. Proviso (c) spells out a requirement that the drawer of the cheque has failed to make payment to the holder in due course or payee within fifteen days of the receipt of the notice. The second respondent does not as a matter of fact, admit that the legal notice dated 31-12-2015 was served on him. The appellant has in the complaint specifically narrated the circumstance that despite repeated requests to the Postal Department, no acknowledgment of the notice was furnished. It was in these circumstances that the appellant issued a second notice dated 26-2-2016. Cognizant as we are of the requirement specified in proviso (b) to Section 138, that the notice must be issued within thirty days of the receipt of the memo of dishonour, we have proceeded on the basis that it is the first notice dated 31-12-2015 which constitutes the cause of action for the complaint under Section 138.

8. The complaint was instituted on 11-5-2016. Under Section 142(1), a complaint has to be instituted within one month of the date on which the cause of action has arisen under clause (c) of the proviso to Section 138⁶. The proviso however stipulates that cognizance of the 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. Both in Paras 7 and 8 of the complaint, the appellant indicated adequate and sufficient reasons for not being able to institute the complaint within the stipulated period. These have been adverted to above. The CJM condoned the delay on the cause which was shown by the appellant for the period commencing from 6-4-2018. However, if Paras 7 and 8 of the complaint are read together, it is evident that the

⁵ Subs. by Act 55 of 2002, Section 7, for “within fifteen days” (w.e.f. 6-2-2003).

⁶ “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.”

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a appellant had indicated sufficient cause for seeking condonation of the delay in the institution of the complaint. The High Court has merely adverted to the presumption that the first notice would be deemed to have been served if it was dispatched in the ordinary course. Even if that presumption applies, we are of the view that sufficient cause was shown by the appellant for condoning the delay in instituting the complaint taking the basis of the complaint as the issuance of the first legal notice dated 31-12-2015.

b **9.** In the view which we have taken, we have come to the conclusion that the impugned judgment¹ of the High Court is unsustainable. The appeal is accordingly allowed and the order passed by the learned Single Judge is set aside. The complaint shall accordingly stand restored to the file of the trial court.

c **10.** We have not expressed any opinion on the merits of the rival contentions which will be adjudicated upon during the trial.

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¹ *Subodh Kumar Singh v. State of Bihar*, 2018 SCC OnLine Pat 4431

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3J

(BEFORE ROHINTON FALI NARIMAN, NAVIN SINHA AND K.M. JOSEPH, JJ.)

P. MOHANRAJ AND OTHERS

.. Appellants;

Versus

SHAH BROTHERS ISPAT PRIVATE LIMITED

.. Respondent.

Civil Appeals No. 10355 of 2018[†] with Criminal Appeals

Nos. 199 of 2021[‡], 200 of 2021^{††}, 201-204 of 2021^{‡‡}, 215-30 of 2021^{‡‡}, 239 of 2021^{‡‡}, 240 of 2021^{†††}, 241 of 2021^{†††}, 242 of 2021^{†††}, 243 of 2021^{†††}, 244 of 2021^{†††}, 245 of 2021^{†††}, 246 of 2021^{†††}, 247-48 of 2021^{†††}, Writ Petitions (C) Nos. 982, 1417, 1439 of 2020, 18 of 2021, Writ Petitions (Crl.) Nos. 297, 330, 339, 342 of 2020, 9 and 26 of 2021, decided on March 1, 2021

A. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 14 r/w Ss. 7 to 9 — Moratorium under S. 14 — Applicability of — Proceedings under Ss. 138/141 NI Act against corporate debtor itself, held, fall within the ambit of the expression “proceedings” in S. 14 IBC — Hence held, moratorium under S. 14 would apply in respect of Ss. 138/141 NI Act proceedings against corporate debtor itself

— Rules of construction noscitur a sociis and ejusdem generis — Inapplicability of, to curtail the meaning of the expression “proceedings” in S. 14 IBC — Object of IBC — Relevance of

— Held, gravamen of a proceeding under S. 138 NI Act, 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 — Thus,

[†] Arising from the Judgment and Order in *Shah Bros. Ispat (P) Ltd. v. P. Mohanraj*, 2018 SCC OnLine NCLAT 415 [National Company Law Appellate Tribunal, Company Appeal (AT) (Insolvency) No. 306 of 2018, dt. 31-7-2018]

[‡] Arising out of SLP (Crl.) No. 3500 of 2020

^{††} Arising out of SLP (Crl.) No. 2496 of 2020. Arising from the Judgment and Order in *Gian Chand & Sons (P) Ltd. v. Mahavir Traders*, 2019 SCC OnLine P&H 3535 (Punjab and Haryana High Court, CRM-M No. 39693 of 2018, dt. 16-10-2019)

^{‡‡} Arising out of SLPs (Crl.) Nos. 5638-51 of 2020

^{‡‡} Arising out of SLPs (Crl.) Nos. 5653-68 of 2020

^{‡‡} Arising out of SLP (Crl.) No. 1955 of 2021 (Diary No. 32585 of 2019). Arising from the Judgment and Order in *Nag Leathers v. Saroj Leathers*, 2019 SCC OnLine Mad 38924 (Madras High Court, Crl. OP No. 24025 of 2017, dt. 2-4-2019)

^{†††} Arising out of SLP (Crl.) No. 10587 of 2019

^{†††} Arising out of SLP (Crl.) No. 10857 of 2019

^{†††} Arising out of SLP (Crl.) No. 10550 of 2019

^{†††} Arising out of SLP (Crl.) No. 10858 of 2019

^{†††} Arising out of SLP (Crl.) No. 10860 of 2019

^{†††} Arising out of SLP (Crl.) No. 10861 of 2019

^{†††} Arising out of SLP (Crl.) No. 10446 of 2019

^{‡‡‡} Arising out of SLPs (Crl.) Nos. 2246-47 of 2020

- a a quasi-criminal proceeding such as that is contained in Ch. XVII NI Act would, given the object and context of S. 14 IBC, amount to “proceedings” within the meaning of S. 14(1)(a), the moratorium therefore attaching to such proceeding — Thus, the legal impediment contained in S. 14 IBC would make it impossible for such proceedings to continue or be instituted against the corporate debtor itself — Therefore, for the period of moratorium, no Ss. 138/141 NI Act proceedings can continue or be initiated against the corporate debtor because of the S. 14 IBC bar — Debt, Financial and Monetary
- b Laws — Negotiable Instruments Act, 1881 — Ss. 138 and 141 — Words and Phrases — “Proceedings”

- B. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 14 — Moratorium under S. 14 — Inapplicability of, to Ss. 138/141 NI Act proceedings against persons in charge of and responsible for the**
- c **conduct of the business of the corporate debtor, even though moratorium under S. 14 applies to Ss. 138/141 NI Act proceedings against corporate debtor itself — Initiation/continuation of proceedings against persons mentioned in Ss. 141(1) and (2) NI Act, despite moratorium under S. 14 IBC — Held, is permissible (see also Shortnotes T to Y)**

- d — Held, the moratorium provision contained in S. 14 IBC would apply only to the corporate debtor: the natural persons mentioned in S. 141 NI Act continuing to be statutorily liable under Ch. XVII NI Act — Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881, Ss. 138 and 141

- C. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — Ss. 14 and 3(33) — Meaning of the expression “proceedings” in S. 14 — Scope of — Explained**

- Held, S. 14(1)(a) does not indicate as to what the proceedings contained therein apply to, however S. 14(3)(a) provides the answer: that such “proceedings” relate to “transactions” entered into by the corporate debtor pre-
- f imposition of the moratorium — Further, the definition of “transaction” in S. 3(33) being an inclusive one is extremely wide in nature and would include a transaction evidencing a debt or liability — Further, what throws light on the width of the expression “proceedings” is the expression “any judgment, decree or order” and “any court of law, tribunal, arbitration panel or other authority” —
- g Held, since criminal proceedings under the Code of Criminal Procedure, 1973 (CrPC) are conducted before the courts mentioned in S. 6 CrPC, it is clear that a S. 138 NI Act proceeding being conducted before a Magistrate would certainly be a proceeding in a court of law in respect of a transaction which relates to a debt owed by the corporate debtor — Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — Ss. 138 and 141 — Interpretation of
- h Statutes — Subsidiary Rules — Conjunctive or disjunctive — Multiple use of “or” in provision concerned — Words and Phrases — “Proceedings”

D. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 14 — Meaning of the expression “proceedings” in S. 14 — Rules of construction noscitur a sociis and ejusdem generis — Inapplicability of

— Held, where a residuary phrase is used as a catch-all expression to take within its scope what may reasonably be comprehended by a provision, regard being had to its object and setting, rules of noscitur a sociis and ejusdem generis cannot be used to colour an otherwise wide expression so as to whittle it down and stultify the object of a statutory provision — Words and Phrases — “Proceedings”

E. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 32-A — Scope and ambit of — Private complaints, such as a complaint under S. 138 NI Act, if covered — Held, S. 32-A(1) clearly includes the liability of the corporate debtor for all offences committed prior to the commencement of the corporate insolvency resolution process, including offences based upon complaints under S. 2(d) CrPC — Thus, S. 138 NI Act proceedings would be included, and would, after the moratorium period comes to an end with a resolution plan by a new management being approved by the adjudicating authority, cease to be an offence qua the corporate debtor

— Held, S. 32-A is inelegantly drafted — Further, if the language of the second proviso is taken to interpret the language of S. 32-A(1) in that the “offence committed” under S. 32-A(1) would not include offences based upon complaints under S. 2(d) CrPC, the width of the language would be cut down and the object of S. 32-A(1) IBC would not be achieved as all prosecutions emanating from private complaints would be excluded — Criminal Procedure Code, 1973 — S. 2(d) — Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881, S. 138

F. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 32-A and S. 14 — Scope and ambit of — How differ — Explained

— Held, S. 32-A has nothing whatsoever to do with any moratorium provision — At the heart of S. 32-A is the *extinguishment* of criminal liability of the corporate debtor, from the date the resolution plan has been approved by the adjudicating authority, so that the new management may make a clean break with the past and start on a clean slate — A moratorium provision, on the other hand, does not extinguish any liability, civil or criminal, but only casts a shadow on proceedings already initiated and on proceedings to be initiated, which shadow is lifted when the moratorium period comes to an end

G. Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — S. 138 — Nature of proceedings under i.e. quasi-criminal — Consideration of S. 138 as a hybrid provision to enforce payment under a bounced cheque if it is otherwise enforceable in civil law

— Held, a S. 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 — Words and Phrases — “Quasi-criminal proceedings” — What are

H. Contempt of Court — Nature and Scope — Broadly — Nature and Scope of contempt proceedings — Quasi-criminal nature of contempt proceedings — Distinction between civil and criminal contempt proceedings — Explained

I. Corporate Laws — Companies Act, 1956 — S. 630 — Quasi-criminal nature of, explained

J. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 14 — Moratorium under — S. 34 A&C Act proceeding, held, covered

— Held, S. 34 A&C Act proceeding is certainly a proceeding against the corporate debtor which may result in an arbitral award against the corporate debtor being upheld, as a result of which, monies would then be payable by the corporate debtor — S. 34 A&C Act proceeding is a proceeding against the corporate debtor in a court of law pertaining to a challenge to an arbitral award and would be covered just as an appellate proceeding in a decree from a suit would be covered — Arbitration and Conciliation Act, 1996, S. 34

K. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 14 and Ss. 81, 85, 96 & 101 — Relative scope of proceedings covered under

— Held, width of S. 14 is greater than Ss. 81, 85, 96 and 101 — This is so, given that S. 14 declares a moratorium prohibiting what is mentioned in Ss. 14(1)(a) to (d) thereof in respect of transactions entered into by the corporate debtor, inclusive of transactions relating to debts, as is contained in Ss. 81, 85, 96 and 101

L. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 14(3)(b) — Effect of — Held, despite declaration of moratorium under S. 14 in respect of the corporate debtor, vide S. 14(3)(b) a surety in a contract of guarantee of a debt owed by a corporate debtor cannot avail of the benefit of a moratorium — Thus, though a creditor cannot enforce the principal debt owed by the corporate debtor during the period of moratorium, a creditor can enforce a guarantee in respect of such debt

M. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — Ss. 81, 85, 96 and 101 — “Legal action or proceeding in respect of any debt” — Scope of — Significance of use of phrase “in respect” of any debt and not “recovery” of any debt

— Held, “in respect of” is a phrase which is wide and includes anything done directly or indirectly — Moreover, the phrase used is not “recovery of debt” — Thus, any legal proceeding even indirectly relatable to recovery of any debt would be covered under Ss. 81, 85, 96 and 101 — Words and Phrases — “Legal action or proceeding in respect of any debt”, “in respect of”

N. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — Ss. 81, 85, 96 and 101 — “Legal action or proceeding in respect of any debt” — Scope of — S. 138 NI Act proceeding, held, covered — Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881, S. 138

a

O. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — Ss. 81, 85, 96 & 101 and S. 14(1)(d) — Absence of provision similar to S. 14(1)(d) in Ss. 81, 85, 96 and 101 — Implication of, held, is that where individuals or firms are concerned, the recovery of any property by an owner or lessor, where such property is occupied by or in possession of the individual or firm can be recovered during the moratorium period, unlike the property of a corporate debtor

b

P. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 33(5) and proviso thereto — “Suit or other legal proceeding” in S. 33(5) and in the proviso — Scope of — Held, this language needs to be construed in the widest possible form as there cannot be any residuary category of “other legal proceedings” which can be instituted against some person other than the liquidator or by the liquidator who now alone represents the Company — Further held, “suit or other legal proceeding” includes Ss. 138/141 NI Act proceedings

c

— Absence of expressions “prosecution” and “criminal proceedings” in S. 25(2)(b) and S. 33(5), but which are used in S. 35(1)(k), held, is not material — Inelegant drafting cannot lead to absurd results or results which stultify the object of a provision, given its otherwise wide language — Thus, nothing can be gained by juxtaposing various provisions against each other and arriving at conclusions that are plainly untenable in law — Interpretation of Statutes — Subsidiary Rules — Anomaly, ambiguity, absurdity, hardship, redundancy, repugnancy — Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881, Ss. 138 and 141

d

e

Q. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 25(2)(b) — Duties of a resolution professional who takes over management of corporate debtor during CIRP, to represent and act on behalf of corporate debtor in all “judicial, quasi-judicial, or arbitration proceedings”, held, includes criminal proceedings — Word “judicial” cannot be construed noscitur a sociis so as to cut down its plain meaning, as otherwise, quasi-judicial or arbitration proceedings, not being criminal proceedings, the word “judicial” would then take colour from them — This would stultify the object sought to be achieved by S. 25 and result in an absurdity, namely, that during this interregnum, nobody can represent or act on behalf of the corporate debtor in criminal proceedings

f

g

— Interpretation of Statutes — Subsidiary Rules — Noscitur a sociis — When inapplicable — When it would lead to absurdity and stultify object of statutory provision concerned — Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881, Ss. 138 and 141

h

R. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 3(33) — Definition of “transaction” under — Nature and scope of — Said definition, held, is an inclusive one which is extremely wide in nature, and includes a transaction evidencing a debt or liability — Words and Phrases — “Transaction”

As many as 51 cheques were issued by the Company in favour of the respondent towards amounts payable for supplies, all of which were returned dishonoured for the reason “funds insufficient” on 3-3-2017. As a result, on 31-3-2017, the respondent issued a statutory demand notice under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (“NI Act”), calling upon the Company and its three Directors, Appellants 1-3 herein, to pay this amount within 15 days of the receipt of the notice.

On 28-4-2017, two cheques for a total amount of INR 80,70,133 presented by the respondent for encashment were returned dishonoured for the reason “funds insufficient”. A second demand notice dated 5-5-2017 was therefore issued.

Since no payment was forthcoming pursuant to the two statutory demand notices, two criminal complaints, being Criminal Complaint No. SS/552/2017 and Criminal Complaint No. SS/690/2017 dated 17-5-2017 and 21-6-2017, respectively, were filed by the respondent against the Company and the appellants under Section 138 read with Section 141 NI Act.

Meanwhile, as a statutory notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) had been issued on 21-3-2017 by the respondent to the Company, and as an order dated 6-6-2017 was passed by the adjudicating authority admitting the application under Section 9 IBC and directing commencement of the corporate insolvency resolution process with respect to the Company, a moratorium in terms of Section 14 IBC was ordered. Pursuant thereto, on 24-5-2018, the adjudicating authority stayed further proceedings in the two criminal complaints pending before the ACMM. In an appeal filed to the National Company Law Appellate Tribunal (“NCLAT”), the NCLAT set aside this order, holding that Section 138 NI Act, being a criminal law provision, cannot be held to be a “proceeding” within the meaning of Section 14 IBC.

Section 14 IBC, reads as follows:

“14. Moratorium.—(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the adjudicating authority shall by order declare moratorium for prohibiting all of the following, namely—

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

* * *

(3) The provisions of sub-section (1) shall not apply to—

(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

* * *

The issues involved in these appeals were:

(1) Whether the institution or continuation of proceedings under Sections 138/141 NI Act against the corporate debtor itself, can be said to be covered by the moratorium provision, namely, Section 14 IBC? a

(2) Whether such proceedings, despite the moratorium, could be continued against erstwhile Directors/persons in charge of and responsible for the conduct of the business of the corporate debtor, even though they could not be continue against the corporate debtor itself? b

Answering both issues in the affirmative, the Supreme Court

Held :

A cursory look at Section 14(1) IBC makes it clear that subject to the exceptions contained in sub-sections (2) and (3), on the insolvency commencement date, the adjudicating authority shall mandatorily, by order, declare a moratorium to prohibit what follows in clauses (a) to (d). Importantly, under sub-section (4), this order of moratorium does not continue indefinitely, but has effect only from the date of the order declaring moratorium till the completion of the corporate insolvency resolution process which is time-bound, either culminating in the order of the adjudicating authority approving a resolution plan or in liquidation. (Para 15) c

The exception created in Section 14(3)(a) is important as it refers to “transactions” as may be notified by the Central Government in consultation with experts in finance. The expression “financial sector regulator” is defined by Section 3(18) IBC. (Para 16) d

Thus, the Central Government, in consultation with experts, may state that the moratorium provision will not apply to such transactions as may be notified. This is of some importance as Section 14(1)(a) does not indicate as to what the proceedings contained therein apply to. Sub-section (3)(a) provides the answer—that such “proceedings” relate to “transactions” entered into by the corporate debtor pre-imposition of the moratorium. Section 3(33) IBC defines “transaction” as follows: e

“3. *Definitions*.—In this Code, unless the context otherwise requires—

* * *

(33) “transaction” includes an agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the corporate debtor;” (Para 17) f

This definition being an inclusive one is extremely wide in nature and would include a transaction evidencing a debt or liability. This is made clear by Section 96(3) and Section 101(3) IBC which contain the same language as Section 14(3)(a), these sections speaking of “debts” of the individual or firm. Equally important is Section 14(3)(b), by which a surety in a contract of guarantee of a debt owed by a corporate debtor cannot avail of the benefit of a moratorium as a result of which a creditor can enforce a guarantee, though not being able to enforce the principal debt during the period of moratorium. (Para 18) g

SBI v. V. Ramakrishnan, (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458, *relied on* h

- a It will be noticed that the expression “or” occurs twice in the first part of Section 14(1)(a)—*first*, between the expressions “institution of suits” and “continuation of pending suits” and *second*, between the expressions “continuation of pending suits” and “proceedings against the corporate debtor ...”. The sweep of the provision is very wide indeed as it includes institution, continuation, judgment and execution of suits and proceedings. It is important to note that an award of an arbitration panel or an order of an authority is also included. This being the case, it would be incongruous to hold that the expression “the institution of suits or continuation of pending suits” must be read disjunctively as otherwise, the institution of arbitral proceedings and proceedings before authorities cannot be subsumed within the expression institution of “suits” which are proceedings in civil courts instituted by a plaint (*see* Section 26 of the Code of Civil Procedure, 1908). Therefore, it is clear that the expression “institution of suits or continuation of pending suits” is to be read as one category, and the disjunctive “or” before the word “proceedings” would make it clear that proceedings against the corporate debtor would be a separate category. What throws light on the width of the expression “proceedings” is the expression “any judgment, decree or order” and “any court of law, tribunal, arbitration panel or other authority”. Since criminal proceedings under the Code of Criminal Procedure, 1973 (“CrPC”) are conducted before the courts mentioned in Section 6 CrPC, it is clear that a Section 138 proceeding being conducted before a Magistrate would certainly be a proceeding in a court of law in respect of a transaction which relates to a debt owed by the corporate debtor. (Para 19)

Application of the noscitur a sociis or ejusdem generis rules of interpretation

- e When in a statute particular classes are mentioned by name and then are followed by general words, the general words are sometimes construed ejusdem generis i.e. limited to the same category or genus comprehended by the particular words. But it is not necessary that this rule must always apply. The nature of the special words and the general words must be considered before the rule is applied. (Para 22)

f *Jagdish Chander Gupta v. Kajaria Traders (India) Ltd.*, (1964) 8 SCR 50 : AIR 1964 SC 1882, *followed*

State of Assam v. Ranga Muhammad, (1967) 1 SCR 454 : AIR 1967 SC 903, *distinguished*

Allen v. Emmerson, 1944 KB 362, *cited*

- g The ejusdem generis rule is one to be applied with caution and not pushed too far. To invoke the application of the ejusdem generis rule there must be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply, but the mention of a single species does not constitute a genus. (Para 23)

Rajasthan SEB v. Mohan Lal, (1967) 3 SCR 377 : AIR 1967 SC 1857, *followed*

United Towns Electric Co. Ltd. v. Attorney General for Newfoundland, (1939) 1 All ER 423 (PC), *cited*

- h *Craies on Statute Law*, 6th Edn., p. 18; *Maxwell on Interpretation of Statutes*, 11th Edn., pp. 326 & 327, *cited*

Any interpretation should be one which achieves that object and not that which might create confusion or perplexity or even bewilderment to the officers of the respective States. In other words, the interpretation should be made with pragmatism, not pedantically or in a stilted manner. (Para 24)

CBI v. Braj Bhushan Prasad, (2001) 9 SCC 432 : 2002 SCC (Cri) 576, followed

Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213 : 1978 SCC (L&S) 215; *Rohit Pulp & Paper Mills Ltd. v. CCE*, (1990) 3 SCC 447; *Oswal Agro Mills Ltd. v. CCE*, 1993 Supp (3) SCC 716; *K. Bhagirathi G. Shenoy v. K.P. Ballakuraya*, (1999) 4 SCC 135; *Lokmat Newspapers (P) Ltd. v. Shankarprasad*, (1999) 6 SCC 275 : 1999 SCC (L&S) 1090, cited

Noscitur a sociis is merely a rule of construction and it cannot prevail in cases where it is clear that wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. (Para 27)

Godfrey Phillips (India) Ltd. v. State of U.P., (2005) 2 SCC 515; *Vikram Singh v. Union of India*, (2015) 9 SCC 502 : (2015) 4 SCC (Cri) 213; *Pioneer Urban Land & Infrastructure Ltd. v. Union of India*, (2019) 8 SCC 416 : (2019) 4 SCC (Civ) 1, followed

Rainbow Steels Ltd. v. CST, (1981) 2 SCC 141 : 1981 SCC (Tax) 90; *State of Bombay v. Hospital Mazdoor Sabha*, (1960) 2 SCR 866 : AIR 1960 SC 610; *Siddeshwari Cotton Mills (P) Ltd. v. Union of India*, (1989) 2 SCC 458 : 1989 SCC (Tax) 297; *Grasim Industries Ltd. v. Collector of Customs*, (2002) 4 SCC 297; *CED v. Kantilal Trikam Lal*, (1976) 4 SCC 643 : 1977 SCC (Tax) 90; *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221 : (2016) 3 SCC (Cri) 1; *Bank of India v. Vijay Transport*, 1988 Supp SCC 47; *R.L. Arora v. State of U.P.*, (1964) 6 SCR 784 : AIR 1964 SC 1230; *Ahmedabad Private Primary Teachers' Assn. v. Administrative Officer*, (2004) 1 SCC 755 : 2004 SCC (L&S) 306, summarised

SS. Magnhild v. McIntyre Bros. & Co., (1920) 3 KB 321; *Tribhuban Parkash Nayyar v. Union of India*, (1969) 3 SCC 99; *U.P. SEB v. Hari Shankar Jain*, (1978) 4 SCC 16 : 1978 SCC (L&S) 481; *Hood-Barrs v. IRC*, (1946) 2 All ER 768 (CA); *Tillmanns & Co. v. S.S. Knutsford Ltd.*, (1908) 2 KB 385 (CA); *Attorney General v. Leicester Corpn.*, (1910) 2 Ch 359; *National Assn. of Local Govt. Officers v. Bolton Corpn.*, 1943 AC 166 (HL), cited

E.A. Driedger: *Construction of Statutes*, p. 95 quoted by Francis Bennion in his *Statutory Construction*, pp. 829 and 830; G.P. Singh: *Principles of Statutory Interpretation* (13th Edn., 2012) p. 509; Maxwell: *Interpretation of Statutes* (11th Edn., 1962) p. 321; G.P. Singh: *Principles of Statutory Interpretation* (8th Edn.) 379, cited

Ejusdem generis and *noscitur a sociis*, being rules as to the construction of statutes, cannot be exalted to nullify the plain meaning of words used in a statute if they are designedly used in a wide sense. Importantly, where a residuary phrase is used as a catch-all expression to take within its scope what may reasonably be comprehended by a provision, regard being had to its object and setting, *noscitur a sociis* cannot be used to colour an otherwise wide expression so as to whittle it down and stultify the object of a statutory provision. (Para 28)

Object of Section 14 IBC

The object of a moratorium provision such as Section 14 is to see that there is no depletion of a corporate debtor's assets during the insolvency resolution process so that it can be kept running as a going concern during this time, thus maximising value for all stakeholders. The idea is that it facilitates the continued operation of the business of the corporate debtor to allow it breathing space to organise its affairs so that a new management may ultimately take over and bring the corporate debtor

out of financial sickness, thus benefitting all stakeholders, which would include workmen of the corporate debtor. (Para 30)

- a* *Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 SCC 17, *affirmed*
Shah Bros. Ispat (P) Ltd. v. P. Mohanraj, 2018 SCC OnLine NCLAT 415, *cited*
Report of the Insolvency Law Committee of February, 2020, *referred to*
Insolvency and Bankruptcy Code Bill, 2015, Notes on Clauses; Catherine Balmond and Katharina Crinson (Ed.), *Restructuring & Insolvency 2019* (12th Edn, Law Business Research Ltd., 2018); United Nations Commission on International Trade Law, *Legislative Guide on Insolvency Law*, (2005); United Nations Commission on International Trade Law, *Legislative Guide on Insolvency Law*, (2005), *cited*
- b*

- c* Regard being had to the object sought to be achieved by the IBC in imposing this moratorium, a quasi-criminal proceeding which would result in the assets of the corporate debtor being depleted as a result of having to pay compensation which can amount to twice the amount of the cheque that has bounced would directly impact the corporate insolvency resolution process in the same manner as the institution, continuation, or execution of a decree in such suit in a civil court for the amount of debt or other liability. Judged from the point of view of this objective, it is impossible to discern any difference between the impact of a suit and a Section 138 proceeding, insofar as the corporate debtor is concerned, on its getting the necessary breathing space to get back on its feet during the corporate insolvency resolution process. Given this fact, it is difficult to accept that *noscitur a sociis* or *eiusdem generis* should be used to cut down the width of the expression “proceedings” so as to make such proceedings analogous to civil suits. (Para 31)
- d*

- Viewed from another point of view, clause (b) of Section 14(1) also makes it clear that during the moratorium period, any transfer, encumbrance, alienation, or disposal by the corporate debtor of *any* of its assets or *any* legal right or beneficial interest therein being also interdicted, yet a liability in the form of compensation payable under Section 138 would somehow escape the dragnet of Section 14(1). While Section 14(1)(a) refers to monetary liabilities of the corporate debtor, Section 14(1)(b) refers to the corporate debtor’s assets, and together, these two clauses form a scheme which shields the corporate debtor from pecuniary attacks against it in the moratorium period so that the corporate debtor gets breathing space to continue as a going concern in order to ultimately rehabilitate itself. Any crack in this shield is bound to have adverse consequences, given the object of Section 14, and cannot, by any process of interpretation, be allowed to occur. (Para 32)
- e*
- f*

Section 14 in relation to other moratorium sections in the IBC

- g* When the language of Section 14 and Section 85 is contrasted, it becomes clear that though the language of Section 85 is only in respect of debts, the moratorium contained in Section 14 is not subject specific. The only light thrown on the subject is by the exception provision contained in Section 14(3)(a) which is that “transactions” are the subject-matter of Section 14(1). “Transaction” is a much wider expression than “debt”, and subsumes it. Also, the expression “proceedings” used by the legislature in Section 14(1)(a) is not trammelled by the word “legal”
- h* as a prefix that is contained in the moratorium provisions qua individuals and firms. Likewise, the provisions of Section 96 and Section 101 are moratorium

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provisions in Chapter III of Part III dealing with the insolvency resolution process of individuals and firms, the same expression, namely, “debts” is used as is used in Section 85. (Para 35)

a

A “legal action or proceeding in respect of any debt” as mentioned in Sections 81, 85, 96 and 101 IBC, would, on its plain language, include a Section 138 NI Act proceeding. This is for the reason that a Section 138 NI Act proceeding would be a legal proceeding “in respect of” a debt. “In respect of” is a phrase which is wide and includes anything done directly or indirectly. This, coupled with the fact that the section is not limited to “recovery” of any debt, would indicate that any legal proceeding even indirectly relatable to recovery of any debt would be covered. (Para 35.2)

b

Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd., (2018) 2 SCC 674 : (2018) 2 SCC (Civ) 288; *Giriraj Garg v. Coal India Ltd.*, (2019) 5 SCC 192 : (2019) 2 SCC (Civ) 744, affirmed

When the language of Sections 81, 85, 96 and 101 IBC is juxtaposed against the language of Section 14, it is clear that the width of Section 14 is even greater, given that Section 14 declares a moratorium prohibiting what is mentioned in clauses (a) to (d) thereof in respect of transactions entered into by the corporate debtor, inclusive of transactions relating to debts, as is contained in Sections 81, 85, 96 and 101. Also, Section 14(1)(d) is conspicuous by its absence in any of these sections. Thus, where individuals or firms are concerned, the recovery of any property by an owner or lessor, where such property is occupied by or in possession of the individual or firm can be recovered during the moratorium period, unlike the property of a corporate debtor. (Para 35.3)

c

d

For all these reasons, therefore, given the object and context of Section 14, the expression “proceedings” cannot be cut down by any rule of construction and must be given a fair meaning consonant with the object and context. It is conceded before us that criminal proceedings which are not directly related to transactions evidencing debt or liability of the corporate debtor would be outside the scope of this expression. (Para 36)

e

SBI v. V. Ramakrishnan, (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458, distinguished

The interplay between Section 14 and Section 32-A IBC

f

Section 32-A cannot possibly be said to throw any light on the true interpretation of Section 14(1)(a) as the reason for introducing Section 32-A had nothing whatsoever to do with any moratorium provision. At the heart of the section is the *extinguishment* of criminal liability of the corporate debtor, from the date the resolution plan has been approved by the adjudicating authority, so that the new management may make a clean break with the past and start on a clean slate. A moratorium provision, on the other hand, does not extinguish any liability, civil or criminal, but only casts a shadow on proceedings already initiated and on proceedings to be initiated, which shadow is lifted when the moratorium period comes to an end. Also, Section 32-A(1) operates only after the moratorium comes to an end. At the heart of Section 32-A is the IBC’s goal of value maximisation and

g

h

the need to obviate lower recoveries to creditors as a result of the corporate debtor continuing to be exposed to criminal liability. (Para 41)

- a *Manish Kumar v. Union of India*, (2021) 5 SCC 1, *considered*
SBI v. Bhushan Steel Ltd., 2018 SCC OnLine NCLT 32305, *cited*
Report of the Insolvency Law Committee, February 2020, *referred to*

- b Unfortunately, Section 32-A is inelegantly drafted. The second proviso to Section 32-A(1) speaks of persons who are in any manner in charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor and who are, directly or indirectly, involved in the commission of “such offence” i.e. the offence referred to in sub-section (1), “as per the report submitted or complaint filed by the investigating authority...”. The report submitted here refers to a police report under Section 173 CrPC, and complaints filed by investigating authorities under special Acts, as opposed to private complaints. If the language of the second proviso is taken to interpret the language of Section 32-A(1) in that the “offence committed” under Section 32-A(1) would not include offences based upon complaints under Section 2(d) CrPC, the width of the language would be cut down and the object of Section 32-A(1) would not be achieved as all prosecutions emanating from private complaints would be excluded. Obviously, Section 32-A(1) cannot be read in this fashion and clearly includes the liability of the corporate debtor for all offences committed prior to the commencement of the corporate insolvency resolution process. Doubtless, a Section 138 proceeding would be included, and would, after the moratorium period comes to an end with a resolution plan by a new management being approved by the adjudicating authority, cease to be an offence qua the corporate debtor. (Para 42)

- e *The nature of proceedings under Chapter XVII of the Negotiable Instruments Act, 1881*

- f Section 138 NI Act 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. (Para 45)

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Likewise, under Section 139 NI Act, 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. (Para 46)

A cursory reading of Section 142 NI Act 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 NI Act 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) NI Act 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 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. (Para 49)

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 5000 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 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 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) CrPC. (Para 50)

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 143-A and 148 NI Act. (Para 51)

P. MOHANRAJ v. SHAH BROS. ISPAT (P) LTD.

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a A Section 138 NI Act 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 NI Act. (Para 53)

S.A.L. Narayan Row v. Ishwarlal Bhagwandas, (1966) 1 SCR 190 : AIR 1965 SC 1818, followed

b The object of bringing Section 138 NI Act 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, c 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 (55 of 2002). (Para 55)

d *Goaplast (P) Ltd. v. Chico Ursula D’Souza*, (2003) 3 SCC 232 : 2003 SCC (Cri) 603; *Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd.*, (2008) 2 SCC 305 : (2008) 1 SCC (Civ) 542 : (2008) 1 SCC (Cri) 351; *Damodar S. Prabhu v. Sayed Babalal H.*, (2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328; *JIK Industries Ltd. v. Amarlal V. Jumani*, (2012) 3 SCC 255 : (2012) 2 SCC (Civ) 82 : (2012) 2 SCC (Cri) 125, summarised and affirmed

e *Electronics Trade & Technology Development Corpn. Ltd. v. Indian Technologists & Engineers (Electronics) (P) Ltd.*, (1996) 2 SCC 739 : 1996 SCC (Cri) 454; *K.M. Ibrahim v. K.P. Mohammed*, (2010) 1 SCC 798 : (2010) 1 SCC (Civ) 263 : (2010) 1 SCC (Cri) 921, cited

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.* (Para 59)

f *Kaushalya Devi Massand v. Roopkishore Khore*, (2011) 4 SCC 593 : (2011) 2 SCC (Civ) 410 : (2011) 2 SCC (Cri) 472, summarised and affirmed

Chapter XVII NI Act, is a unique exercise which blurs the dividing line between civil and criminal jurisdictions. (Para 60)

g *R. Vijayan v. Baby*, (2012) 1 SCC 260 : (2012) 1 SCC (Civ) 79 : (2012) 1 SCC (Cri) 520, summarised and affirmed

Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129 : (2014) 4 SCC (Civ) 676 : (2014) 3 SCC (Cri) 673, held, legislatively superseded and distinguished

Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328; *Frick (India) Ltd. v. Union of India*, (1990) 1 SCC 400 : 1990 SCC (Tax) 185; *Forage & Co. v. Municipal Corpn. of Greater Bombay*, (1999) 8 SCC 577, cited

h

The gravamen of a proceeding under Section 138 NI Act, 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. A quasi-criminal proceeding that is contained in Chapter XVII NI Act would, given the object and context of Section 14 IBC, amount to a “proceeding” within the meaning of Section 14(1)(a), the moratorium therefore attaching to such proceeding. (Para 67)

Lafarge Aggregates & Concrete (India) (P) Ltd. v. Sukarsh Azad, (2014) 13 SCC 779 : (2014) 5 SCC (Cri) 818; *Meters & Instruments (P) Ltd. v. Kanchan Mehta*, (2018) 1 SCC 560 : (2018) 1 SCC (Civ) 405 : (2018) 1 SCC (Cri) 477; *Makwana Mangaldas Tulsidas v. State of Gujarat*, (2020) 4 SCC 695 : (2020) 3 SCC (Civ) 128 : (2020) 2 SCC (Cri) 630; *M. Abbas Haji v. T.N. Channakeshava*, (2019) 9 SCC 606 : (2019) 4 SCC (Civ) 664 : (2019) 3 SCC (Cri) 901; *H.N. Jagadeesh v. R. Rajeshwari*, (2019) 16 SCC 730 : (2020) 2 SCC (Civ) 758 : (2020) 2 SCC (Cri) 450, summarised and affirmed

Rajneesh Aggarwal v. Amit J. Bhalla, (2001) 1 SCC 631 : 2001 SCC (Cri) 229, held, legislatively superseded

Goa Plast (P) Ltd. v. Chico Ursula D'Souza, (2004) 2 SCC 235 : 2004 SCC (Cri) 499; *Rangappa v. Sri Mohan*, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184; *R. Vijayan v. Baby*, (2012) 1 SCC 260 : (2012) 1 SCC (Civ) 79 : (2012) 1 SCC (Cri) 520; *T.N. Channakeshava v. M. Abbas Haji*, 2008 SCC OnLine Kar 829; *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158 : 2004 SCC (Cri) 999, cited

Quasi-criminal proceedings

There are many instances of acts which are punishable by imprisonment or fine or both which have been described as quasi-criminal. One instance is the infraction of Section 630 of the Companies Act, 1956. (Para 68)

Abhilash Vinodkumar Jain v. Cox & Kings (India) Ltd., (1995) 3 SCC 732 : 1995 SCC (Cri) 590, affirmed

Likewise, contempt of court proceedings have been described as “quasi-criminal” in a long series of judgments. The predecessor to the Contempt of Courts Act, 1971, namely, the Contempt of Courts Act, 1952 did not contain any definition of the expression “contempt of court”. (Para 71)

Legal Remembrancer v. Matilal Ghose, 1913 SCC OnLine Cal 443 : ILR (1914) 41 Cal 173; *Dulal Chandra Bhar v. Sukumar Banerjee*, 1958 SCC OnLine Cal 176 : AIR 1958 Cal 474, cited

Sanyal Committee Report, 1963, referred to

Whether the contempt committed is civil or criminal, the High Court is empowered to try such “offences” whether the person allegedly guilty is within or outside its territorial jurisdiction. (Para 74)

Though there may not be any watertight distinction between civil and criminal contempt, yet, an analysis of the authorities would make it clear that civil contempt is essentially an action which is moved by the party in whose interest an order was made with a view to enforce its personal right, where contumacious disregard for such order results in punishment of the offender in public interest, whereas a criminal contempt is, in essence, a proceeding which relates to the public interest in

seeing that the administration of justice remains unpolluted. What is of importance is to note that even in cases of civil contempt, fine or imprisonment or both may be imposed. The mere fact that punishments that are awardable relate to Section 53 IPC would not, therefore, render a civil contempt proceeding a criminal proceeding. There is a great deal of wisdom in the finding of the Sanyal Committee Report that the question whether a contempt is civil or criminal is not to be judged with reference to the penalty which may be inflicted but with reference to the cause for which the penalty has been inflicted. (Para 83)

Niaz Mohd. v. State of Haryana, (1994) 6 SCC 332; *T.N. Godavarman Thirumulpad (102) v. Ashok Khot*, (2006) 5 SCC 1; *Andre Paul Terence Ambard v. Attorney General of Trinidad & Tobago*, 1936 SCC OnLine PC 15 : AIR 1936 PC 141; *Sahdeo v. State of U.P.*, (2010) 3 SCC 705 : (2010) 2 SCC (Cri) 451; *Maninderjit Singh Bitta v. Union of India*, (2012) 1 SCC 273 : (2012) 1 SCC (Civ) 88 : (2012) 1 SCC (Cri) 528 : (2012) 1 SCC (L&S) 83; *Kanwar Singh Saini v. High Court of Delhi*, (2012) 4 SCC 307 : (2012) 2 SCC (Civ) 497 : (2012) 2 SCC (Cri) 423; *T.C. Gupta v. Bimal Kumar Dutta*, (2014) 14 SCC 446 : (2015) 1 SCC (Civ) 340, summarised

M., In re, (1994) 1 AC 377 : (1993) 3 WLR 433 (HL); *B.K. Kar v. High Court of Orissa*, AIR 1961 SC 1367 : (1961) 2 Cri LJ 438; *Sukhdev Singh Sodhi v. Teja Singh*, AIR 1954 SC 186 : 1954 Cri LJ 460; *S. Abdul Karim v. M.K. Prakash*, (1976) 1 SCC 975 : 1976 SCC (Cri) 217; *Chhotu Ram v. Urvashi Gulati*, (2001) 7 SCC 530 : 2001 SCC (L&S) 1196; *Anil Ratan Sarkar v. Hiral Ghosh*, (2002) 4 SCC 21; *Daroga Singh v. B.K. Pandey*, (2004) 5 SCC 26 : 2004 SCC (Cri) 1521; *All India Anna Dravida Munnetra Kazhagam v. L.K. Tripathi*, (2009) 5 SCC 417 : (2009) 2 SCC (Cri) 673; *Mrityunjoy Das v. Sayed Hasibur Rahaman*, (2001) 3 SCC 739 : (2006) 1 SCC (Cri) 29; *V.G. Nigam v. Kedar Nath Gupta*, (1992) 4 SCC 697 : 1993 SCC (L&S) 202; *Murray & Co. v. Ashok Kr. Newatia*, (2000) 2 SCC 367 : 2000 SCC (Cri) 473, cited

Clearly, therefore, given the hybrid nature of a civil contempt proceeding, described as “quasi-criminal” by several judgments of the Supreme Court, there is nothing wrong with the same appellation “quasi-criminal” being applied to a Section 138 proceeding for the reasons given by us on an analysis of Chapter XVII NI Act. (Para 84)

Other sections of the IBC in relation to Section 14 IBC

Section 33(5) states as follows:

“33. Initiation of liquidation.—(1)-(4) * * *

(5) Subject to Section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the adjudicating authority.”

It will be noted that under this section, the expression “no suit or other legal proceeding” occurs both in the enacting part as well as the proviso. Going by the proviso first, given the object that the liquidator now has to act on behalf of the Company after a winding-up order is passed, which includes filing of suits and other legal proceedings on behalf of the Company, there is no earthly reason as to why a Sections 138/141 NI Act proceeding would be outside the ken of the proviso. On the contrary, as the liquidator alone now represents the Company, it is

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obvious that whatever the Company could do pre-liquidation is now vested in the liquidator, and in order to realise monies that are due to the Company, there is no reason why the liquidator cannot institute a Sections 138/141 proceeding against a defaulting debtor of the Company. Obviously, this language needs to be construed in the widest possible form as there cannot be any residuary category of “other legal proceedings” which can be instituted against some person other than the liquidator or by the liquidator who now alone represents the Company. Given the object of this provision also, what has been said earlier with regard to the non-application of the doctrines of ejusdem generis and noscitur a sociis would apply with all force to this provision as well. (Para 85)

In fact, several other provisions of the IBC may also be looked at in this context.

(1) Thus, when it comes to the duties of a resolution professional who takes over the management of the Company during the corporate insolvency resolution process, Section 25(2)(b) states as follows:

“**25. Duties of resolution professional.**—(1) * * *

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely—

* * *

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;”

Here again, given the fact that it is the resolution professional alone who is now to preserve and protect the assets of the corporate debtor in this interregnum, the resolution professional therefore is to represent and act on behalf of the corporate debtor in all judicial, quasi-judicial, or arbitration proceedings, which would include criminal proceedings. Here again, the word “judicial” cannot be construed noscitur a sociis so as to cut down its plain meaning, as otherwise, quasi-judicial or arbitration proceedings, not being criminal proceedings, the word “judicial” would then take colour from them. This would stultify the object sought to be achieved by Section 25 and result in an absurdity, namely, that during this interregnum, nobody can represent or act on behalf of the corporate debtor in criminal proceedings.

(2) Likewise, if a corporate debtor cannot be taken over by a new management and has to be condemned to liquidation, the powers and duties of the liquidator, while representing the corporate debtor, are enumerated in Section 35. Section 35(1)(k), in particular, states as follows:

“**35. Powers and duties of liquidator.**—(1) Subject to the directions of the adjudicating authority, the liquidator shall have the following powers and duties, namely—

* * *

(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the corporate debtor;”

This provision specifically speaks of “prosecution” and “criminal proceedings”. Contrasted with Section 25(2)(b) and Section 33(5), an argument could be made

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a that the absence of the expressions “prosecution” and “criminal proceedings” in Section 25(2)(b) and Section 33(5) would show that they were designedly eschewed by the legislature. Inelegant drafting cannot lead to absurd results or results which stultify the object of a provision, given its otherwise wide language. Thus, nothing can be gained by juxtaposing various provisions against each other and arriving at conclusions that are plainly untenable in law. (Paras 86 to 86.2)

BSI Ltd. v. Gift Holdings (P) Ltd., (2000) 2 SCC 737 : 2000 SCC (Cri) 538, held partly legislatively superseded and distinguished

b *S.V. Kandeekar v. V.M. Deshpande*, (1972) 1 SCC 438, explained and distinguished

Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd., (2000) 2 SCC 745 : 2000 SCC (Cri) 546; *D.K. Kapur v. RBI*, 2001 SCC OnLine Del 67 : (2001) 58 DRJ 424; *Indorama Synthetics (India) Ltd. v. State of Maharashtra*, 2016 SCC OnLine Bom 2611 : (2016) 4 Mah LJ 249, distinguished

c *Sudarshan Chits (India) Ltd. v. O. Sukumaran Pillai*, (1984) 4 SCC 657; *Central Bank of India v. Elmot Engg. Co.*, (1994) 4 SCC 159, referred to

Maharashtra Tubes Ltd. v. State Industrial & Investment Corpn. of Maharashtra Ltd., (1993) 2 SCC 144; *Union of India v. Seth Spg. Mills Ltd.*, 1961 SCC OnLine P&H 173; *Mysore Spun Silk Mills Ltd., In re*, 1968 SCC OnLine Kar 242, cited

d A proceeding under Section 34 of the Arbitration and Conciliation Act, 1996 (“A&C Act, 1996”) is covered by Section 14 IBC as it is certainly a proceeding against the corporate debtor which may result in an arbitral award against the corporate debtor being upheld, as a result of which, monies would then be payable by the corporate debtor. A proceeding under Section 34 of the A&C Act, 1996 is a proceeding against the corporate debtor in a court of law pertaining to a challenge to an arbitral award and would be covered just as an appellate proceeding in a decree from a suit would be covered. (Para 97)

e *Inderjit C. Parekh v. V.K. Bhatt*, (1974) 4 SCC 313 : 1974 SCC (L&S) 268, clarified and distinguished

Directorate of Enforcement v. Axis Bank, 2019 SCC OnLine Del 7854 : (2019) 259 DLT 500, distinguished

Power Grid Corpn. of India Ltd. v. Jyoti Structures Ltd., 2017 SCC OnLine Del 12189 : (2018) 246 DLT 485, overruled

f

Conclusion re corporate debtor

A Sections 138/141 NI Act proceeding against a corporate debtor is covered by Section 14(1)(a) IBC. (Para 103)

Shah Bros. Ispat (P) Ltd. v. P. Mohanraj, 2018 SCC OnLine NCLAT 415, reversed

g *Tayal Cotton (P) Ltd. v. State of Maharashtra*, 2018 SCC OnLine Bom 2069 : (2019) 1 Mah LJ 312; *MBL Infrastructures Ltd. v. Manik Chand Somani*, 2019 SCC OnLine Cal 9097, overruled

P. Mohanraj v. Shah Bros. Ispat (P) Ltd., 2018 SCC OnLine SC 3672, referred to

Whether natural persons are covered by Section 14 IBC

h As far as the Directors/persons in management or control of the corporate debtor are concerned, a Sections 138/141 NI Act proceeding against them cannot be initiated or continued without the corporate debtor. This is because Section 141

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NI Act speaks of persons in charge of, and responsible to the Company for the conduct of the business of the Company, *as well as the Company*. (Para 101)

The legal impediment contained in Section 14 IBC would make it impossible for such proceeding to continue or be instituted against the corporate debtor. Thus, for the period of moratorium, since no Sections 138/141 NI Act proceeding can continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Sections 141(1) and (2) NI Act. This being the case, it is clear that the moratorium provision contained in Section 14 IBC would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII NI Act. (Para 102)

[**Ed.**: See also paras 107 to 121 and Shortnotes *T* to *Y*.]

Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241, *followed*

Sheoratan Agarwal v. State of M.P., (1984) 4 SCC 352 : 1984 SCC (Cri) 620; *State of Madras v. C.V. Parekh*, (1970) 3 SCC 491 : 1971 SCC (Cri) 97; *Anil Hada v. Indian Acrylic Ltd.*, (2000) 1 SCC 1 : 2001 SCC (Cri) 174; *U.P. Pollution Control Board v. Modi Distillery*, (1987) 3 SCC 684 : 1987 SCC (Cri) 632, *cited*

S. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 14 r/w Ss. 7 to 9 — Moratorium under S. 14 — Applicability of, to proceedings against corporate debtor under S. 138 NI Act pertaining to dishonour of cheque

— Three cheques were issued by the appellant in favour of the respondent and before the cheques could be presented for payment, on 10-7-2017, the adjudicating authority admitted a petition by an operational creditor under S. 9 IBC and imposed a moratorium under S. 14 — Cheques were presented for payment, but were returned citing “insufficient funds” as the reason on 4-8-2017 — Legal notice to initiate proceedings under S. 138 NI Act was issued by the respondent on 12-8-2017 but as no payment was forthcoming within the time specified, the respondent preferred a complaint against the corporate debtor alone on 19-9-2017 — In the present case, since S. 138 NI Act proceedings are against corporate debtor (*see* Shortnote *A*), held, the complaint needs to be quashed — Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — Ss. 138 and 141 — Criminal Procedure Code, 1973, S. 482 (Paras 107 to 109)

Nag Leathers v. Saroj Leathers, 2019 SCC OnLine Mad 38924, *reversed*

T. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 14 r/w Ss. 7 to 9 — Moratorium under S. 14 — Inapplicability of, to Ss. 138/141 NI Act proceedings against persons in charge of and responsible for the conduct of the business of the corporate debtor, even though it applies to proceedings against corporate debtor (*see also* Shortnote *B*)

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- a — All the complaints filed by different creditors of the same appellant under S. 138 r/w S. 141 NI Act were admittedly filed long before the adjudicating authority admitted a petition under S. 7 IBC and imposed moratorium on 19-3-2019 — Held, the said moratorium order would not cover the appellant in these cases, who is not a corporate debtor, but a Director thereof — Thus, the impugned order issuing a proclamation under S. 82 CrPC cannot be faulted — Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — Ss. 138 and 141 — Criminal Procedure Code, 1973, S. 82 (Paras 110 and 111)

U. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 14 r/w Ss. 7 to 9 — Moratorium under S. 14 — Inapplicability of, to Ss. 138/141 NI Act proceedings against persons in charge of and responsible for the conduct of the business of the corporate debtor (see also Shortnote B)

- c — Two complaints dt. 12-3-2018 and 14-3-2018 under S. 138 read with S. 141 NI Act were filed by the respondent against the corporate debtor along with persons in charge of and responsible for the conduct of business of the corporate debtor — On 14-2-2020, the adjudicating authority admitted a petition under S. 9 IBC against the corporate debtor and imposed a moratorium — The impugned interim order dt. 20-2-2020 was for the issuance of non-bailable warrants against two of the accused individuals — Dismissing the appeal, held, the moratorium provision did not extend to persons other than the corporate debtor — Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881, Ss. 138 and 141 (Paras 113 and 114)

- e **V. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 14 — Moratorium under S. 14 — Inapplicability of, to Ss. 138/141 NI Act proceedings against persons in charge of and responsible for the conduct of the business of the corporate debtor, even though it applies to proceedings against corporate debtor (see also Shortnote B)**

- f — Complaint under S. 138 r/w S. 141 NI Act was filed by Respondent 1 against the corporate debtor together with its Managing Director and Director on 15-5-2018 — Thereafter a petition under S. 9 IBC, filed by Respondent 1, was admitted by the adjudicating authority and a moratorium was imposed on 30-10-2018 — The impugned judgment held that a petition under S. 482 CrPC to quash the said proceeding would be rejected as S. 14 IBC did not apply to S. 138 proceedings — Setting aside the impugned judgment, the complaint is directed to be continued against the Managing Director and Director, respectively — Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — Ss. 138 and 141 — Criminal Procedure Code, 1973, S. 482 (Paras 113, 115 and 116)

Gian Chand & Sons (P) Ltd. v. Mahavir Traders, 2019 SCC OnLine P&H 3535, reversed

h

W. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 14 r/w Ss. 7 to 9 — Moratorium under S. 14 — Inapplicability of, to Ss. 138/141 NI Act proceedings against persons in charge of and responsible for the conduct of the business of the corporate debtor, even though it applies to proceedings against corporate debtor

a

— Complaint was filed by the respondent on 28-7-2016 — An application under S. 7 IBC was admitted by the adjudicating authority only on 20-2-2018 and moratorium imposed on the same date — The impugned judgment rejected a petition under S. 482 CrPC on the ground that S. 138 NI Act proceedings are not covered by S. 14 IBC — In the present case, impugned judgment set aside in view of ruling in Civil Appeal No. 10355 of 2018 (*see* Shortnotes A and B), and the complaint directed to be continued against the appellant — Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — Ss. 138 and 141 — Criminal Procedure Code, 1973, S. 482 (Paras 117 and 118)

b

c

X. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 14 — Moratorium under S. 14 — Applicability of, to proceedings against corporate debtor under S. 138 NI Act pertaining to dishonour of cheque — Magistrate held that S. 14 IBC would not cover proceedings under S. 138 NI Act; as a result, warrants of attachment were issued under S. 431 r/w S. 421 CrPC against various accused persons, including the corporate debtor and persons who are since deceased — While setting aside the impugned judgments, matter remanded to the Magistrate to apply the law laid down in Civil Appeal No. 10355 of 2018 (*see* Shortnotes A and B), and thereafter decide all other points that may arise in these cases in accordance with law — Criminal Procedure Code, 1973 — Ss. 421 and 431 — Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881, Ss. 138 and 141 (Para 119)

d

e

Y. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 14 — Moratorium under S. 14 — Inapplicability of, to Ss. 138/141 NI Act proceedings against persons in charge of and responsible for the conduct of the business of the corporate debtor, even though it applies to proceedings against corporate debtor

f

— Writ petitions were filed by erstwhile Directors/persons in charge of and responsible for the conduct of the business of the corporate debtor premised upon the fact that S. 138 NI Act proceedings are covered by S. 14 IBC and hence, cannot continue against the corporate debtor and consequently, against the petitioners — In the present case, writ petitions dismissed in view of the fact that such proceedings can continue against erstwhile Directors/persons in charge of and responsible for the conduct of the business of the corporate debtor (*see also* Shortnotes A and B) — Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — Ss. 138 and 141 — Criminal Procedure Code, 1973 — S. 482 — Constitution of India, Art. 226 (Paras 120 and 121)

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Advocates who appeared in this case :

Jayanth Muth Raj and S. Nagamuthu, Senior Advocates, for the Appellants;

Jayant Mehta, Advocate, for the Respondent.

a	Chronological list of cases cited	on page(s)
	1. (2021) 5 SCC 1, <i>Manish Kumar v. Union of India</i>	309e
	2. (2020) 4 SCC 695 : (2020) 3 SCC (Civ) 128 : (2020) 2 SCC (Cri) 630, <i>Makwana Mangaldas Tulsidas v. State of Gujarat</i>	329c
	3. (2019) 16 SCC 730 : (2020) 2 SCC (Civ) 758 : (2020) 2 SCC (Cri) 450, <i>H.N. Jagadeesh v. R. Rajeshwari</i>	329d-e
	4. (2019) 9 SCC 606 : (2019) 4 SCC (Civ) 664 : (2019) 3 SCC (Cri) 901, <i>M. Abbas Haji v. T.N. Channakeshava</i>	329c
b	5. (2019) 8 SCC 416 : (2019) 4 SCC (Civ) 1, <i>Pioneer Urban Land & Infrastructure Ltd. v. Union of India</i>	296f
	6. (2019) 5 SCC 192 : (2019) 2 SCC (Civ) 744, <i>Giriraj Garg v. Coal India Ltd.</i>	305e
	7. (2019) 4 SCC 17, <i>Swiss Ribbons (P) Ltd. v. Union of India</i>	301e
	8. 2019 SCC OnLine Mad 38924, <i>Nag Leathers v. Saroj Leathers (reversed)</i>	352e-f, 352f-g
c	9. 2019 SCC OnLine Cal 9097, <i>MBL Infrastructures Ltd. v. Manik Chand Somani (overruled)</i>	352a
	10. 2019 SCC OnLine Del 7854 : (2019) 259 DLT 500, <i>Directorate of Enforcement v. Axis Bank</i>	349c-d
	11. 2019 SCC OnLine P&H 3535, <i>Gian Chand & Sons (P) Ltd. v. Mahavir Traders (reversed)</i>	353e
	12. (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458, <i>SBI v. V. Ramakrishnan</i>	288b-c, 306a
d	13. (2018) 2 SCC 674 : (2018) 2 SCC (Civ) 288, <i>Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd.</i>	305e
	14. (2018) 1 SCC 560 : (2018) 1 SCC (Civ) 405 : (2018) 1 SCC (Cri) 477, <i>Meters & Instruments (P) Ltd. v. Kanchan Mehta</i>	327b-c, 328b-c
	15. 2018 SCC OnLine NCLT 32305, <i>SBI v. Bhushan Steel Ltd.</i>	308d-e
	16. 2018 SCC OnLine SC 3672, <i>P. Mohanraj v. Shah Bros. Ispat (P) Ltd.</i>	282g
e	17. 2018 SCC OnLine Bom 2069 : (2019) 1 Mah LJ 312, <i>Tayal Cotton (P) Ltd. v. State of Maharashtra (overruled)</i>	352a
	18. 2018 SCC OnLine NCLAT 415, <i>Shah Bros. Ispat (P) Ltd. v. P. Mohanraj (reversed)</i>	282f-g
	19. 2017 SCC OnLine Del 12189 : (2018) 246 DLT 485, <i>Power Grid Corpn. of India Ltd. v. Jyoti Structures Ltd. (overruled)</i>	347d-e
	20. (2016) 7 SCC 221 : (2016) 3 SCC (Cri) 1, <i>Subramanian Swamy v. Union of India</i>	297d-e
f	21. 2016 SCC OnLine Bom 2611 : (2016) 4 Mah LJ 249, <i>Indorama Synthetics (India) Ltd. v. State of Maharashtra</i>	347a
	22. (2015) 9 SCC 502 : (2015) 4 SCC (Cri) 213, <i>Vikram Singh v. Union of India</i>	294b
	23. (2014) 14 SCC 446 : (2015) 1 SCC (Civ) 340, <i>T.C. Gupta v. Bimal Kumar Dutta</i>	340b
	24. (2014) 13 SCC 779 : (2014) 5 SCC (Cri) 818, <i>Lafarge Aggregates & Concrete (India) (P) Ltd. v. Sukarsh Azad</i>	326a-b, 328b-c
g	25. (2014) 9 SCC 129 : (2014) 4 SCC (Civ) 676 : (2014) 3 SCC (Cri) 673, <i>Dashrath Rupsingh Rathod v. State of Maharashtra (held, legislatively superseded)</i>	325a
	26. (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241, <i>Aneeta Hada v. Godfather Travels & Tours (P) Ltd.</i>	285f-g, 350b-c, 350c, 351e
	27. (2012) 4 SCC 307 : (2012) 2 SCC (Civ) 497 : (2012) 2 SCC (Cri) 423, <i>Kanwar Singh Saini v. High Court of Delhi</i>	340b
h	28. (2012) 3 SCC 255 : (2012) 2 SCC (Civ) 82 : (2012) 2 SCC (Cri) 125, <i>JKI Industries Ltd. v. Amarlal V. Juman</i>	321e, 322a

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29.	(2012) 1 SCC 273 : (2012) 1 SCC (Civ) 88 : (2012) 1 SCC (Cri) 528 : (2012) 1 SCC (L&S) 83, <i>Maninderjit Singh Bitta v. Union of India</i>	339e	
30.	(2012) 1 SCC 260 : (2012) 1 SCC (Civ) 79 : (2012) 1 SCC (Cri) 520, <i>R. Vijayan v. Baby</i>	323e-f, 328b	a
31.	(2011) 4 SCC 593 : (2011) 2 SCC (Civ) 410 : (2011) 2 SCC (Cri) 472, <i>Kaushalya Devi Massand v. Roopkishore Khore</i>	323c-d	
32.	(2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184, <i>Rangappa v. Sri Mohan</i>	327f-g	
33.	(2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328, <i>Damodar S. Prabhu v. Sayed Babalal H.</i>	319d-e, 321e, 321g, 323f-g	b
34.	(2010) 3 SCC 705 : (2010) 2 SCC (Cri) 451, <i>Sahdeo v. State of U.P.</i>	338a-b	
35.	(2010) 1 SCC 798 : (2010) 1 SCC (Civ) 263 : (2010) 1 SCC (Cri) 921, <i>K.M. Ibrahim v. K.P. Mohammed</i>	320c-d	
36.	(2009) 5 SCC 417 : (2009) 2 SCC (Cri) 673, <i>All India Anna Dravida Munnetra Kazhagam v. L.K. Tripathi</i>	338e	
37.	(2008) 2 SCC 305 : (2008) 1 SCC (Civ) 542 : (2008) 1 SCC (Cri) 351, <i>Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd.</i>	318g, 327f	c
38.	2008 SCC OnLine Kar 829, <i>T.N. Channakeshava v. M. Abbas Haji</i>	329c-d	
39.	(2006) 5 SCC 1, <i>T.N. Godavarma Thirumulpad (102) v. Ashok Khot</i>	337b-c	
40.	(2005) 2 SCC 515, <i>Godfrey Phillips (India) Ltd. v. State of U.P.</i>	292f-g, 298g	
41.	(2004) 5 SCC 26 : 2004 SCC (Cri) 1521, <i>Daroga Singh v. B.K. Pandey</i>	338d-e	
42.	(2004) 4 SCC 158 : 2004 SCC (Cri) 999, <i>Zahira Habibulla H. Sheikh v. State of Gujarat</i>	329e-f	d
43.	(2004) 2 SCC 235 : 2004 SCC (Cri) 499, <i>Goa Plast (P) Ltd. v. Chico Ursula D'Souza</i>	327e-f	
44.	(2004) 1 SCC 755 : 2004 SCC (L&S) 306, <i>Ahmedabad Private Primary Teachers' Assn. v. Administrative Officer</i>	299c-d	
45.	(2003) 3 SCC 232 : 2003 SCC (Cri) 603, <i>Goaplast (P) Ltd. v. Chico Ursula D'Souza</i>	317f	
46.	(2002) 4 SCC 297, <i>Grasim Industries Ltd. v. Collector of Customs</i>	296d	e
47.	(2002) 4 SCC 21, <i>Anil Ratan Sarkar v. Hirak Ghosh</i>	338d-e	
48.	(2001) 9 SCC 432 : 2002 SCC (Cri) 576, <i>CBI v. Braj Bhushan Prasad</i>	291f	
49.	(2001) 7 SCC 530 : 2001 SCC (L&S) 1196, <i>Chhotu Ram v. Urvashi Gulati</i>	338d-e	
50.	(2001) 3 SCC 739 : (2006) 1 SCC (Cri) 29, <i>Mrityunjoy Das v. Sayed Hasibur Rahaman</i>	338e-f	
51.	(2001) 1 SCC 631 : 2001 SCC (Cri) 229, <i>Rajneesh Aggarwal v. Amit J. Bhalla (held, legislatively superseded)</i>	326c-d	
52.	2001 SCC OnLine Del 67 : (2001) 58 DRJ 424, <i>D.K. Kapur v. RBI</i>	346a, 346e, 346g	f
53.	(2000) 2 SCC 745 : 2000 SCC (Cri) 546, <i>Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd.</i>	343e-f	
54.	(2000) 2 SCC 737 : 2000 SCC (Cri) 538, <i>Bisak Ltd. v. Gift Holdings (P) Ltd. (held partly legislatively superseded)</i>	342d-e	
55.	(2000) 2 SCC 367 : 2000 SCC (Cri) 473, <i>Murray & Co. v. Ashok Kr. Newatia</i>	338f	
56.	(2000) 1 SCC 1 : 2001 SCC (Cri) 174, <i>Anil Hada v. Indian Acrylic Ltd.</i>	350d, 351c-d	g
57.	(1999) 8 SCC 577, <i>Forage & Co. v. Municipal Corpn. of Greater Bombay</i>	325e	
58.	(1999) 6 SCC 275 : 1999 SCC (L&S) 1090, <i>Lokmat Newspapers (P) Ltd. v. Shankarprasad</i>	292a	
59.	(1999) 4 SCC 135, <i>K. Bhagirathi G. Shenoy v. K.P. Ballakuraya</i>	292a	
60.	(1996) 2 SCC 739 : 1996 SCC (Cri) 454, <i>Electronics Trade & Technology Development Corpn. Ltd. v. Indian Technologists & Engineers (Electronics) (P) Ltd.</i>	319b	h
61.	(1995) 3 SCC 732 : 1995 SCC (Cri) 590, <i>Abhilash Vinodkumar Jain v. Cox & Kings (India) Ltd.</i>	330f-g, 331f	

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	62. (1994) 6 SCC 332, <i>Niaz Mohd. v. State of Haryana</i>	336e
	63. (1994) 4 SCC 159, <i>Central Bank of India v. Elmot Engg. Co.</i>	345g
	64. (1994) 1 AC 377 : (1993) 3 WLR 433 (HL), <i>M., In re</i>	337g-h
a	65. (1993) 2 SCC 144, <i>Maharashtra Tubes Ltd. v. State Industrial & Investment Corp. of Maharashtra Ltd.</i>	342g-h
	66. 1993 Supp (3) SCC 716, <i>Oswal Agro Mills Ltd. v. CCE</i>	292a
	67. (1992) 4 SCC 697 : 1993 SCC (L&S) 202, <i>V.G. Nigam v. Kedar Nath Gupta</i>	338f
	68. (1990) 3 SCC 447, <i>Rohit Pulp & Paper Mills Ltd. v. CCE</i>	292a
	69. (1990) 1 SCC 400 : 1990 SCC (Tax) 185, <i>Frick (India) Ltd. v. Union of India</i>	325e
b	70. (1989) 2 SCC 458 : 1989 SCC (Tax) 297, <i>Siddeshwari Cotton Mills (P) Ltd. v. Union of India</i>	294e, 295b
	71. 1988 Supp SCC 47, <i>Bank of India v. Vijay Transport</i>	298d, 298e
	72. (1987) 3 SCC 684 : 1987 SCC (Cri) 632, <i>U.P. Pollution Control Board v. Modi Distillery</i>	351d
	73. (1984) 4 SCC 657, <i>Sudarshan Chits (India) Ltd. v. O. Sukumaran Pillai</i>	345g
	74. (1984) 4 SCC 352 : 1984 SCC (Cri) 620, <i>Sheoratan Agarwal v. State of M.P.</i>	350c-d, 351c-d
c	75. (1981) 2 SCC 141 : 1981 SCC (Tax) 90, <i>Rainbow Steels Ltd. v. CST</i>	293a-b
	76. (1978) 4 SCC 16 : 1978 SCC (L&S) 481, <i>U.P. SEB v. Hari Shankar Jain</i>	295b
	77. (1978) 2 SCC 213 : 1978 SCC (L&S) 215, <i>Bangalore Water Supply & Sewerage Board v. A. Rajappa</i>	292a
	78. (1976) 4 SCC 643 : 1977 SCC (Tax) 90, <i>CED v. Kantilal Trikam Lal</i>	297a
	79. (1976) 1 SCC 975 : 1976 SCC (Cri) 217, <i>S. Abdul Karim v. M.K. Prakash</i>	338d-e
	80. (1974) 4 SCC 313 : 1974 SCC (L&S) 268, <i>Inderjit C. Parekh v. V.K. Bhatt</i>	347f-g, 349b
d	81. (1972) 1 SCC 438, <i>S.V. Kandeekar v. V.M. Deshpande</i>	344b, 345f, 346e
	82. (1970) 3 SCC 491 : 1971 SCC (Cri) 97, <i>State of Madras v. C.V. Parekh</i>	350c-d, 351c
	83. (1969) 3 SCC 99, <i>Tribhuban Parkash Nayyar v. Union of India</i>	295b
	84. 1968 SCC OnLine Kar 242, <i>Mysore Spun Silk Mills Ltd., In re</i>	345e
	85. (1967) 3 SCR 377 : AIR 1967 SC 1857, <i>Rajasthan SEB v. Mohan Lal</i>	290e
	86. (1967) 1 SCR 454 : AIR 1967 SC 903, <i>State of Assam v. Ranga Muhammad</i>	288g-h
e	87. (1966) 1 SCR 190 : AIR 1965 SC 1818, <i>S.A.L. Narayan Row v. Ishwarlal Bhagwandas</i>	315g, 317c-d
	88. (1964) 8 SCR 50 : AIR 1964 SC 1882, <i>Jagdish Chander Gupta v. Kajaria Traders (India) Ltd.</i>	289c
	89. (1964) 6 SCR 784 : AIR 1964 SC 1230, <i>R.L. Arora v. State of U.P.</i>	298e
	90. 1961 SCC OnLine P&H 173, <i>Union of India v. Seth Spg. Mills Ltd.</i>	345e
	91. AIR 1961 SC 1367 : (1961) 2 Cri LJ 438, <i>B.K. Kar v. High Court of Orissa</i>	338c
f	92. (1960) 2 SCR 866 : AIR 1960 SC 610, <i>State of Bombay v. Hospital Mazdoor Sabha</i>	293b, 293d, 298b
	93. 1958 SCC OnLine Cal 176 : AIR 1958 Cal 474, <i>Dulal Chandra Bhar v. Sukumar Banerjee</i>	333f
	94. AIR 1954 SC 186 : 1954 Cri LJ 460, <i>Sukhdev Singh Sodhi v. Teja Singh</i>	338c-d
	95. (1946) 2 All ER 768 (CA), <i>Hood-Barrs v. IRC</i>	295e-f
	96. 1944 KB 362, <i>Allen v. Emmerson</i>	289e-f, 295e
	97. 1943 AC 166 (HL), <i>National Assn. of Local Govt. Officers v. Bolton Corp.</i>	296b
	98. (1939) 1 All ER 423 (PC), <i>United Towns Electric Co. Ltd. v. Attorney General for Newfoundland</i>	291b, 295f
g	99. 1936 SCC OnLine PC 15 : AIR 1936 PC 141, <i>Andre Paul Terence Ambard v. Attorney General of Trinidad & Tobago</i>	338a, 338c-d
	100. (1920) 3 KB 321, <i>SS. Magnhild v. McIntyre Bros. & Co.</i>	295a-b
	101. 1913 SCC OnLine Cal 443 : ILR (1914) 41 Cal 173, <i>Legal Remembrancer v. Matilal Ghose</i>	333b-c
	102. (1910) 2 Ch 359, <i>Attorney General v. Leicester Corp.</i>	296b
h	103. (1908) 2 KB 385 (CA), <i>Tillmanns & Co. v. S.S. Knutsford Ltd.</i>	295f-g

The Judgment of the Court was delivered by

ROHINTON FALI NARIMAN, J.— Steel products were supplied by the respondent to one M/s Diamond Engineering Pvt. Ltd. (“the Company”) from 21-9-2015 to 11-11-2016, as a result of which INR 24,20,91,054 was due and payable by the Company. As many as 51 cheques were issued by the Company in favour of the respondent towards amounts payable for supplies, all of which were returned dishonoured for the reason “funds insufficient” on 3-3-2017. As a result, on 31-3-2017, the respondent issued a statutory demand notice under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881, calling upon the Company and its three Directors, Appellants 1-3 herein, to pay this amount within 15 days of the receipt of the notice.

2. On 28-4-2017, two cheques for a total amount of INR 80,70,133 presented by the respondent for encashment were returned dishonoured for the reason “funds insufficient”. A second demand notice dated 5-5-2017 was therefore issued under the selfsame sections by the respondent, calling upon the Company and the appellants to pay this amount within 15 days of the receipt of the notice.

3. Since no payment was forthcoming pursuant to the two statutory demand notices, two criminal complaints, being Criminal Complaint No. SS/552/2017 and Criminal Complaint No. SS/690/2017 dated 17-5-2017 and 21-6-2017, respectively, were filed by the respondent against the Company and the appellants under Section 138 read with Section 141 of the Negotiable Instruments Act before the Additional Chief Metropolitan Magistrate (“ACMM”), Kurla, Mumbai. On 12-2-2018, summons were issued by the ACMM to the Company and the appellants in both the criminal complaints.

4. Meanwhile, as a statutory notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) had been issued on 21-3-2017 by the respondent to the Company, and as an order dated 6-6-2017 was passed by the adjudicating authority admitting the application under Section 9 IBC and directing commencement of the corporate insolvency resolution process with respect to the Company, a moratorium in terms of Section 14 IBC was ordered. Pursuant thereto, on 24-5-2018, the adjudicating authority stayed further proceedings in the two criminal complaints pending before the ACMM. In an appeal filed to the National Company Law Appellate Tribunal (“NCLAT”), the NCLAT set aside¹ this order, holding that Section 138, being a criminal law provision, cannot be held to be a “proceeding” within the meaning of Section 14 IBC. In an appeal filed before this Court, on 26-10-2018, this Court ordered² a stay of further proceedings in the two complaints pending before the learned ACMM.

5. On 30-9-2019, since a resolution plan submitted by the promoters of the Company had been approved by the committee of creditors, the adjudicating authority approved such plan as a result of which, the moratorium order

1 *Shah Bros. Ispat (P) Ltd. v. P. Mohanraj*, 2018 SCC OnLine NCLAT 415

2 *P. Mohanraj v. Shah Bros. Ispat (P) Ltd.*, 2018 SCC OnLine SC 3672

- dated 6-6-2017 ceased to have effect. It may only be added that at present, an application for withdrawal of approval of this resolution plan has been filed by the financial creditors of the Company before the adjudicating authority. Equally, an application to extend time for implementation of this plan has been filed by the resolution applicant sometime in October 2020 before the adjudicating authority. Both these applications have yet to be decided by the adjudicating authority, the next date of hearing before such Authority being 8-2-2021.
- 6.** The important question that arises in this appeal is whether the institution or continuation of a proceeding under Sections 138/141 of the Negotiable Instruments Act can be said to be covered by the moratorium provision, namely, Section 14 IBC.
- 7.** Shri Jayanth Muth Raj, learned Senior Advocate appearing on behalf of the appellants, has painstakingly taken us through various provisions of the IBC and has argued that the object of Section 14 being that the assets of the corporate debtor be preserved during the corporate insolvency resolution process, it would be most incongruous to hold that a Section 138 proceeding, which, although a criminal proceeding, is in essence to recover the amount of the bounced cheque, be kept out of the word “proceedings” contained in Section 14(1)(a) IBC. According to the learned Senior Advocate, given the object of Section 14, there is no reason to curtail the meaning of the expression “proceedings”, which would therefore include all proceedings against the corporate debtor, civil or criminal, which would result in “execution” of any judgment for payment of compensation. He emphasised the fact that Section 14(1)(a) was extremely wide and ought not to be cut down by judicial interpretation given the expression “any” occurring twice in Section 14(1)(a), thus emphasising that so long as there is a judgment by any court of law (which even extends to an order by an authority) which results in coercive steps being taken against the assets of the corporate debtor, all such proceedings are necessarily subsumed within the meaning of Section 14(1)(a).
- 8.** Shri Muth Raj also referred to the width of Section 14(1)(b) and the language of Section 14(1)(b) and therefore argued that given the object of Section 14, no rule of construction, be it ejusdem generis or noscitur a sociis can be used to cut down the plain meaning of the words used in Section 14(1)(a). He cited a number of judgments in support of this proposition. He also argued that in any event, even if criminal proceedings properly so-called are to be excluded from Section 14(1)(a), a Section 138 proceeding being quasi-criminal in nature, whose dominant object is compensation being payable to the person in whose favour a cheque is made, which has bounced, the punitive aspect of Section 138 being only to act as an in terrorem proceeding to achieve this result, it is clear that in any event, a hybrid proceeding partaking of this nature would certainly be covered. He cited a number of judgments in order to buttress this proposition as well.

9. Shri Jayant Mehta, learned advocate appearing on behalf of the respondent, rebutted each of these submissions with erudition and grace. He referred to the Report of the Insolvency Law Committee of February 2020 to drive home his point that the object of Section 14 being a limited one, a criminal proceeding could not possibly be included within it. He further went on to juxtapose the moratorium provisions which would apply in the case of individuals and firms in Sections 85, 96 and 101 IBC, emphasising that the language of these provisions being wider would, by way of contrast, include a Section 138 proceeding so far as individuals and firms are concerned, which has been expressly eschewed so far as Section 14's applicability to corporate debtors is concerned. He relied upon the ejusdem generis/noscitur a sociis rules of construction that had, in fact, been applied to Section 14(1)(a) by the Bombay High Court and the Calcutta High Court to press home his point that since the expression "proceedings" takes its colour from the previous expression "suits", such proceedings must necessarily be civil in nature. He cited judgments which distinguish between civil and criminal proceedings and went on to argue that Section 138 of the Negotiable Instruments Act is a criminal proceeding whose object may be twofold, the primary object being to make what was once a civil wrong punishable by a jail sentence and/or fine. He relied heavily upon judgments which construed like expressions contained in Section 22(1) of the Sick Industrial Companies Act, 1985 ("SICA"), and Section 446(2) of the Companies Act, 1956. He also was at pains to point out from several judgments that the Delhi High Court had not applied Section 14 IBC to stay proceedings under Section 34 of the Arbitration and Conciliation Act, 1996; the Bombay High Court had not applied Section 14 IBC to stay prosecution under the Employees' Provident Funds Act, 1952; and that the Delhi High Court had not stayed proceedings covered by the Prevention of Money-Laundering Act, 2002, stating that criminal proceedings were not the subject-matter of Section 14 IBC. He, thus, supported the judgment under appeal, stating that the consistent view of the High Courts has been that Section 138, being a criminal law provision, could not possibly be said to be covered by Section 14 IBC.

10. Shri Mehta also relied upon the provision contained in Section 33(5) IBC to argue that when a liquidation order is passed, no suit or other legal proceeding can be instituted by or against a corporate debtor, similar to what is contained in Section 446 of the Companies Act, 1956, and if those decisions are seen, then the expression "or other legal proceeding" obviously cannot include criminal proceedings. On the other hand, in any case, the expression "or other legal proceeding" should be contrasted with the word "proceedings" in Section 14(1)(a) IBC, which cannot possibly include a criminal proceeding, given its object.

11. Lastly, Shri Mehta also relied upon Section 32-A IBC, which was introduced by the Insolvency and Bankruptcy Code (Amendment) Act, 2020 w.e.f. 28-12-2019, and emphasised the fact that the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease in certain circumstances. This

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a provision would have been wholly unnecessary if Section 14(1)(a) were to cover criminal offences as well, as they would cease for the period of moratorium. Thus, he argued that this section throws considerable light on the fact that criminal prosecutions are outside the ken of the expression “proceedings” contained in Section 14(1)(a) IBC.

b 12. Shri Aman Lekhi, learned Additional Solicitor General, appearing on behalf of the Union of India in WP (Crl.) No. 297 of 2020, has comprehensively taken us through Chapter XVII of the Negotiable Instruments Act to argue that a plain reading of the said chapter would reveal that the offence under Section 138 is a purely criminal offence which results in imposition of a jail sentence or fine or both, being punishments exclusively awardable under Section 53 of the Penal Code, 1860 only in a criminal proceeding, and hence, does not fall within “proceedings” contemplated by Section 14 IBC. He further states that since compounding under criminal law can only take place at the instance of the complainant/injured party, a subordinate criminal court has no inherent power to terminate proceedings under Sections 138/141 upon “payment of compensation to the satisfaction of the court”. He then relied upon the rule of *noscitur a sociis* to state that since the expression “proceedings” contained in Section 14(1)(a) IBC is preceded by the expression “suits” and followed by the expression “execution”, it has to be read in a sense analogous to civil proceedings dealing with private rights of action as contrasted with criminal proceedings which deal with public wrongs. According to the learned Additional Solicitor General, the intent manifest in Section 14 IBC is reinforced by the introduction of Section 32-A IBC in that if the intent of Section 14 were to prohibit initiation or continuation of criminal proceedings, the legislature would not have contemplated the introduction of Section 32-A by way of amendment.

f 13. The learned ASG further states that if the expression “proceedings” contained in Section 14 were to be construed so as to include criminal proceedings, it would render the first proviso to Section 32, which deals with institution of *prosecution* against a corporate debtor *during* the corporate insolvency resolution process, and the second proviso, which indicates pendency of criminal prosecution against those in charge of and responsible for the conduct of the corporate debtor, otiose. He relied on the judgment in *Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*³ [*“Aneeta Hada”*] to buttress his submission that criminal liability can fall on Directors/persons in charge of and responsible for the conduct of the corporate debtor even where the corporate debtor may not be proceeded against by virtue of Section 14 or Section 32-A. g He lastly submits that Sections 81 and 101 IBC, in speaking of a moratorium in the context of “any debt” also lend support to his contention that moratorium under the IBC only applies to civil proceedings within the realm of private law, and that since Section 138 proceedings are not proceedings for the recovery of a debt, they cannot fall within the moratorium provisions set out by Sections 14 or 81 or 101. h

3 (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241

Interpretation of Section 14 IBC

14. Having heard the learned counsel, it is important at this stage to set out Section 14 IBC, which reads as follows:

“14. Moratorium.—(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the adjudicating authority shall by order declare moratorium for prohibiting all of the following, namely—

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation.—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the licence, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2-A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to—

(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

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(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

a Provided that where at any time during the corporate insolvency resolution process period, if the adjudicating authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

b **15.** A cursory look at Section 14(1) makes it clear that subject to the exceptions contained in sub-sections (2) and (3), on the insolvency commencement date, the adjudicating authority shall mandatorily, by order, declare a moratorium to prohibit what follows in clauses (*a*) to (*d*). Importantly, under sub-section (4), this order of moratorium does not continue indefinitely, but has effect only from the date of the order declaring moratorium till the completion of the corporate insolvency resolution process which is time-bound, either culminating in the order of the adjudicating authority approving a resolution plan or in liquidation.

d **16.** The two exceptions to Section 14(1) are contained in sub-sections (2) and (3) of Section 14. Under sub-section (2), the supply of essential goods or services to the corporate debtor during this period cannot be terminated or suspended or even interrupted, as otherwise the corporate debtor would be brought to its knees and would not be able to function as a going concern during this period. The exception created in sub-section (3)(*a*) is important as it refers to “transactions” as may be notified by the Central Government in consultation with experts in finance. The expression “financial sector regulator” is defined by Section 3(18) as follows:

e **“3. Definitions.**—In this Code, unless the context otherwise requires—

* * *

f (18) “**financial sector regulator**” means an authority or body constituted under any law for the time being in force to regulate services or transactions of financial sector and includes the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority of India, the Pension Fund Regulatory Authority and such other regulatory authorities as may be notified by the Central Government;”

g **17.** Thus, the Central Government, in consultation with experts, may state that the moratorium provision will not apply to such transactions as may be notified. This is of some importance as Section 14(1)(*a*) does not indicate as to what the proceedings contained therein apply to. Sub-section (3)(*a*) provides the answer — that such “proceedings” relate to “transactions” entered into by the corporate debtor pre-imposition of the moratorium. Section 3(33) defines “transaction” as follows:

“3. Definitions.—In this Code, unless the context otherwise requires—

h * * *

(33) “**transaction**” includes an agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the corporate debtor;”

18. This definition being an inclusive one is extremely wide in nature and would include a transaction evidencing a debt or liability. This is made clear by Section 96(3) and Section 101(3) which contain the same language as Section 14(3)(a), these sections speaking of “debts” of the individual or firm. Equally important is Section 14(3)(b), by which a surety in a contract of guarantee of a debt owed by a corporate debtor cannot avail of the benefit of a moratorium as a result of which a creditor can enforce a guarantee, though not being able to enforce the principal debt during the period of moratorium — see *SBI v. V. Ramakrishnan*⁴ (at para 20) [*“V. Ramakrishnan”*].

19. We now come to the language of Section 14(1)(a). It will be noticed that the expression “or” occurs twice in the first part of Section 14(1)(a) — *first*, between the expressions “institution of suits” and “continuation of pending suits” and *second*, between the expressions “continuation of pending suits” and “proceedings against the corporate debtor...”. The sweep of the provision is very wide indeed as it includes institution, continuation, judgment and execution of suits and proceedings. It is important to note that an award of an arbitration panel or an order of an authority is also included. This being the case, it would be incongruous to hold that the expression “the institution of suits or continuation of pending suits” must be read disjunctively as otherwise, the institution of arbitral proceedings and proceedings before authorities cannot be subsumed within the expression institution of “suits” which are proceedings in civil courts instituted by a plaint (see Section 26 of the Code of Civil Procedure, 1908). Therefore, it is clear that the expression “institution of suits or continuation of pending suits” is to be read as one category, and the disjunctive “or” before the word “proceedings” would make it clear that proceedings against the corporate debtor would be a separate category. What throws light on the width of the expression “proceedings” is the expression “any judgment, decree or order” and “any court of law, tribunal, arbitration panel or other authority”. Since criminal proceedings under the Code of Criminal Procedure, 1973 (“CrPC”) are conducted before the courts mentioned in Section 6 CrPC, it is clear that a Section 138 proceeding being conducted before a Magistrate would certainly be a proceeding in a court of law in respect of a transaction which relates to a debt owed by the corporate debtor.

20. Let us now see as to whether the expression “proceedings” can be cut down to mean civil proceedings *stricto sensu* by the use of rules of interpretation such as *ejusdem generis* and *noscitur a sociis*.

Application of the noscitur a sociis rule of interpretation

21. Shri Aman Lekhi, learned Additional Solicitor General, relied upon the judgment in *State of Assam v. Ranga Muhammad*⁵. The Court was concerned with the meaning of the expression “posting” which occurs in Article 233 of the

⁴ (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458

⁵ (1967) 1 SCR 454 : AIR 1967 SC 903

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Constitution, qua District Judges in a State. Applying the doctrine of *noscitur a sociis*, this Court held that given the fact that the expression “posting” comes in between “appointment” and “promotion” of District Judges, it is clear that a narrower meaning has to be assigned to it, namely, that of assigning someone to a post which would not include “transfer”. Quite apart from the positioning of the word “posting” in between “appointment” and “promotion”, from which it took its colour, even otherwise, Articles 234 and 235 of the Constitution would make it clear that since “transfer” of District Judges is with the High Court and not with the State Government, quite obviously, the expression “posting” could not be used in its wider sense — see SCR pp. 460-61 : AIR pp. 906-07, para 9. This judgment is an early application of the rule of *noscitur a sociis*, given the position of a wider word between two narrow words, and more importantly, the reading of other allied provisions in the Constitution.

22. In *Jagdish Chander Gupta v. Kajaria Traders (India) Ltd.*⁶, a five-Judge Bench of this Court had to decide as to whether the expression “or other proceeding” occurring in Section 69(3) of the Partnership Act, 1932 would include a proceeding to appoint an arbitrator under Section 8(2) of the Arbitration Act, 1940. This Court held: (SCR pp. 56-57 & 60 : AIR pp. 1885-86, paras 6 & 9)

“6. It remains, however, to consider whether by reason of the fact that the words “other proceeding” stand opposed to the words “a claim of set-off” any limitation in their meaning was contemplated. It is on this aspect of the case that the learned Judges have seriously differed. When in a statute particular classes are mentioned by name and then are followed by general words, the general words are sometimes construed *eiusdem generis* i.e. limited to the same category or genus comprehended by the particular words. But it is not necessary that this rule must always apply. The nature of the special words and the general words must be considered before the rule is applied. In *Allen v. Emmerson*⁷ Asquith, J., gave interesting examples of particular words followed by general words where the principle of *eiusdem generis* might or might not apply. We think that the following illustration will clear any difficulty. In the expression “books, pamphlets, newspapers and other documents” private letters may not be held included if “other documents” be interpreted *eiusdem generis* with what goes before. But in a provision which reads “newspapers or other document likely to convey secrets to the enemy”, the words “other document” would include document of any kind and would not take their colour from “newspapers”. It follows, therefore, that interpretation *eiusdem generis* or *noscitur a sociis* need not always be made when words showing particular classes are followed by general words. Before the general words can be so interpreted there must be a genus constituted or a category disclosed with reference to which the general words can and are intended to be restricted. Here the expression “claim of set-off” does not disclose

⁶ (1964) 8 SCR 50 : AIR 1964 SC 1882

⁷ 1944 KB 362

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a category or a genus. Set-offs are of two kinds—legal and equitable—and both are already comprehended and it is difficult to think of any right “arising from a contract” which is of the same nature as a claim of set-off and can be raised by a defendant in a suit. Mr B.C. Misra, whom we invited to give us examples, admitted frankly that it was impossible for him to think of any proceeding of the nature of a claim of set-off other than a claim of set-off which could be raised in a suit such as is described in the second sub-section. In respect of the first sub-section he could give only two examples. They are (i) a claim by a pledger of goods with an unregistered firm whose good are attached and who has to make an objection under Order 21 Rule 58 of the Code of Civil Procedure, and (ii) proving a debt before a liquidator. The latter is not raised as a defence and cannot belong to the same genus as a “claim of set-off”. The former can be made to fit but by a stretch of some considerable imagination. It is difficult for us to accept that the legislature was thinking of such far-fetched things when it spoke of “other proceeding” ejusdem generis with a claim of set-off.

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9. In our judgment, the words “other proceeding” in sub-section (3) must receive their full meaning untrammelled by the words “a claim of set-off”. The latter words neither intend nor can be construed to cut down the generality of the words “other proceeding”. The sub-section provides for the application of the provisions of sub-sections (1) and (2) to claims of set-off and also to other proceedings of any kind which can properly be said to be for enforcement of any right arising from contract except those expressly mentioned as exceptions in sub-section (3) and sub-section (4).”

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23. Likewise, in *Rajasthan SEB v. Mohan Lal*⁸, this Court had to decide whether the expression “other authorities” in Article 12 of the Constitution of India took its colour from the preceding expressions used in the said Article, making such authorities only those authorities who exercised governmental power. This was emphatically turned down by a Constitution Bench of this Court, stating: (SCR pp. 384-85 : AIR p. 1862, paras 4-5)

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“4. In our opinion, the High Courts fell into an error in applying the principle of ejusdem generis when interpreting the expression “other authorities” in Article 12 of the Constitution, as they overlooked the basic principle of interpretation that, to invoke the application of ejusdem generis rule, there must be a distinct genus or category running through the bodies already named. *Craies on Statute Law* summarises the principle as follows:

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“The ejusdem generis rule is one to be applied with caution and not pushed too far. ... To invoke the application of the ejusdem generis rule there must be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects. Where this

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8 (1967) 3 SCR 377 : AIR 1967 SC 1857

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is lacking, the rule cannot apply, but the mention of a single species does not constitute a genus⁹.’

- a* Maxwell in his book on *Interpretation of Statutes* explained the principle by saying: ‘But the general word which follows particular and specific words of the same nature as itself takes its meaning from them, and is presumed to be restricted to the same genus as those words ... Unless there is a genus or category, there is no room for the application of the ejusdem generis doctrine¹⁰’. In *United Towns Electric Co. Ltd. v. Attorney General for Newfoundland*¹¹, the Privy Council held that, in their opinion, there is no room for the application of the principle of ejusdem generis in the absence of any mention of a genus, since the mention of a single species—for example, water rates—does not constitute a genus. In Article 12 of the Constitution, the bodies specifically named are the Executive Governments of the Union and the State, the Legislatures of the Union and the States, and local authorities. We are unable to find any common genus running through these named bodies, nor can these bodies be placed in one single category on any rational basis. The doctrine of ejusdem generis could not, therefore, be applied to the interpretation of the expression “other authorities” in this article.

- d* 5. The meaning of the word “authority” given in *Webster’s Third New International Dictionary*, which can be applicable, is ‘a public administrative agency or corporation having quasi-governmental powers and authorised to administer a revenue-producing public enterprise’. This dictionary meaning of the word “authority” is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi-governmental functions. The expression “other authorities” is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India; and we do not see any reason to narrow down this meaning in the context in which the words “other authorities” are used in Article 12 of the Constitution.”

- f* 24. In *CBI v. Braj Bhushan Prasad*¹², this Court was asked to construe Section 89 of the Bihar Reorganisation Act with reference to *noscitur a sociis*. In turning this down, this Court held: (SCC pp. 442-43, paras 26-29)

- g* “26. We pointed out the above different shades of meanings in order to determine as to which among them has to be chosen for interpreting the said word falling in Section 89 of the Act. The doctrine of *noscitur a sociis* (meaning of a word should be known from its accompanying or associating words) has much relevance in understanding the import of words in a statutory provision. The said doctrine has been resorted to with

⁹ *Craies on Statute Law*, 6th Edn., p. 18.

h ¹⁰ *Maxwell on Interpretation of Statutes*, 11th Edn., pp. 326 & 327.

¹¹ (1939) 1 All ER 423 (PC)

¹² (2001) 9 SCC 432 : 2002 SCC (Cri) 576

advantage by this Court in a number of cases vide *Bangalore Water Supply & Sewerage Board v. A. Rajappa*¹³; *Rohit Pulp & Paper Mills Ltd. v. CCE*¹⁴; *Oswal Agro Mills Ltd. v. CCE*¹⁵; *K. Bhagirathi G. Shenoy v. K.P. Ballakuraya*¹⁶ and *Lokmat Newspapers (P) Ltd. v. Shankarprasad*¹⁷. a

27. If so, we have to gauge the implication of the words “proceeding relating exclusively to the territory” from the surrounding context. Section 89 of the Act says that proceeding pending prior to the appointed day before ‘a court (other than the High Court), tribunal, authority or officer’ shall stand transferred to the ‘corresponding court, tribunal, authority or officer’ of Jharkhand State. A very useful index is provided in the section by defining the words “corresponding court, tribunal, authority or officer in the State of Jharkhand” as this: [Section 89(3)(b)(i)] b

‘The court, tribunal, authority or officer in which, or before whom, the proceeding would have laid if it had been instituted after the appointed day;’ c

28. Look at the words ‘would have laid if it had been instituted after the appointed day’. In considering the question as to where the proceeding relating to the 36 cases involved in these appeals would have laid, had they been instituted after the appointed day, we have absolutely no doubt that the meaning of the word “exclusively” should be understood as “substantially all or for the greater part or principally”. d

29. We cannot overlook the main object of Section 89 of the Act. It must not be forgotten that transfer of criminal cases is not the only subject covered by the section. The provision seeks to allocate the files or records relating to all proceedings, after the bifurcation if they were to be instituted after the appointed day. Any interpretation should be one which achieves that object and not that which might create confusion or perplexity or even bewilderment to the officers of the respective States. In other words, the interpretation should be made with pragmatism, not pedantically or in a stilted manner. For the purpose of criminal cases, we should bear in mind the subject-matter of the case to be transferred. When so considering, we have to take into account further that all the 36 cases are primarily for the offences under the PC Act and hence they are all triable before the Courts of Special Judges. Hence, the present question can be determined by reference to the provisions of the PC Act.” e

25. In *Godfrey Phillips India Ltd. v. State of U.P.*¹⁸, a Constitution Bench of this Court had to construe the meaning of the expression “luxury” in Schedule VII List II Entry 62 to the Constitution of India. In this context, the rule of *noscitur a sociis* was applied by the Court, the Court also pointing out g

13 (1978) 2 SCC 213 : 1978 SCC (L&S) 215

14 (1990) 3 SCC 447

15 1993 Supp (3) SCC 716

16 (1999) 4 SCC 135

17 (1999) 6 SCC 275 : 1999 SCC (L&S) 1090

18 (2005) 2 SCC 515 h

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how a court must be careful before blindly applying the principle, as follows:
(SCC pp. 549-51, paras 77-79, 81 & 83)

- a* “77. In the present context the general meaning of “luxury” has been explained or clarified and must be understood in a sense analogous to that of the less general words such as entertainments, amusements, gambling and betting, which are clubbed with it. This principle of interpretation known as “*noscitur a sociis*” has received approval in *Rainbow Steels Ltd. v. CST*¹⁹, SCC at p. 145 although doubted in its indiscriminate application in *State of Bombay v. Hospital Mazdoor Sabha*²⁰. In the latter case this Court was required to construe Section 2(j) of the Industrial Disputes Act which read:
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‘2. (j) “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;’

- c*
78. It was found that the words in the definition were of very wide and definite import. It was suggested that these words should be read in a restricted sense having regard to the included items on the principle of “*noscitur a sociis*”. The suggestion was rejected in the following language: (*Hospital Mazdoor Sabha case*²⁰, SCR p. 874 : AIR p. 614, para 9)
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“9. ... It must be borne in mind that *noscitur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. *It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service.*”

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- f* 79. We do not read this passage as excluding the application of the principle of *noscitur a sociis* to the present case since it has been amply demonstrated with reference to authority that the meaning of the word “luxury” in Entry 62 is doubtful and has been defined and construed in different senses.

* * *

- g* 81. We are aware that the maxim of *noscitur a sociis* may be a treacherous one unless the “*societas*” to which the “*socii*” belong, are known. The risk may be present when there is no other factor except contiguity to suggest the “*societas*”. But where there is, as here, a term of wide denotation which is not free from ambiguity, the addition of the words

- h*
- 19 (1981) 2 SCC 141 : 1981 SCC (Tax) 90
20 (1960) 2 SCR 866 : AIR 1960 SC 610

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such as “including” is sufficiently indicative of the *societas*. As we have said, the word “includes” in the present context indicates a commonality or shared features or attributes of the including word with the included.

* * *

83. Hence on an application of general principles of interpretation, we would hold that the word “luxuries” in Entry 62 of List II means the activity of enjoyment of or indulgence in that which is costly or which is generally recognised as being beyond the necessary requirements of an average member of society and not articles of luxury.” (emphasis in original)

26. In *Vikram Singh v. Union of India*²¹, this Court was asked to construe the expression “government or any other person” contained in Section 364-A of the Penal Code, 1860 with reference to *ejusdem generis*. This Court, in repelling the contention, went on to hold: (SCC pp. 523-25, paras 26-30 & 32)

“26. We may before parting with this aspect of the matter also deal with the argument that the expression “*any other person*” appearing in Section 364-A IPC ought to be read *ejusdem generis* with the expression preceding the said words. The argument needs notice only to be rejected. The rule of *ejusdem generis* is a rule of construction and not a rule of law. Courts have to be very careful in applying the rule while interpreting statutory provisions. Having said that the rule applies in situations where specific words forming a distinct genus, class or category are followed by general words. The first stage of any forensic application of the rule, therefore, has to be to find out whether the preceding words constitute a genus, class or category so that the general words that follow them can be given the same colour as the words preceding. In cases where it is not possible to find the genus in the use of the words preceding the general words, the rule of *ejusdem generis* will have no application.

27. In *Siddeshwari Cotton Mills (P) Ltd. v. Union of India*²² M.N. Venkatachaliah, J., as his Lordship then was, examined the rationale underlying *ejusdem generis* as a rule of construction and observed: (SCC p. 463, para 14)

‘14. The principle underlying this approach to statutory construction is that the subsequent general words were only intended to guard against some accidental omission in the objects of the kind mentioned earlier and were not intended to extend to objects of a wholly different kind. This is a presumption and operates unless there is some contrary indication. But the preceding words or expressions of restricted meaning must be susceptible of the import that they represent a class. If no class can be found, *ejusdem generis* rule is not attracted and such broad construction as the subsequent words may admit will be favoured. As a learned author puts it:

‘... if a class can be found, but the specific words exhaust the class, then rejection of the rule may be favoured because its

21 (2015) 9 SCC 502 : (2015) 4 SCC (Cri) 213

22 (1989) 2 SCC 458 : 1989 SCC (Tax) 297

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a adoption would make the general words unnecessary; if, however, the specific words do not exhaust the class, then adoption of the rule may be favoured because its rejection would make the specific words unnecessary.’²³ ,

b 28. Relying upon the observations made by Francis Bennion in his *Statutory Construction* and English decision in *SS. Magnhild v. McIntyre Bros. & Co.*²⁴ and those rendered by this Court in *Tribhuban Parkash Nayyar v. Union of India*²⁵, *U.P. SEB v. Hari Shankar Jain*²⁶, his Lordship summed up the legal principle in the following words: (*Siddeshwari Cotton Mills*²², SCC p. 464, para 19)

c ‘19. The preceding words in the statutory provision which, under this particular rule of construction, control and limit the meaning of the subsequent words must represent a genus or a family which admits of a number of species or members. If there is only one species it cannot supply the idea of a genus.’

d 29. Applying the above to the case at hand, we find that Section 364-A added to IPC made use of only two expressions viz. “Government” or “any other person”. Parliament did not use multiple expressions in the provision constituting a distinct genus, class or category. It used only one single expression viz. “Government” which does not constitute a genus, even when it may be a specie. The situation, at hand, is somewhat similar to what has been enunciated in *Craies on Statute Law* (7th Edn.) at pp. 181-82 in the following passage:

e ‘... The modern tendency of the law, it was said [by Asquith, J. in *Allen v. Emmerson*⁷], is “to attenuate the application of the rule of ejusdem generis”. To invoke the application of the ejusdem generis rule there must be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply (*Hood-Barrs v. IRC*²⁷), but the mention of a single species does not constitute a genus. (Per Lord Thankerton in *United Towns Electric Co. Ltd. v. Attorney General for Newfoundland*¹¹.) “Unless you can find a category”, said Farwell, L.J. (*Tillmanns & Co. v. S.S. Knutsford Ltd.*²⁸), “there is no room for the application of the ejusdem generis doctrine”, and where the words are clearly wide in their meaning they ought not to be qualified

g 23 See: *Construction of Statutes* by E.A. Driedger, p. 95 quoted by Francis Bennion in his *Statutory Construction*, pp. 829 and 830.

24 (1920) 3 KB 321

25 (1969) 3 SCC 99

26 (1978) 4 SCC 16 : 1978 SCC (L&S) 481

22 *Siddeshwari Cotton Mills (P) Ltd. v. Union of India*, (1989) 2 SCC 458 : 1989 SCC (Tax) 297

7 1944 KB 362

h 27 (1946) 2 All ER 768 (CA)

11 (1939) 1 All ER 423 (PC)

28 (1908) 2 KB 385 (CA)

on the ground of their association with other words. For instance, where a local Act required that “theatres and other places of public entertainment” should be licensed, the question arose whether a “fun-fair” for which no fee was charged for admission was within the Act. It was held to be so, and that the ejusdem generis rule did not apply to confine the words “other places” to places of the same kind as theatres. So the insertion of such words as “or things of whatever description” would exclude the rule. (*Attorney General v. Leicester Corpn.*²⁹) In *National Assn. of Local Govt. Officers v. Bolton Corpn.*³⁰ Lord Simon, L.C. referred to a definition of “workman” as any person who has entered into a works under a contract with an employer whether the contract be by way of manual labour, clerical work “or otherwise” and said: “The use of the words “or otherwise” does not bring into play the ejusdem generis principle: for “manual labour” and “clerical work” do not belong to a single limited genus” and Lord Wright in the same case said: “*The ejusdem generis rule is often useful or convenient, but it is merely a rule of construction, not a rule of law. In the present case it is entirely inapt. It presupposes a “genus” but here the only “genus” is a contract with an employer.*”

30. The above passage was quoted with approval by this Court in *Grasim Industries Ltd. v. Collector of Customs*³¹ holding that Note 1(a) of Chapter 84 relevant to that case was clear and unambiguous. It did not speak of a class, category or genus followed by general words making the rule of ejusdem generis inapplicable.

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32. This would mean that the term “person” appearing in Section 364-A IPC would include a company or association or body of persons whether incorporated or not, apart from natural persons. The tenor of the provision, the context and the statutory definition of the expression “person” all militate against any attempt to restrict the meaning of the term “person” to the “Government” or “foreign State” or “international inter-governmental organisations” only.” (emphasis in original)

27. In *Pioneer Urban Land & Infrastructure Ltd. v. Union of India*³², this Court laid down the limits of the application of the rule of construction that is contained in the expression “noscitur a sociis” as follows: (SCC pp. 517-21, paras 84-86)

“84. It was then argued, relying on a large number of judgments that Section 5(8)(f) must be construed noscitur a sociis with clauses (a) to (e) and (g) to (i), and so construed would only refer to loans or other financial transactions which would involve money at both ends. This, again, is not correct in view of the fact that Section 5(8)(f) is clearly a residuary “catch all” provision, taking within it matters which are not subsumed within the

29 (1910) 2 Ch 359

30 1943 AC 166 (HL)

31 (2002) 4 SCC 297

32 (2019) 8 SCC 416 : (2019) 4 SCC (Civ) 1

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other sub-clauses. Even otherwise, in *CED v. Kantilal Trikamlal*³³, this Court has held that when an expression is a residuary one, ejusdem generis will not apply. It was thus held: (SCC p. 655, para 21)

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‘21. ... We have also to stress the expression “other right” in the explanation which is of the widest import and cannot be constricted by reading it ejusdem generis with “debt”. “Other right”, in the context, is expressly meant considerably to widen the concept and therefore suggests a somewhat contrary intention to the application of the ejusdem generis rule. We may derive instruction from Green’s construction of the identical expression in the English Act [Section 45(2)]. The learned author writes:

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“A disclaimer is an extinguishment of a right for this purpose. Although in the event the person disclaiming never has any right in the property, he has the right to obtain it; this inchoate right is a “right” for the purposes of Section 45(2). The ejusdem generis rule does not apply to the words “a debt or other right” and the word “right” is a word of the widest import. Moreover, the expression “at the expense of the deceased” is used in an ordinary and natural manner; and is apt to cover not only cases where the extinguishment involves a loss to the deceased of a benefit he already enjoyed, but also those where it prevents him from acquiring the benefit.”

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85. Also, in *Subramanian Swamy v. Union of India*³⁴, this Court held: (SCC pp. 291-93, paras 70-74)

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‘70. The other aspect that is being highlighted in the context of Article 19(2) is that defamation even if conceived of to include a criminal offence, it must have the potentiality to “incite to cause an offence”. To elaborate, the submission is the words “incite to cause an offence” should be read to give attributes and characteristics of criminality to the word “defamation”. It must have the potentiality to lead to breach of peace and public order. It has been urged that the intention of clause (2) of Article 19 is to include a public law remedy in respect of a grievance that has a collective impact but not as an actionable claim under the common law by an individual and, therefore, the word “defamation” has to be understood in that context, as the associate words are “incitement to an offence” would so warrant. Mr Rao, learned Senior Counsel, astutely canvassed that unless the word “defamation” is understood in this manner applying the principle of *noscitur a sociis*, the cherished and natural right of freedom of speech and expression which has been recognised under Article 19(1)(a) would be absolutely at peril. Mr Narasimha, learned ASG would contend that the said rule of construction would not be

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33 (1976) 4 SCC 643 : 1977 SCC (Tax) 90

34 (2016) 7 SCC 221 : (2016) 3 SCC (Cri) 1

applicable to understand the meaning of the term “defamation”. Be it noted, while construing the provision of Article 19(2), it is the duty of the Court to keep in view the exalted spirit, essential aspects, the value and philosophy of the Constitution. There is no doubt that the principle of *noscitur a sociis* can be taken recourse to in order to understand and interpret the Constitution but while applying the principle, one has to keep in mind the contours and scope of applicability of the said principle. a

71. In *State of Bombay v. Hospital Mazdoor Sabha*²⁰, it has been held that it must be borne in mind that *noscitur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the said rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service. b

72. In *Bank of India v. Vijay Transport*³⁵, the Court was dealing with the contention that a literal interpretation is not always the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used. For the said purpose, reliance was placed on *R.L. Arora v. State of U.P.*³⁶ Dealing with the said aspect, the Court has observed thus: (*Vijay Transport case*³⁵, SCC p. 51, para 11) c

“11. ... It may be that in interpreting the words of the provision of a statute, the setting in which such words are placed may be taken into consideration, but that does not mean that even though the words which are to be interpreted convey a clear meaning, still a different interpretation or meaning should be given to them because of the setting. In other words, while the setting of the words may sometimes be necessary for the interpretation of the words of the statute, but that has not been ruled by this Court to be the only and the surest method of interpretation.” d

73. The Constitution Bench, in *Godfrey Phillips (India) Ltd. v. State of U.P.*¹⁸, while expressing its opinion on the aforesaid rule of construction, opined: (SCC pp. 550-51, paras 81 & 83) e

20 (1960) 2 SCR 866 : AIR 1960 SC 610

35 1988 Supp SCC 47

36 (1964) 6 SCR 784 : AIR 1964 SC 1230

18 (2005) 2 SCC 515

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a “81. We are aware that the maxim of *noscitur a sociis* may be a treacherous one unless the “*societas*” to which the “*socii*” belong, are known. The risk may be present when there is no other factor except contiguity to suggest the “*societas*”. But where there is, as here, a term of wide denotation which is not free from ambiguity, the addition of the words such as “including” is sufficiently indicative of the *societas*. As we have said, the word “includes” in the present context indicates a commonality or shared features or attributes of the including word with the included.

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c 83. Hence on an application of general principles of interpretation, we would hold that the word “luxuries” in Entry 62 of List II means the activity of enjoyment of or indulgence in that which is costly or which is generally recognised as being beyond the necessary requirements of an average member of society and not articles of luxury.”

d 74. At this juncture, we may note that in *Ahmedabad Private Primary Teachers’ Assn. v. Administrative Officer*³⁷, it has been stated that *noscitur a sociis* is a legitimate rule of construction to construe the words in an Act of Parliament with reference to the words found in immediate connection with them. In this regard, we may refer to a passage from Justice G.P. Singh, *Principles of Statutory Interpretation*³⁸ where the learned author has referred to the lucid explanation given by Gajendragadkar, J. We think it appropriate to reproduce the passage:

e “It is a rule wider than the rule of *eiusdem generis*; rather the latter rule is only an application of the former. The rule has been lucidly explained by Gajendragadkar, J. in the following words:

f “This rule, according to Maxwell³⁹, means that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general.’ ”

g The learned author on further discussion has expressed the view that meaning of a word is to be judged from the Company it keeps i.e. reference to words found in immediate connection with them. It applies when two or more words susceptible of analogous meanings are coupled together, to be read and understood in their cognate sense.⁴⁰ *Noscitur a sociis* is merely a rule of construction and

h 37 (2004) 1 SCC 755 : 2004 SCC (L&S) 306

38 (13th Edn., 2012) p. 509.

39 Maxwell, *Interpretation of Statutes* (11th Edn., 1962) p. 321.

40 G.P. Singh, *Principles of Statutory Interpretation* (8th Edn.) 379.

cannot prevail where it is clear that wider and diverse etymology is intentionally and deliberately used in the provision. It is only when and where the intention of the legislature in associating wider words with words of narrowest significance is doubtful or otherwise not clear, that the rule of *noscitur a sociis* is useful.’

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86. It is clear from a reading of these judgments that *noscitur a sociis* being a mere rule of construction cannot be applied in the present case as it is clear that wider words have been deliberately used in a residuary provision, to make the scope of the definition of “financial debt” subsume matters which are not found in the other sub-clauses of Section 5(8). This contention must also, therefore, be rejected.”

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28. A reading of these judgments would show that *eiusdem generis* and *noscitur a sociis*, being rules as to the construction of statutes, cannot be exalted to nullify the plain meaning of words used in a statute if they are designedly used in a wide sense. Importantly, where a residuary phrase is used as a catch-all expression to take within its scope what may reasonably be comprehended by a provision, regard being had to its object and setting, *noscitur a sociis* cannot be used to colour an otherwise wide expression so as to whittle it down and stultify the object of a statutory provision.

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Object of Section 14 IBC

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29. This then brings us to the object sought to be achieved by Section 14 IBC. The Report of the Insolvency Law Committee of February 2020 throws some light on Section 14 thereof read as follows:

“8.2. The moratorium under Section 14 is intended to keep ‘*the corporate debtor’s assets together during the insolvency resolution process and facilitating orderly completion of the processes envisaged during the insolvency resolution process and ensuring that the Company may continue as a going concern while the creditors take a view on resolution of default*’.⁴¹ Keeping the corporate debtor running as a going concern during the CIRP helps in achieving resolution as a going concern as well, which is likely to maximise value for all stakeholders. In other jurisdictions too, a moratorium may be put in place on the advent of formal insolvency proceedings, including liquidation and reorganisation proceedings.⁴² The UNCITRAL Guide notes that a moratorium is critical during reorganisation proceedings since it ‘*facilitates the continued operation of the business and allows the debtor a breathing space to organise its affairs, time for preparation and approval of a reorganisation plan and for other steps*’

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41 Insolvency and Bankruptcy Code Bill, 2015, Notes on Clauses, p. 118, <https://www.prsindia.org/sites/default/files/bill_files/Insolvency_and_Bankruptcy_code%2C_2015.pdf> accessed 26-11-2019.

42 See Catherine Balmond and Katharina Crinson (Ed.), *Restructuring & Insolvency 2019* (12th Edn, Law Business Research Ltd., 2018) <<https://gettingthedealthrough.com/download/area/35/restructuring-insolvency>> accessed 26-11-2019.

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*such as shedding unprofitable activities and onerous contracts, where appropriate.*⁴³

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8.11. Further, the purpose of the moratorium is to keep the assets of the debtor together for successful insolvency resolution, and it does not bar all actions, especially where countervailing public policy concerns are involved. For instance, criminal proceedings are not considered to be barred by the moratorium, since they do not constitute “*money claims or recovery*” proceedings.⁴⁴ In this regard, the Committee also noted that in some jurisdictions, laws allow ‘*regulatory claims, such as those which are not designed to collect money for the estate but to protect vital and urgent public interests, restraining activities causing environmental damage or activities that are detrimental to public health and safety*’ to be continued during the moratorium period.⁴⁵ (emphasis in original)

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30. It can be seen that Para 8.11 refers to the very judgment under appeal before us, and cannot therefore be said to throw any light on the correct position in law which has only to be finally settled by this Court. However, Para 8.2 is important in that the object of a moratorium provision such as Section 14 is to see that there is no depletion of a corporate debtor’s assets during the insolvency resolution process so that it can be kept running as a going concern during this time, thus maximising value for all stakeholders. The idea is that it facilitates the continued operation of the business of the corporate debtor to allow it breathing space to organise its affairs so that a new management may ultimately take over and bring the corporate debtor out of financial sickness, thus benefitting all stakeholders, which would include workmen of the corporate debtor. Also, the judgment of this Court in *Swiss Ribbons (P) Ltd. v. Union of India*⁴⁶ states the *raison d’être* for Section 14 in para 28 as follows: (SCC p. 55)

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“28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself,

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43 United Nations Commission on International Trade Law, *Legislative Guide on Insolvency Law*, (2005) p. 84 <https://www.uncitral.org/pdf/english/texts/insolven/05-80722_Ebook.pdf> accessed 26-11-2019.

44 See *Shah Bros. Ispat (P) Ltd. v. P. Mohanraj*, 2018 SCC OnLine NCLAT 415

45 United Nations Commission on International Trade Law, *Legislative Guide on Insolvency Law*, (2005) p. 86 <https://www.uncitral.org/pdf/english/texts/insolven/05-80722_Ebook.pdf> accessed 26-11-2019.

46 (2019) 4 SCC 17

thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protect the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends."

31. It can thus be seen that regard being had to the object sought to be achieved by the IBC in imposing this moratorium, a quasi-criminal proceeding which would result in the assets of the corporate debtor being depleted as a result of having to pay compensation which can amount to twice the amount of the cheque that has bounced would directly impact the corporate insolvency resolution process in the same manner as the institution, continuation, or execution of a decree in such suit in a civil court for the amount of debt or other liability. Judged from the point of view of this objective, it is impossible to discern any difference between the impact of a suit and a Section 138 proceeding, insofar as the corporate debtor is concerned, on its getting the necessary breathing space to get back on its feet during the corporate insolvency resolution process. Given this fact, it is difficult to accept that *noscitur a sociis* or *eiusdem generis* should be used to cut down the width of the expression "proceedings" so as to make such proceedings analogous to civil suits.

32. Viewed from another point of view, clause (b) of Section 14(1) also makes it clear that during the moratorium period, any transfer, encumbrance, alienation, or disposal by the corporate debtor of *any* of its assets or *any* legal right or beneficial interest therein being also interdicted, yet a liability in the form of compensation payable under Section 138 would somehow escape the dragnet of Section 14(1). While Section 14(1)(a) refers to monetary liabilities of the corporate debtor, Section 14(1)(b) refers to the corporate debtor's assets, and together, these two clauses form a scheme which shields the corporate debtor from pecuniary attacks against it in the moratorium period so that the corporate debtor gets breathing space to continue as a going concern in order to ultimately rehabilitate itself. Any crack in this shield is bound to have adverse consequences, given the object of Section 14, and cannot, by any process of interpretation, be allowed to occur.

Section 14 in relation to other moratorium sections in the IBC

33. Even otherwise, when some of the other provisions as to moratorium are seen in the context of individuals and firms, the provisions of Section 14 become even clearer. Thus, in Part III of the IBC, which deals with insolvency resolution and bankruptcy for individuals and partnership firms, Section 81, which occurs in Chapter II thereof, entitled "Fresh Start Process", an interim moratorium is imposed thus:

"81. Application for fresh start order.—(1) When an application is filed under Section 80 by a debtor, an interim-moratorium shall commence on the date of filing of said application in relation to all the debts and shall cease to

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have effect on the date of admission or rejection of such application, as the case may be.

- a* (2) During the interim-moratorium period—
- (i) any legal action or legal proceeding pending in respect of any of his debts shall be deemed to have been stayed; and
- (ii) no creditor shall initiate any legal action or proceedings in respect of such debt.
- b* (3) The application under Section 80 shall be in such form and manner and accompanied by such fee, as may be prescribed.
- (4) The application under sub-section (3) shall contain the following information supported by an affidavit, namely—
- c* (a) a list of all debts owed by the debtor as on the date of the said application along with details relating to the amount of each debt, interest payable thereon and the names of the creditors to whom each debt is owed;
- (b) the interest payable on the debts and the rate thereof stipulated in the contract;
- (c) a list of security held in respect of any of the debts;
- (d) the financial information of the debtor and his immediate family up to two years prior to the date of the application;
- d* (e) the particulars of the debtor's personal details, as may be prescribed;
- (f) the reasons for making the application;
- (g) the particulars of any legal proceedings which, to the debtor's knowledge has been commenced against him;
- e* (h) the confirmation that no previous fresh start order under this Chapter has been made in respect of the qualifying debts of the debtor in the preceding twelve months of the date of the application.”
- 34.** Similarly, in Section 85, which also occurs in Chapter II in Part III of the IBC, a moratorium is imposed thus:
- f* “**85. Effect of admission of application.**—(1) On the date of admission of the application, the moratorium period shall commence in respect of all the debts.
- (2) During the moratorium period—
- (a) any pending legal action or legal proceeding in respect of any debt shall be deemed to have been stayed; and
- g* (b) subject to the provisions of Section 86, the creditors shall not initiate any legal action or proceedings in respect of any debt.
- (3) During the moratorium period, the debtor shall—
- (a) not act as a Director of any company, or directly or indirectly take part in or be concerned in the promotion, formation or management of a company;
- h* (b) not dispose of or alienate any of his assets;

(c) inform his business partners that he is undergoing a fresh start process;

(d) be required to inform prior to entering into any financial or commercial transaction of such value as may be notified by the Central Government, either individually or jointly, that he is undergoing a fresh start process;

(e) disclose the name under which he enters into business transactions, if it is different from the name in the application admitted under Section 84;

(f) not travel outside India except with the permission of the adjudicating authority.

(4) The moratorium ceases to have effect at the end of the period of one hundred and eighty days beginning with the date of admission unless the order admitting the application is revoked under sub-section (2) of Section 91."

35. When the language of Section 14 and Section 85 are contrasted, it becomes clear that though the language of Section 85 is only in respect of debts, the moratorium contained in Section 14 is not subject specific. The only light thrown on the subject is by the exception provision contained in Section 14(3)(a) which is that "transactions" are the subject-matter of Section 14(1). "Transaction" is, as we have seen, a much wider expression than "debt", and subsumes it. Also, the expression "proceedings" used by the legislature in Section 14(1)(a) is not trammelled by the word "legal" as a prefix that is contained in the moratorium provisions qua individuals and firms. Likewise, the provisions of Section 96 and Section 101 are moratorium provisions in Chapter III of Part III dealing with the insolvency resolution process of individuals and firms, the same expression, namely, "debts" is used as is used in Section 85.

35.1. Sections 96 and 101 read as follows:

"96. Interim-moratorium.—(1) When an application is filed under Section 94 or Section 95—

(a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and

(b) during the interim-moratorium period—

(i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and

(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.

(2) Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

* * *

101. Moratorium.—(1) When the application is admitted under Section 100, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date the adjudicating authority passes an order on the repayment plan under Section 114, whichever is earlier.

(2) During the moratorium period—
(a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;

(b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt; and

(c) the debtor shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein;

(3) Where an order admitting the application under Section 96 has been made in relation to a firm, the moratorium under sub-section (1) shall operate against all the partners of the firm.

(4) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.”

35.2. A legal action or proceeding in respect of any debt would, on its plain language, include a Section 138 proceeding. This is for the reason that a Section 138 proceeding would be a legal proceeding “in respect of” a debt. “In respect of” is a phrase which is wide and includes anything done directly or indirectly — see *Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd.*⁴⁷ (at p. 709) and *Giriraj Garg v. Coal India Ltd.*⁴⁸ (at pp. 202-203). This, coupled with the fact that the section is not limited to “recovery” of any debt, would indicate that any legal proceeding even indirectly relatable to recovery of any debt would be covered.

35.3. When the language of these sections is juxtaposed against the language of Section 14, it is clear that the width of Section 14 is even greater, given that Section 14 declares a moratorium prohibiting what is mentioned in clauses (a) to (d) thereof in respect of transactions entered into by the corporate debtor, inclusive of transactions relating to debts, as is contained in Sections 81, 85, 96 and 101. Also, Section 14(1)(d) is conspicuous by its absence in any of these sections. Thus, where individuals or firms are concerned, the recovery of any property by an owner or lessor, where such property is occupied by or in possession of the individual or firm can be recovered during the moratorium period, unlike the property of a corporate debtor.

36. For all these reasons, therefore, given the object and context of Section 14, the expression “proceedings” cannot be cut down by any rule of construction and must be given a fair meaning consonant with the object

⁴⁷ (2018) 2 SCC 674 : (2018) 2 SCC (Civ) 288

⁴⁸ (2019) 5 SCC 192 : (2019) 2 SCC (Civ) 744

and context. It is conceded before us that criminal proceedings which are not directly related to transactions evidencing debt or liability of the corporate debtor would be outside the scope of this expression.

37. V. Ramakrishnan⁴ looked at and contrasted Section 14 with Sections 96 and 101 from the point of view of a guarantor to a debt, and in this context, held: (SCC pp. 411-12, para 26)

“26. We are also of the opinion that Sections 96 and 101, when contrasted with Section 14, would show that Section 14 cannot possibly apply to a personal guarantor. When an application is filed under Part III, an interim-moratorium or a moratorium is applicable in respect of any debt due. First and foremost, this is a separate moratorium, applicable separately in the case of personal guarantors against whom insolvency resolution processes may be initiated under Part III. Secondly, the protection of the moratorium under these sections is far greater than that of Section 14 in that pending legal proceedings in respect of the debt and not the debtor are stayed. The difference in language between Sections 14 and 101 is for a reason.

26.1. Section 14 refers only to debts due by corporate debtors, who are limited liability companies, and it is clear that in the vast majority of cases, personal guarantees are given by Directors who are in management of the companies. The object of the Code is not to allow such guarantors to escape from an independent and co-extensive liability to pay off the entire outstanding debt, which is why Section 14 is not applied to them. However, insofar as firms and individuals are concerned, guarantees are given in respect of individual debts by persons who have unlimited liability to pay them. And such guarantors may be complete strangers to the debtor — often it could be a personal friend. It is for this reason that the moratorium mentioned in Section 101 would cover such persons, as such moratorium is in relation to the debt and not the debtor.”

These observations, when viewed in context, are correct. However, this case is distinguishable in that the difference between these provisions and Section 14 was not examined qua moratorium provisions as a whole in relation to corporate debtors vis-à-vis individuals/firms.

The interplay between Section 14 and Section 32-A IBC

38. Shri Mehta, however, strongly relied upon Section 32-A(1) IBC, which was introduced by the Insolvency and Bankruptcy Code (Amendment) Act, 2020, to argue that the first proviso to Section 32-A(1) would make it clear that “prosecutions” that had been instituted during the corporate insolvency resolution process against a corporate debtor will result in a discharge of the corporate debtor from the prosecution, subject to the other requirements of sub-section (1) having been fulfilled. According to him, therefore, a prosecution of the corporate debtor under Sections 138/141 of the Negotiable Instruments Act can be instituted during the corporate insolvency resolution process, making it

⁴ *SBI v. V. Ramakrishnan*, (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458

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clear that such prosecutions are, therefore, outside the ken of the moratorium provisions contained in Section 14 IBC. Section 32-A(1) IBC reads as follows:

- a* “**32-A. Liability for prior offences, etc.**—(1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the adjudicating authority under Section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not—

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

- b* (b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

- d* Provided further that every person who was a “designated partner” as defined in clause (j) of Section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or an “officer who is in default”, as defined in clause (60) of Section 2 of the Companies Act, 2013 (18 of 2013), or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor’s liability has ceased under this sub-section.”

- f* **39.** The *raison d’être* for the enactment of Section 32-A has been stated by the Report of the Insolvency Law Committee of February 2020, which is as follows:

“17. LIABILITY OF CORPORATE DEBTOR FOR OFFENCES COMMITTED PRIOR TO INITIATION OF CIRP⁴⁹

- g* 17.1. Section 17 of the Code provides that on commencement of the CIRP, the powers of management of the corporate debtor vest with the interim resolution professional. Further, the powers of the Board of Directors or partners of the corporate debtor stand suspended, and are to be exercised by the interim resolution professional. Thereafter, Section 29-A,

h ⁴⁹ Recommendations contained herein have been implemented pursuant to Section 10 of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019.

read with Section 35(1)(f), places restrictions on related parties of the corporate debtor from proposing a resolution plan and purchasing the property of the corporate debtor in the CIRP and liquidation process, respectively. Thus, in most cases, the provisions of the Code effectuate a change in control of the corporate debtor that results in a clean break of the corporate debtor from its erstwhile management. However, the legal form of the corporate debtor continues in the CIRP, and may be preserved in the resolution plan. Additionally, while the property of the corporate debtor may also change hands upon resolution or liquidation, such property also continues to exist, either as property of the corporate debtor, or in the hands of the purchaser.

17.2. However, even after commencement of CIRP or after its successful resolution or liquidation, the corporate debtor, along with its property, would be susceptible to investigations or proceedings related to criminal offences committed by it prior to the commencement of a CIRP, leading to the imposition of certain liabilities and restrictions on the corporate debtor and its properties even after they were lawfully acquired by a resolution applicant or a successful bidder, respectively.

Liability where a Resolution Plan has been approved

17.3. It was brought to the Committee that this had created apprehension amongst potential resolution applicants, who did not want to take on the liability for any offences committed prior to commencement of CIRP. In one case, JSW Steel had specifically sought certain reliefs and concessions, within an annexure to the resolution plan it had submitted for approval of the adjudicating authority.⁵⁰ Without relief from imposition of the such liability, the Committee noted that in the long run, potential resolution applicants could be disincentivised from proposing a resolution plan. The Committee was also concerned that resolution plans could be priced lower *on an average*, even where the corporate debtor did not commit any offence and was not subject to investigation, due to *adverse selection* by resolution applicants who might be apprehensive that they might be held liable for offences that they have not been able to detect due to information asymmetry. Thus, the threat of liability falling on bona fide persons who acquire the legal entity, could substantially lower the chances of its successful takeover by potential resolution applicants.

17.4. *This could have substantially hampered the Code's goal of value maximisation, and lowered recoveries to creditors, including financial institutions who take recourse to the Code for resolution of the NPAs on their balance sheet. At the same time, the Committee was also conscious that authorities are duty-bound to penalise the commission of any offence, especially in cases involving substantial public interest. Thus, two competing concerns need to be balanced.*

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⁵⁰ *SBI v. Bhushan Steel Ltd.*, 2018 SCC OnLine NCLT 32305, para 83(i)

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a 17.6. Given this, the Committee felt that a distinction must be drawn between the corporate debtor which may have committed offences under the control of its previous management, prior to the CIRP, and the corporate debtor that is resolved, and taken over by an unconnected resolution applicant. While the corporate debtor's actions prior to the commencement of the CIRP must be investigated and penalised, the liability must be affixed only upon those who were responsible for the corporate debtor's actions in this period. However, the new management of the corporate debtor, which *b* has nothing to do with such past offences, should not be penalised for the actions of the erstwhile management of the corporate debtor, unless they themselves were involved in the commission of the offence, or were related parties, promoters or other persons in management and control of the corporate debtor at the time of or any time following the commission of the offence, and could acquire the corporate debtor, notwithstanding the prohibition under Section 29-A.⁵¹ *c*

d 17.7. Thus, the Committee agreed that a new section should be inserted to provide that where the corporate debtor is successfully resolved, it should not be held liable for any offence committed prior to the commencement of the CIRP, unless the successful resolution applicant was also involved in the commission of the offence, or was a related party, promoter or other person in management and control of the corporate debtor at the time of or any time following the commission of the offence.

e 17.8. Notwithstanding this, those persons who were responsible to the corporate debtor for the conduct of its business at the time of the commission of such offence, should continue to be liable for such an offence, vicariously or otherwise, regardless of the fact that the corporate debtor's liability has ceased.” (emphasis in original and supplied)

40. This Court in *Manish Kumar v. Union of India*⁵², upheld the constitutional validity of this provision. This Court observed: (SCC pp. 170-71, para 326)

f “326. We are of the clear view that no case whatsoever is made out to seek invalidation of Section 32-A. The boundaries of this Court's jurisdiction are clear. The wisdom of the legislation is not open to judicial review. Having regard to the object of the Code, the experience of the working of the Code, the interests of all stakeholders including most importantly the imperative need to attract resolution applicants who would not shy away from offering reasonable and fair value as part of the resolution plan if the legislature thought that immunity be granted to the corporate debtor as also its property, it hardly furnishes a ground *g* for this Court to interfere. The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away. They remain liable.

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⁵¹ For example, where the exemption under Section 240-A is applicable.

⁵² (2021) 5 SCC 1

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The extinguishment of the criminal liability of the corporate debtor is apparently important to the new management to make a clean break with the past and start on a clean slate. We must also not overlook the principle that the impugned provision is part of an economic measure. The reverence courts justifiably hold such laws in cannot but be applicable in the instant case as well. The provision deals with reference to offences committed prior to the commencement of the CIRP. With the admission of the application the management of the corporate debtor passes into the hands of the interim resolution professional and thereafter into the hands of the resolution professional subject undoubtedly to the control by the Committee of Creditors. As far as protection afforded to the property is concerned there is clearly a rationale behind it. Having regard to the object of the statute we hardly see any manifest arbitrariness in the provision.”

41. Section 32-A cannot possibly be said to throw any light on the true interpretation of Section 14(1)(a) as the reason for introducing Section 32-A had nothing whatsoever to do with any moratorium provision. At the heart of the section is the *extinguishment* of criminal liability of the corporate debtor, from the date the resolution plan has been approved by the adjudicating authority, so that the new management may make a clean break with the past and start on a clean slate. A moratorium provision, on the other hand, does not extinguish any liability, civil or criminal, but only casts a shadow on proceedings already initiated and on proceedings to be initiated, which shadow is lifted when the moratorium period comes to an end. Also, Section 32-A(1) operates only after the moratorium comes to an end. At the heart of Section 32-A is the IBC’s goal of value maximisation and the need to obviate lower recoveries to creditors as a result of the corporate debtor continuing to be exposed to criminal liability.

42. Unfortunately, Section 32-A is inelegantly drafted. The second proviso to Section 32-A(1) speaks of persons who are in any manner in charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor and who are, directly or indirectly, involved in the commission of “such offence” i.e. the offence referred to in sub-section (1), “as per the report submitted or complaint filed by the investigating authority ...”. The report submitted here refers to a police report under Section 173 CrPC, and complaints filed by investigating authorities under special Acts, as opposed to private complaints. If the language of the second proviso is taken to interpret the language of Section 32-A(1) in that the “offence committed” under Section 32-A(1) would not include offences based upon complaints under Section 2(d) CrPC, the width of the language would be cut down and the object of Section 32-A(1) would not be achieved as all prosecutions emanating from private complaints would be excluded. Obviously, Section 32-A(1) cannot be read in this fashion and clearly incudes the liability of the corporate debtor for all offences committed prior to the commencement of the corporate insolvency resolution process. Doubtless, a Section 138 proceeding would be included, and would, after the moratorium period comes to an end with a resolution plan by a new management being approved by the adjudicating authority, cease to be an offence qua the corporate debtor.

- 43.** A section which has been introduced by an amendment into an Act with its focus on cesser of liability for offences committed by the corporate debtor prior to the commencement of the corporate insolvency resolution process cannot be so construed so as to limit, by a sidewind as it were, the moratorium provision contained in Section 14, with which it is not at all concerned. If the first proviso to Section 32-A(1) is read in the manner suggested by Shri Mehta, it will impact Section 14 by taking out of its ken Sections 138/141 proceedings, which is not the object of Section 32-A(1) at all. Assuming, therefore, that there is a clash between Section 14 IBC and the first proviso of Section 32-A(1), this clash is best resolved by applying the doctrine of harmonious construction so that the objects of both the provisions get subserved in the process, without damaging or limiting one provision at the expense of the other. If, therefore, the expression “prosecution” in the first proviso of Section 32-A(1) refers to criminal proceedings properly so-called either through the medium of a first information report or complaint filed by an investigating authority or complaint and not to quasi-criminal proceedings that are instituted under Sections 138/141 of the Negotiable Instruments Act against the corporate debtor, the object of Section 14(1) IBC gets subserved, as does the object of Section 32-A, which does away with criminal prosecutions in all cases against the corporate debtor, thus absolving the corporate debtor from the same after a new management comes in.

The nature of proceedings under Chapter XVII of the Negotiable Instruments Act

- 44.** 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.”

45. 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.

46. 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.

47. We have already seen how the language of Sections 96 and 101 would include a Sections 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

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liability partnerships, are concerned, the moratorium provision contained in Section 14 IBC would not apply, but so far as a partnership firm is concerned, being covered by Sections 96 and 101 IBC, a Sections 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.

48. 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.”

49. 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 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.

50. 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 5000 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 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 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) CrPC.

51. 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 143-A 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

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thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

a (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.

b (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).

c (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.

* * *

d **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.

e (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:

f 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.”

g **52.** With this analysis of Chapter XVII, let us look at some of the decided cases. In *S.A.L. Narayan Row v. Ishwarlal Bhagwandas*⁵³, this Court distinguished between civil proceedings and criminal proceedings in the context of Article 132 of the Constitution thus: (SCR pp. 196-97 & 199 : AIR pp. 1821-23, paras 8 & 14)

h “8. ... The expression “civil proceeding” is not defined in the Constitution, nor in the General Clauses Act. The expression in our

53 (1966) 1 SCR 190 : AIR 1965 SC 1818

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.

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14. 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 expressed. 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

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a 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 b 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 negated it appears to have been assumed that the expression c “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.”

d 53. A perusal of the judgment in *Ishwarlal Bhagwandas*⁵³ 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 e 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.

f 54. In *Goaplast (P) Ltd. v. Chico Ursula D’Souza*⁵⁴, the object sought to be achieved by Section 138 is succinctly set out in para 3 thereof: (SCC pp. 234-35)

g “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 (66 of 1988) with the object of inculcating h faith in the efficacy of banking operations and giving credibility to

53 *S.A.L. Narayan Row v. Ishwarlal Bhagwandas*, (1966) 1 SCR 190 : AIR 1965 SC 1818

54 (2003) 3 SCC 232 : 2003 SCC (Cri) 603

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-recognised 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."

55. In *Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd.*⁵⁵, a Division Bench of this Court referred to the object of Section 138 thus: (SCC pp. 309-10, paras 16-17)

"16. Section 138 of the Act was inserted by the Banking, Public Financial Institutions and Negotiable Instruments Law (Amendment) Act, 1988 (66 of 1988) to regulate financial promises in growing business, trade, commerce and industrial activities of the country and the strict liability

55 (2008) 2 SCC 305 : (2008) 1 SCC (Civ) 542 : (2008) 1 SCC (Cri) 351

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a 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.

b 17. As observed by this Court in *Electronics Trade & Technology Development Corpn. Ltd. v. Indian Technologists & Engineers (Electronics) (P) Ltd.*⁵⁶ 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 (55 of 2002). The said section reads thus:

d ‘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.’ ”

e 56. *Damodar S. Prabhu v. Sayed Babalal H.*⁵⁷ 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: (SCC pp. 668-70, paras 10-12 & 15-18)

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

f ‘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.’

g 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

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⁵⁶ (1996) 2 SCC 739 : 1996 SCC (Cri) 454

⁵⁷ (2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328

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*⁵⁸ 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*

58 (2010) 1 SCC 798 : (2010) 1 SCC (Civ) 263 : (2010) 1 SCC (Cri) 921

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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)

57. The judgment in *Damodar S. Prabhu*⁵⁷ was followed by a Division Bench of this Court in *JK Industries Ltd. v. Amarlal V. Jumani*⁵⁹, stating: (SCC p. 273, para 68)

“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 sub-section (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*⁵⁷ (see para 12). Therefore, the submission of the learned counsel for the appellant to the contrary cannot be accepted.”

⁵⁷ *Damodar S. Prabhu v. Sayed Babalal H.*, (2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328

⁵⁹ (2012) 3 SCC 255 : (2012) 2 SCC (Civ) 82 : (2012) 2 SCC (Cri) 125

58. The Court then went into the history of compounding in criminal law as follows: (*JK Industries Ltd. case*⁵⁹, SCC pp. 275-76, paras 78-82)

“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.’ (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

⁵⁹ *JK Industries Ltd. v. Amarlal V. Jumani*, (2012) 3 SCC 255 : (2012) 2 SCC (Civ) 82 : (2012) 2 SCC (Cri) 125

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a 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.” (emphasis in original)

59. In *Kaushalya Devi Massand v. Roopkishore Khore*⁶⁰, a Division Bench of this Court succinctly stated: (SCC p. 595, para 11)

d “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)

e (This is the clearest enunciation of a Section 138 proceeding being a “civil sheep” in a “criminal wolf’s” clothing.)

60. In *R. Vijayan v. Baby*⁶¹, 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: (SCC pp. 266-67, paras 16-17)

f “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*⁵⁷. 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

60 (2011) 4 SCC 593 : (2011) 2 SCC (Civ) 410 : (2011) 2 SCC (Cri) 472

61 (2012) 1 SCC 260 : (2012) 1 SCC (Civ) 79 : (2012) 1 SCC (Cri) 520

57 *Damodar S. Prabhu v. Sayed Babalal H.*, (2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328

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)

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- 61.** In *Dashrath Rupsingh Rathod v. State of Maharashtra*⁶², 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 paras 15.2 and 17 of the judgment of Vikramjit Sen, J., which states as follows: (SCC pp. 151-52)

- “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.

* * *

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*⁶³ and *Forage & Co. v. Municipal Corpn. of Greater Bombay*⁶⁴. 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

⁶² (2014) 9 SCC 129 : (2014) 4 SCC (Civ) 676 : (2014) 3 SCC (Cri) 673

⁶³ (1990) 1 SCC 400 : 1990 SCC (Tax) 185

⁶⁴ (1999) 8 SCC 577

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.”

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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.

62. In *Lafarge Aggregates & Concrete (India) (P) Ltd. v. Sukarsh Azad*⁶⁵, this Court, continuing the trend of the earlier judgments in describing the hybrid nature of these provisions, held: (SCC pp. 781-82, paras 6-8 & 10)

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“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*^{66, 67}

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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.

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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

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65 (2014) 13 SCC 779 : (2014) 5 SCC (Cri) 818

66 (2001) 1 SCC 631 : 2001 SCC (Cri) 229

67 The judgment in *Rajneesh Aggarwal v. Amit J. Bhalla*, (2001) 1 SCC 631 : 2001 SCC (Cri) 229 was delivered prior to the 2002 and 2018 Amendment Acts to the Negotiable Instruments Act. The perceptible shift in the provisions by introducing Sections 143 to 148 has been noticed by this Court hereinabove, as a result of which the observations contained in this judgment would no longer be valid.

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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.”

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63. In *Meters & Instruments (P) Ltd. v. Kanchan Mehta*⁶⁸, this Court noticed the object of Section 138 and the amendments made to Chapter XVII, and summarised the case law as follows: (SCC p. 566, paras 6-7)

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“6. The object of introducing Section 138 and other provisions of Chapter XVII in the Act in the year 1988⁶⁹ 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.

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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.⁷⁰ 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.⁵⁵ 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”.⁷¹ 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

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68 (2018) 1 SCC 560 : (2018) 1 SCC (Civ) 405 : (2018) 1 SCC (Cri) 477

69 Vide the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988.

70 *Goa Plast (P) Ltd. v. Chico Ursula D’Souza*, (2004) 2 SCC 235 at p. 248, para 26 : 2004 SCC (Cri) 499

55 *Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd.*, (2008) 2 SCC 305 : (2008) 1 SCC (Civ) 542 : (2008) 1 SCC (Cri) 351

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71 *Rangappa v. Sri Mohan*, (2010) 11 SCC 441 at p. 454, para 28 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184

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.⁷² 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.⁷³

64. The Court then concluded: (*Kanchan Mehta case*⁶⁸, SCC pp. 571-72, para 18)

“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

72 *R. Vijayan v. Baby*, (2012) 1 SCC 260 at p. 264, para 9 : (2012) 1 SCC (Civ) 79 : (2012) 1 SCC (Cri) 520

73 *Lafarge Aggregates & Concrete (India) (P) Ltd. v. Sukarsh Azad*, (2014) 13 SCC 779 at p. 781, para 7 : (2014) 5 SCC (Cri) 818

68 *Meters & Instruments (P) Ltd. v. Kanchan Mehta*, (2018) 1 SCC 560 : (2018) 1 SCC (Civ) 405 : (2018) 1 SCC (Cri) 477

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a 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.

b 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.”⁷⁴ (emphasis supplied)

c 65. In a recent judgment in *M. Abbas Haji v. T.N. Channakeshava*⁷⁵, this Court held: (SCC p. 607, para 6)

d “6. It is urged before us that the High Court⁷⁶ 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)

e 66. Likewise, in *H.N. Jagadeesh v. R. Rajeshwari*⁷⁷, this Court again alluded to the quasi-criminal nature of the offence as follows: (SCC p. 732, para 7)

f “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*⁷⁸. 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)

g 67. 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

74 This judgment was subsequently referred to with approval in *Makwana Mangaldas Tulsidas v. State of Gujarat*, (2020) 4 SCC 695, paras 17 and 18 : (2020) 3 SCC (Civ) 128 : (2020) 2 SCC (Cri) 630

75 (2019) 9 SCC 606 : (2019) 4 SCC (Civ) 664 : (2019) 3 SCC (Cri) 901

h 76 *T.N. Channakeshava v. M. Abbas Haji*, 2008 SCC OnLine Kar 829

77 (2019) 16 SCC 730 : (2020) 2 SCC (Civ) 758 : (2020) 2 SCC (Cri) 450

78 (2004) 4 SCC 158 : 2004 SCC (Cri) 999

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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 IBC, amount to a “proceeding” within the meaning of Section 14(1)(a), the moratorium therefore attaching to such proceeding.

Quasi-criminal proceedings

68. Shri Lekhi, learned Additional Solicitor General, took strong objection to the use of the expression “quasi-criminal” to describe proceedings under Section 138 of the Negotiable Instruments Act, which, according to him, can only be described as criminal proceedings. This is for the reason that these proceedings result in imprisonment or fine or both, which are punishments that can be imposed only in criminal proceedings as stated by Section 53 IPC. It is difficult to agree with Shri Lekhi. There are many instances of acts which are punishable by imprisonment or fine or both which have been described as quasi-criminal. One instance is the infraction of Section 630 of the Companies Act, 1956. This section reads as follows:

“630. Penalty for wrongful withholding of property.—(1) If any officer or employee of a company—

(a) wrongfully obtains possession of any property of a company; or

(b) having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by this Act;

he shall, on the complaint of the Company or any creditor or contributory thereof, be punishable with fine which may extend to ten thousand rupees.

(2) The Court trying the offence may also order such officer or employee to deliver up or refund, within a time to be fixed by the Court, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied or in default, to suffer imprisonment for a term which may extend to two years.”

69. In *Abhilash Vinodkumar Jain v. Cox & Kings (India) Ltd.*⁷⁹, this Court examined whether a petition under Section 630 of the Companies Act, 1956 is maintainable against the legal heirs of a deceased officer or employee for retrieval of the Company’s property. In holding that it was so retrievable, this Court held:

“15. Even though Section 630 of the Act falls in Part XIII of the Companies Act and provides for penal consequences for wrongful withholding of the property of the Company, the provisions strictly

⁷⁹ (1995) 3 SCC 732 : 1995 SCC (Cri) 590

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a speaking are not penal in the sense as understood under the penal law. The provisions are quasi-criminal. They have been enacted with the main object of providing speedy relief to a company when its property is wrongfully obtained or wrongfully withheld by an employee or officer or an ex-employee or ex-officer or anyone claiming under them. In our opinion, a proper construction of the section would be that the term “officer or employee” of a company in Section 630 of the Act would by a **deeming fiction** include the legal heirs and representatives of the employee or the officer concerned continuing in occupation of the property of the Company after the death of the employee or the officer.

b 16. Under sub-section (1) of Section 630 for the wrongful obtaining of the possession of the property of the Company or wrongfully withholding it or knowingly applying it to a purpose other than that authorised by the Company, the employee or the officer concerned is ‘punishable with fine which may extend to one thousand rupees’. The “fine” under this sub-section is to be understood in the nature of “compensation” for wrongful withholding of the property of the Company. Under sub-section (2) what is made punishable is the **disobedience of the order of the Court**, directing the person, continuing in occupation, after the right of the employee or the officer to occupation has extinguished, to deliver up or refund within a time to be fixed by the court, the property of the Company obtained or wrongfully withheld or knowingly misapplied. Thus, it is in the event of the **disobedience** of the order of the court, that imprisonment for a term which may extend to two years has been prescribed. The provision makes the defaulter, whether an employee or a past employee or the legal heir of the employee, who disobeys the order of the court to hand back the property to the Company within the prescribed time liable for punishment.” (emphasis supplied)

c 70. Having so held, the Court did not construe the provision strictly, which it would have been bound to do had it been a purely criminal one, but instead gave it a broad, liberal, and purposeful construction as follows: (*Abhilash Vinodkumar Jain case*⁷⁹, SCC pp. 741-42, para 18)

d “18. Section 630 of the Act provides speedy relief to the Company where its property is wrongfully obtained or wrongfully withheld by an “employee or an officer” or a “past employee or an officer” or “legal heirs and representatives” deriving their colour and content from such an employee or officer insofar as the occupation and possession of the property belonging to the Company is concerned. The failure to deliver property back to the employer on the termination, resignation, superannuation or death of an employee would render the “holding” of that property wrongful and actionable under Section 630 of the Act. To hold that the “legal heirs” would not be covered by the provisions of Section 630 of the Act would be unrealistic and illogical. It would defeat the “beneficent” provision and

e * Ed.: The words between two asterisks have been emphasised in original.

f 79 *Abhilash Vinodkumar Jain v. Cox & Kings (India) Ltd.*, (1995) 3 SCC 732 : 1995 SCC (Cri) 590

ignore the factual realities that the legal heirs or family members who are continuing in possession of the allotted property had obtained the right of *occupancy* with the employee concerned in the property of the employer only by virtue of their relationship with the employee/officer and had not obtained or acquired the right to *possession* of the property in any other capacity, status or right. The legislature, which is supposed to know and appreciate the needs of the people, by enacting Section 630 of the Act manifested that it was conscious of the position that today in the corporate sector—private or public enterprise—the employees/officers are often provided residential accommodation by the employer for the “use and occupation” of the employee concerned during the course of his employment. More often than not, it is a part of the service conditions of the employee that the employer shall provide him residential accommodation during the course of his employment. If an employee or a past employee or anyone claiming the right of occupancy under them, were to continue to “hold” the property belonging to the Company after the right to be in occupation has ceased for one reason or the other, it would not only create difficulties for the Company, which shall not be able to allot that property to its other employees, but would also cause hardship for the employee awaiting allotment and defeat the intention of the legislature. The courts are therefore obliged to place a broader, liberal and purposeful construction on the provisions of Section 630 of the Act in furtherance of the object and purpose of the legislation and construe it in a wider sense to effectuate the intendment of the provision. The “heirs and legal representatives” of the deceased employee have no independent capacity or status to continue in occupation and possession of the property, which stood allotted to the employee or the officer concerned or resist the return of the property to the employer in the absence of any express agreement to the contrary entered with them by the employer. The court, when approached by the employer for taking action under Section 630 of the Act, can examine the basis on which the petition/complaint is filed and if it is found that the Company’s right to retrieve its property is quite explicit and the stand of the employee, or anyone claiming through him, to continue in possession is baseless, it shall proceed to act under Section 630 of the Act and pass appropriate orders. Only an independent valid right, not only to occupation but also to possession of the property belonging to the Company, unconnected with the employment of the deceased employee can defeat an action under Section 630 of the Act if it can be established that the deceased employee concerned had not wrongfully nor knowingly applied it for purposes other than those authorised by the employer. In interpreting a beneficent provision, the court must be forever alive to the principle that it is the duty of the court to defend the law from clever evasion and defeat and prevent perpetration of a legal fraud.” (emphasis in original)

71. Likewise, contempt of court proceedings have been described as “quasi-criminal” in a long series of judgments. We may point out that the predecessor to the Contempt of Courts Act, 1971, namely, the Contempt of Courts Act,

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1952 did not contain any definition of the expression “contempt of court”. A Committee was appointed by the Government of India, referred to as the Sanyal Committee, which then went into whether this expression needs to be defined.
a The Sanyal Committee Report, 1963 then broadly divided contempts into two kinds—civil and criminal contempt—as follows:

“2.1. ... Broadly speaking, the classification follows the method of dividing contempt into criminal and civil contempts. The Shawcross Committee adopted the same classification on the grounds of convenience.
b *Broadly speaking, civil contempts are contempts which involve a private injury occasioned by disobedience to the judgment, order or other process of the court. On the other hand, criminal contempts are right from their inception in the nature of offences. In Legal Remembrancer v. Matilal Ghose*⁸⁰, Mookerjee, J. observed thus: (SCC OnLine Cal)

‘... A criminal contempt is conduct that is directed against the dignity and authority of the Court. A civil contempt is failure to do something ordered to be done by a court in a civil action for the benefit of the opposing party therein. *Consequently, in the case of a civil contempt, the proceeding for its punishment is at the instance of the party interested and is civil in its character; in the case of a criminal contempt, the proceeding is for punishment of an act committed against the majesty of the law, and, as the primary purpose of the punishment is the vindication of the public authority, the proceedings conform as nearly as possible to proceedings in criminal cases. It is conceivable that the dividing line between the acts constituting criminal and those constituting civil contempts may become indistinct in those cases where the two gradually merge into each other.*’
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2.2. Notwithstanding the existence of a broad distinction between civil and criminal contempts, a large number of cases have shown that the dividing line between the two is almost imperceptible. For instance, in *Dulal Chandra Bhar v. Sukumar Banerjee*⁸¹, the following observations occur: (SCC OnLine Cal para 2)
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‘2. ... The line between civil and criminal contempt can be broad as well as thin. Where the contempt consists in mere failure to comply with or carry out an order of a court made for the benefit of a private party, it is plainly civil contempt and it has been said that when the party, in whose interest the order was made, moves the court for action to be taken in contempt against the contemner with a view to an enforcement of his right, the proceeding is only a form of execution. In such a case, there is no criminality in the disobedience, and the contempt, such as it is, is not criminal. If, however, the contemner adds defiance of the court to disobedience of the order and conducts himself in a manner which amounts to obstruction or interference with
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⁸⁰ 1913 SCC OnLine Cal 443 : ILR (1914) 41 Cal 173 at p. 252

⁸¹ 1958 SCC OnLine Cal 176 : AIR 1958 Cal 474 at pp. 476 & 477

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the course of justice, the contempt committed by him is of a mixed character, partaking as between him and his opponent of the nature of a civil contempt and as between him and the court or the State, of the nature of a criminal contempt. In cases of this type, no clear distinction between civil and criminal contempt can be drawn and the contempt committed cannot be broadly classed as either civil or criminal contempt. ... To put the matter in other words, a contempt is merely a civil wrong where there has been disobedience of an order made for the benefit of a particular party, but where it has consisted in setting the authority of the courts at naught and has had a tendency to invade the efficacy of the machinery maintained by the State for the administration of justice, it is a public wrong and consequently criminal in nature.'

2.3. In other words, the question whether a contempt is civil or criminal is not to be judged with reference to the penalty which may be inflicted but with reference to the cause for which the penalty has been inflicted."

(at pp. 21-22)

(emphasis supplied)

72. The Statement of Objects and Reasons for the Contempt of Courts Act, 1971 expressly states that the said Act was in pursuance of the Sanyal Committee Report as follows:

"Statement of Objects and Reasons.—It is generally felt that the existing law relating to contempt of courts is somewhat uncertain, undefined and unsatisfactory. The jurisdiction to punish for contempt touches upon two important fundamental rights of the citizen, namely, the right to personal liberty and the right to freedom of expression. It was, therefore, considered advisable to have the entire law on the subject scrutinised by a special committee. In pursuance of this, a Committee was set up in 1961 under the Chairmanship of the late Shri H.N. Sanyal, the then Additional Solicitor General. The Committee made a comprehensive examination of the law and problems relating to contempt of court in the light of the position obtaining in our own country and various foreign countries. The recommendations which the Committee made took note of the importance given to freedom of speech in the Constitution and of the need for safeguarding the status and dignity of courts and interests of administration of justice.

2. The recommendations of the Committee have been generally accepted by Government after considering the views expressed on those recommendations by the State Governments, Union Territory Administrations the Supreme Court, the High Courts and the Judicial Commissioners. The Bill seeks to give effect to the accepted recommendations of the Sanyal Committee."

73. The Contempt of Courts Act, 1971 defines "civil contempt" and "criminal contempt" as follows:

"2. Definitions.—In this Act, unless the context otherwise requires—

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a (b) “**civil contempt**” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

(c) “**criminal contempt**” means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

b (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;”

c 74. Whether the contempt committed is civil or criminal, the High Court is empowered to try such “offences” whether the person allegedly guilty is within or outside its territorial jurisdiction. Thus, Section 11 of the Contempt of Courts Act, states:

d “11. **Power of High Court to try offences committed or offenders found outside jurisdiction.**—A High Court shall have jurisdiction to inquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and whether the person alleged to be guilty of contempt is within or outside such limits.”

e 75. Punishments awarded for contempt of court, whether civil or criminal, are then dealt with by Section 12 of the Act, which states:

“12. **Punishment for contempt of court.**—(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

f Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation.—An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

g (3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

h (4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the

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Company for the conduct of the business of the Company, as well as the Company, shall be deemed to be guilty of the contempt and the punishment may be enforced with the leave of the court, by the detention in civil prison of each such person: a

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any Director, manager, secretary or other officer of the Company, such Director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such Director, manager, secretary or other officer. b
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Explanation.—For the purpose of sub-sections (4) and (5),—

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

(b) “Director”, in relation to a firm, means a partner in the firm.” d

76. In criminal contempt cases, “cognizance” in contempts other than those referred to in Section 14 of the Act is taken by the Supreme Court or the High Court in the manner provided by Section 15. Section 17 then lays down the procedure that is to be followed after cognizance is taken. Finally, by Section 23, the Supreme Court and the High Courts are given the power to make rules, not inconsistent with the provisions of the Act, providing for any matter relating to its procedure. e

77. This Court in *Niaz Mohd. v. State of Haryana*⁸², spoke of the hybrid nature of a civil contempt as follows: (SCC pp. 337-38, paras 9-10)

“9. Section 2(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as “the Act”) defines “civil contempt” to mean ‘wilful disobedience to any judgment, decree, direction, order, writ or other process of a court...’. *Where the contempt consists in failure to comply with or carry out an order of a court made in favour of a party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the court for initiating proceeding for contempt against the alleged contemner, with a view to enforce the right flowing from the order or direction in question. ...* f
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10. ... In *Halsbury’s Laws of England*, 4th Edn., Vol. 9, Para 53, p. 34, it has been said:

‘**53. Unintentional disobedience.**—Although contempt may be committed in the absence of wilful disobedience on the part of the h

82 (1994) 6 SCC 332

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contemnor, committal or sequestration will not be ordered unless the contempt involves a degree of fault or misconduct.’

a It has been further stated in *Halsbury’s Laws of England*, 4th Edn., Vol. 9, para 54, pp. 34-35:

b ‘54. *Where misconduct involved.*—In circumstances involving misconduct, civil contempt bears a twofold character, implying as between the parties to the proceedings merely a right to exercise and a liability to submit to a form of civil execution, but as between the party in default and the State, a penal or disciplinary jurisdiction to be exercised by the court in the public interest.’ ” (emphasis supplied)

78. In *T.N. Godavarman Thirumulpad (102) v. Ashok Khor*⁸³, this Court held: (SCC pp. 17-18, paras 33-34)

c “33. *Proceedings for contempt are essentially personal and punitive.* This does not mean that it is not open to the court, as a matter of law to make a finding of contempt against any official of the Government say, Home Secretary or a Minister.

d 34. While contempt proceedings usually have these characteristics and contempt proceedings against a government department or a Minister in an official capacity would not be either personal or punitive (it would clearly not be appropriate to fine or sequester the assets of the Crown or a government department or an officer of the Crown acting in his official capacity), this does not mean that a finding of contempt against a government department or Minister would be pointless. The very fact of making such a finding would vindicate the requirements of justice. In addition, an order for costs could be made to underline the significance of a contempt. A purpose of the court’s powers to make findings of contempt is to ensure that the orders of the court are obeyed. This jurisdiction is required to be coextensive with the court’s jurisdiction to make orders which need the protection which the jurisdiction to make findings of contempt provides. In civil proceedings the court can now make orders (other than injunctions or for specific performance) against authorised government departments or the Attorney General. On applications for judicial review orders can be made against Ministers. In consequence such orders must be taken not to offend the theory that the Crown can supposedly do no wrong. Equally, if such orders are made and not obeyed, the body against whom the orders were made can be found guilty of contempt without offending that theory, which could be the only justifiable impediment against making a finding of contempt. (See *M., In re*⁸⁴.)” (emphasis supplied)

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83 (2006) 5 SCC 1

84 (1994) 1 AC 377 : (1993) 3 WLR 433 (HL)

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79. The description of contempt proceedings being “quasi-criminal” in nature has its origin in the celebrated Privy Council judgment of *Andre Paul Terence Ambard v. Attorney General of Trinidad & Tobago*⁸⁵ in which Lord Atkin referred to contempt of court proceedings as quasi-criminal (see AIR p. 143).

80. In *Sahdeo v. State of U.P.*⁸⁶, this Court again referred to the “quasi-criminal” nature of contempt proceedings as follows: (SCC pp. 711-13 & 715, paras 15, 18-20 & 27)

“15. The proceedings of contempt are quasi-criminal in nature. In a case where the order passed by the court is not complied with by mistake, inadvertence or by misunderstanding of the meaning and purport of the order, unless it is intentional, no charge of contempt can be brought home. There may possibly be a case where *disobedience is accidental*. If that is so, there would be no contempt. [Vide *B.K. Kar v. High Court of Orissa*⁸⁷, AIR p. 1370, para 7.]

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18. In *Sukhdev Singh Sodhi v. Teja Singh*⁸⁸ this Court placing reliance upon the judgment of the Privy Council in *Andre Paul Terence Ambard v. Attorney General of Trinidad and Tabago*⁸⁵, held that the proceedings under the Contempt of Courts Act are quasi-criminal in nature and orders passed in those proceedings are to be treated as orders passed in criminal cases.

19. In *S. Abdul Karim v. M.K. Prakash*⁸⁹, *Chhotu Ram v. Urvashi Gulati*⁹⁰, *Anil Ratan Sarkar v. Hiral Ghosh*⁹¹, *Daroga Singh v. B.K. Pandey*⁹² and *All India Anna Dravida Munnetra Kazhagam v. L.K. Tripathi*⁹³, this Court held that burden and standard of proof in contempt proceedings, being quasi-criminal in nature, is the standard of proof required in criminal proceedings, for the reason that contempt proceedings are quasi-criminal in nature.

20. Similarly, in *Mrityunjay Das v. Sayed Hasibur Rahaman*⁹⁴ this Court placing reliance upon a large number of its earlier judgments, including *V.G. Nigam v. Kedar Nath Gupta*⁹⁵ and *Murray & Co. v. Ashok Kr. Newatia*⁹⁶, held that jurisdiction of contempt has been conferred on the Court to punish an offender for his contemptuous conduct or obstruction

85 1936 SCC OnLine PC 15 : AIR 1936 PC 141

86 (2010) 3 SCC 705 : (2010) 2 SCC (Cri) 451

87 AIR 1961 SC 1367 : (1961) 2 Cri LJ 438

88 AIR 1954 SC 186 : 1954 Cri LJ 460

89 (1976) 1 SCC 975 : 1976 SCC (Cri) 217

90 (2001) 7 SCC 530 : 2001 SCC (L&S) 1196

91 (2002) 4 SCC 21

92 (2004) 5 SCC 26 : 2004 SCC (Cri) 1521

93 (2009) 5 SCC 417 : (2009) 2 SCC (Cri) 673

94 (2001) 3 SCC 739 : (2006) 1 SCC (Cri) 29

95 (1992) 4 SCC 697 : 1993 SCC (L&S) 202

96 (2000) 2 SCC 367 : 2000 SCC (Cri) 473

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a to the majesty of law, but in the case of quasi-criminal in nature, charges have to be proved beyond reasonable doubt and the alleged contemnor becomes entitled to the benefit of doubt. It would be very hazardous to impose sentence in contempt proceedings on some probabilities.

* * *

b 27. In view of the above, the law can be summarised that the High Court has a power to initiate the contempt proceedings suo motu for ensuring the compliance with the orders passed by the Court. However, contempt proceedings being quasi-criminal in nature, the same standard of proof is required in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the criminal jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The alleged contemnor is to be informed as to what is the charge, he has to meet. Thus, specific charge has to be framed in precision. The alleged contemnor may ask the Court to permit him to cross-examine the witnesses i.e. the deponents of affidavits, who have deposed against him. In spite of the fact that contempt proceedings are quasi-criminal in nature, provisions of the Code of Criminal Procedure, 1973 (hereinafter called "CrPC") and the Evidence Act are not attracted for the reason that proceedings have to be concluded expeditiously. Thus, the trial has to be concluded as early as possible. The case should not rest only on surmises and conjectures. There must be clear and reliable evidence to substantiate the allegations against the alleged contemnor. The proceedings must be concluded giving strict adherence to the statutory rules framed for the purpose."

e **81.** In *Maninderjit Singh Bitta v. Union of India*⁹⁷, this Court again referred to "civil" and "criminal" contempt as follows: (SCC pp. 280-81, paras 17 & 19)

f "17. Section 12 of the 1971 Act deals with the contempt of court and its punishment while Section 15 deals with cognizance of criminal contempt. Civil contempt would be wilful breach of an undertaking given to the court or wilful disobedience of any judgment or order of the court, while criminal contempt would deal with the cases where by words, spoken or written, signs or any matter or doing of any act which scandalises, prejudices or interferes, obstructs or even tends to obstruct the due course of any judicial proceedings, any court and the administration of justice in any other manner. Under the English law, the distinction between criminal and civil contempt is stated to be very little and that too of academic significance. However, under both the English and Indian law these are proceedings sui generis.

* * *

h 19. Under the Indian law the conduct of the parties, the act of disobedience and the attendant circumstances are relevant to consider

97 (2012) 1 SCC 273 : (2012) 1 SCC (Civ) 88 : (2012) 1 SCC (Cri) 528 : (2012) 1 SCC (L&S) 83

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whether a case would fall under civil contempt or criminal contempt. For example, disobedience of an order of a court simpliciter would be civil contempt but when it is coupled with conduct of the parties which is contemptuous, prejudicial and is in flagrant violation of the law of the land, it may be treated as a criminal contempt. Even under the English law, the courts have the power to enforce its judgment and orders against the recalcitrant parties.”

82. That contempt proceedings are “quasi-criminal” is also stated in *Kanwar Singh Saini v. High Court of Delhi*⁹⁸, SCC para 38 and in *T.C. Gupta v. Bimal Kumar Dutta*⁹⁹, SCC para 10.

83. What is clear from the aforesaid is that though there may not be any watertight distinction between civil and criminal contempt, yet, an analysis of the aforesaid authorities would make it clear that civil contempt is essentially an action which is moved by the party in whose interest an order was made with a view to enforce its personal right, where contumacious disregard for such order results in punishment of the offender in public interest, whereas a criminal contempt is, in essence, a proceeding which relates to the public interest in seeing that the administration of justice remains unpolluted. What is of importance is to note that even in cases of civil contempt, fine or imprisonment or both may be imposed. The mere fact that punishments that are awardable relate to Section 53 IPC would not, therefore, render a civil contempt proceeding a criminal proceeding. There is a great deal of wisdom in the finding of the Sanyal Committee Report that the question whether a contempt is civil or criminal is not to be judged with reference to the penalty which may be inflicted but with reference to the cause for which the penalty has been inflicted.

84. Clearly, therefore, given the hybrid nature of a civil contempt proceeding, described as “quasi-criminal” by several judgments of this Court, there is nothing wrong with the same appellation “quasi-criminal” being applied to a Section 138 proceeding for the reasons given by us on an analysis of Chapter XVII of the Negotiable Instruments Act. We, therefore, reject the learned Additional Solicitor General’s strenuous argument that the appellation “quasi-criminal” is a misnomer when it comes to Section 138 proceedings and that therefore some of the cases cited in this judgment should be given a fresh look.

Other sections of the IBC in relation to Section 14 IBC

85. Shri Mehta then argued that Section 33(5) IBC may also be seen, as it is a provision analogous to Section 14(1)(a). Section 33(5) states as follows:

“33. Initiation of liquidation.—(1)-(4) * * *

(5) Subject to Section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

⁹⁸ (2012) 4 SCC 307 : (2012) 2 SCC (Civ) 497 : (2012) 2 SCC (Cri) 423
⁹⁹ (2014) 14 SCC 446 : (2015) 1 SCC (Civ) 340

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Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the adjudicating authority.”

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It will be noted that under this section, the expression “no suit or other legal proceeding” occurs both in the enacting part as well as the proviso. Going by the proviso first, given the object that the liquidator now has to act on behalf of the Company after a winding-up order is passed, which includes filing of suits and other legal proceedings on behalf of the Company, there is no earthly reason as to why a Sections 138/141 proceeding would be outside the ken of the proviso. On the contrary, as the liquidator alone now represents the Company, it is obvious that whatever the Company could do pre-liquidation is now vested in the liquidator, and in order to realise monies that are due to the Company, there is no reason why the liquidator cannot institute a Sections 138/141 proceeding against a defaulting debtor of the Company. Obviously, this language needs to be construed in the widest possible form as there cannot be any residuary category of “other legal proceedings” which can be instituted against some person other than the liquidator or by the liquidator who now alone represents the Company. Given the object of this provision also, what has been said earlier with regard to the non-application of the doctrines of ejusdem generis and noscitur a sociis would apply with all force to this provision as well.

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86. In fact, several other provisions of the IBC may also be looked at in this context.

86.1. Thus, when it comes to the duties of a resolution professional who takes over the management of the Company during the corporate insolvency resolution process, Section 25(2)(b) states as follows:

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“25. Duties of resolution professional.—(1) * * *

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely—

* * *

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(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;”

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Here again, given the fact that it is the resolution professional alone who is now to preserve and protect the assets of the corporate debtor in this interregnum, the resolution professional therefore is to represent and act on behalf of the corporate debtor in all judicial, quasi-judicial, or arbitration proceedings, which would include criminal proceedings. Here again, the word “judicial” cannot be construed noscitur a sociis so as to cut down its plain meaning, as otherwise, quasi-judicial or arbitration proceedings, not being criminal proceedings, the word “judicial” would then take colour from them. This would stultify the object sought to be achieved by Section 25 and result in an absurdity, namely, that during this interregnum, nobody can represent or act on behalf of the corporate debtor in criminal proceedings.

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86.2. Likewise, if a corporate debtor cannot be taken over by a new management and has to be condemned to liquidation, the powers and duties of the liquidator, while representing the corporate debtor, are enumerated in Section 35. Section 35(1)(k), in particular, states as follows:

“35. Powers and duties of liquidator.—(1) Subject to the directions of the adjudicating authority, the liquidator shall have the following powers and duties, namely—

* * *

(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the corporate debtor;”

This provision specifically speaks of “prosecution” and “criminal proceedings”. Contrasted with Section 25(2)(b) and Section 33(5), an argument could be made that the absence of the expressions “prosecution” and “criminal proceedings” in Section 25(2)(b) and Section 33(5) would show that they were designedly eschewed by the legislature. We have seen how inelegant drafting cannot lead to absurd results or results which stultify the object of a provision, given its otherwise wide language. Thus, nothing can be gained by juxtaposing various provisions against each other and arriving at conclusions that are plainly untenable in law.

Case law under provisions of other statutes

87. Shri Mehta then relied strongly upon judgments under Section 22(1) of the SICA and under Section 446(2) of the Companies Act, 1956. He relied upon *BSI Ltd. v. Gift Holdings (P) Ltd.*¹⁰⁰, which judgment held that the expression “suit” in Section 22(1) of the SICA would not include a Section 138 proceeding. The Court was directly concerned with only this expression and, therefore, held: (SCC p. 744, paras 19-21)

“19. The said contention is also devoid of merits. The word “suit” envisaged in Section 22(1) cannot be stretched to criminal prosecutions. The suit mentioned therein is restricted to ‘recovery of money or for enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company’. As the suit is clearly delineated in the provision itself, the context would not admit of any other stretching process.

20. A criminal prosecution is neither for recovery of money nor for enforcement of any security, etc. Section 138 of the NI Act is a penal provision the commission of which offence entails a conviction and sentence on proof of the guilt in duly conducted criminal proceedings. Once the offence under Section 138 is completed the prosecution proceedings can be initiated not for recovery of the amount covered by the cheque but for bringing the offender to penal liability. What was considered in *Maharashtra Tubes Ltd.*¹⁰¹ is whether the remedy provided in Section 29

100 (2000) 2 SCC 737 : 2000 SCC (Cri) 538

101 *Maharashtra Tubes Ltd. v. State Industrial & Investment Corpn. of Maharashtra Ltd.*, (1993) 2 SCC 144

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a or Section 31 of the State Finance Corporation Act, 1951 could be pursued notwithstanding the ban contained in Section 22 of SICA. Hence the legal principle adumbrated in the said decision is of no avail to the appellants.

b 21. In the above context it is pertinent to point out that Section 138 of the NI Act was introduced in 1988 when SICA was already in vogue. Even when the amplitude of the word “company” mentioned in Section 141 of the NI Act was widened through the Explanation added to the section, Parliament did not think it necessary to exclude companies falling under Section 22 of SICA from the operation thereof. If Parliament intended to exempt sick companies from prosecution proceedings, necessary provision would have been included in Section 141 of the NI Act. More significantly, when Section 22(1) of SICA was amended in 1994 by inserting the words

c ‘and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company’

Parliament did not specifically include prosecution proceedings within the ambit of the said ban.”

d This case is wholly distinguishable as the word “proceedings” did not come up for consideration at all. Further, given the object of Section 22(1) of the SICA, which was amended in 1994 by inserting the words that were interpreted by this Court, Parliament restricted proceedings only to suits for recovery of money, etc. thereby expressly not including prosecution proceedings, as was held by this Court. The observations contained in para 20, that Section 138 of the Negotiable Instruments Act is a penal provision in a criminal proceeding cannot now be said to be good law given the march of events, in particular, the amendments of 2002 and 2018 to the Negotiable Instruments Act, as pointed out hereinabove, and the later judgments of this Court interpreting Chapter XVII of the Negotiable Instruments Act.

e 88. The next decision relied upon by Shri Mehta is the judgment in *Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd.*¹⁰², which merely followed this judgment (see paras 15-18).

f 89. Likewise, all the judgments cited under Section 446(2) of the Companies Act, 1956 are distinguishable. Section 446(2) states as follows:

“446. *Suits stayed on winding up order.*—(1) * * *

(2) The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of—

g (a) any suit or proceeding by or against the Company;
(b) any claim made by or against the Company (including claims by or against any of its branches in India);
(c) any application made under Section 391 by or in respect of the Company;

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(d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the Company;

whether such suit or proceeding has been instituted or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the Company, or before or after the commencement of the Companies (Amendment) Act, 1960.”

90. In *S.V. Kandeekar v. V.M. Deshpande*¹⁰³, [*“S.V. Kandeekar”*], this Court explained why income tax proceedings would be outside the purview of Section 446(2) as follows: (SCC pp. 448-49, paras 17-18)

“17. Turning now to the Income Tax Act it is noteworthy that Section 148 occurs in Chapter XIV which beginning with Section 139 prescribes the procedure for assessment and Section 147 provides for assessment or reassessment of income escaping assessment. This section empowers the Income Tax Officer concerned subject to the provisions of Sections 148 to 153 to assess or reassess escaped income. While holding these assessment proceedings the Income Tax Officer does not, in our view, perform the functions of a court as contemplated by Section 446(2) of the Act. Looking at the legislative history and the scheme of the Indian Companies Act, particularly the language of Section 446, read as a whole, it appears to us that the expression “other legal proceeding” in sub-section (1) and the expression “legal proceeding” in sub-section (2) convey the same sense and the proceedings in both the sub-sections must be such as can appropriately be dealt with by the winding up court. The Income Tax Act is, in our opinion, a complete code and it is particularly so with respect to the assessment and reassessment of income tax with which alone we are concerned in the present case. The fact that after the amount of tax payable by an assessee has been determined or quantified its realisation from a company in liquidation is governed by the Act because the income tax payable also being a debt has to rank *pari passu* with other debts due from the Company does not mean that the assessment proceedings for computing the amount of tax must be held to be such other legal proceedings as can only be started or continued with the leave of the liquidation court under Section 446 of the Act. The liquidation court, in our opinion, cannot perform the functions of Income Tax Officers while assessing the amount of tax payable by the assessee even if the assessee be the Company which is being wound up by the Court. The orders made by the Income Tax Officer in the course of assessment or reassessment proceedings are subject to appeal to the higher hierarchy under the Income Tax Act. There are also provisions for reference to the High Court and for appeals from the decisions of the High Court to the Supreme Court and then there are provisions for revision by the Commissioner of Income Tax. It would lead to anomalous consequences if the winding up court were to be held empowered to transfer the assessment proceedings to itself and assess

¹⁰³ (1972) 1 SCC 438

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a the Company to income tax. The argument on behalf of the appellant by Shri Desai is that the winding up court is empowered in its discretion to decline to transfer the assessment proceedings in a given case but the power on the plain language of Section 446 of the Act must be held to vest in that court to be exercised only if considered expedient. We are not impressed by this argument. The language of Section 446 must be so construed as to eliminate such startling consequences as investing the winding up court with the powers of an Income Tax Officer conferred on him by the Income Tax Act, because in our view the legislature could not have intended such a result.

b 18. The argument that the proceedings for assessment or reassessment of a company which is being wound up can only be started or continued with the leave of the liquidation court is also, on the scheme both of the Act and of the Income Tax Act, unacceptable. We have not been shown any principle on which the liquidation court should be vested with the power to stop assessment proceedings for determining the amount of tax payable by the Company which is being wound up. The liquidation court would have full power to scrutinise the claim of the revenue after income tax has been determined and its payment demanded from the liquidator. It would be open to the liquidation court then to decide how far under the law the amount of income tax determined by the Department should be accepted as a lawful liability on the funds of the Company in liquidation. At that stage the winding up court can fully safeguard the interests of the Company and its creditors under the Act. Incidentally, it may be pointed out that at the Bar no English decision was brought to our notice under which the assessment proceedings were held to be controlled by the winding up court.

c On the view that we have taken, the decisions in *Seth Spg. Mills Ltd. (In Liquidation)*¹⁰⁴ and *Mysore Spun Silk Mills Ltd. (In Liquidation)*¹⁰⁵ do not seem to lay down the correct rule of law that the Income Tax Officers must obtain leave of the winding up court for commencing or continuing assessment or reassessment proceedings.”

d 91. From the judgment in *S.V. Kandeekar*¹⁰³, what becomes clear is the fact that the winding-up court under Section 446(2) is to take up all matters which the Company Court itself can conveniently dispose of rather than exposing a company which is under winding up to expensive litigation in other courts. This being the object of Section 446(2), the expression “proceeding” was given a limited meaning as it is obvious that a Company Court cannot dispose of an assessment proceeding in income tax or a criminal proceeding. This is further made clear in *Sudarshan Chits (India) Ltd. v. O. Sukumaran Pillai*¹⁰⁶ (at para 8) and in *Central Bank of India v. Elmot Engg. Co.*¹⁰⁷ (at para 14).

104 *Union of India v. Seth Spg. Mills Ltd.*, 1961 SCC OnLine P&H 173

105 *Mysore Spun Silk Mills Ltd., In re*, 1968 SCC OnLine Kar 242

h 103 *S.V. Kandeekar v. V.M. Deshpande*, (1972) 1 SCC 438

106 (1984) 4 SCC 657

107 (1994) 4 SCC 159

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92. Shri Mehta also relied upon *D.K. Kapur v. RBI*¹⁰⁸. This judgment referred to Sections 446(1) and (2) of the Companies Act, 1956 and contrasted the language contained therein with the language contained in Section 457 of the same Act, which made it clear that the liquidator in a winding up by the court shall have power, with the sanction of the court, to institute or defend any suit, *prosecution*, or other legal proceeding, civil or *criminal*, in the name and on behalf of the Company. Thus, the Delhi High Court held: (SCC OnLine Del para 12)

“12. Mere look at the aforesaid provisions would show that on the one hand, in Section 457 of the Act, the legislature has empowered the liquidator to institute or defend any “suit” or “prosecution” or “other legal proceedings” civil or criminal in the name and on behalf of company after permission from the court; and by Section 454(5-A) of the Act the legislature has empowered the Company Court itself to take cognizance of the offence under sub-section (5) of Section 454 of the Act and to try such offenders as per the procedure provided for trial of summons cases under the Code of Criminal Procedure, 1974; but on the other hand in Sections 442 and 446 of the Act the legislature has used only the expression “suit or other legal proceedings”. The words “prosecution” or “criminal case” are conspicuously missing in these sections. It appears quite logical as purpose and object of Sections 442 and 446 of the Act is to enable the Company Court to oversee the affairs of the Company and to avoid wasteful expenditure. Therefore the intention of the legislature under these sections does not appear to provide jurisdiction to the Company Court over criminal proceedings either against the Company or against its Directors. Wherever legislature thought it necessary to provide such jurisdiction it has used the appropriate expressions.”

93. It then set out the judgment in *S.V. Kandeekar*¹⁰³ in para 14, and concluded: (*D.K. Kapur case*¹⁰⁸, SCC OnLine Del para 15)

“15. The reasoning adopted by the Supreme Court in the above case would be fully applicable to the facts at hand. Complaints under the penal provisions of other statutes against the Company or its Directors, (except those provided under the Companies Act) cannot be appropriately dealt with by the Company Court. Orders passed by the criminal court are subject to the appeal and revision, etc. under the Code of Criminal Procedure. If the winding up court is held to be empowered to transfer these criminal proceedings to itself it would lead to anomalous consequences.”

94. It was in this context that the Court therefore ultimately held: (*D.K. Kapur case*¹⁰⁸, SCC OnLine Del para 20)

“20. ... The expression “other legal proceedings” must be read in *ejusdem generis* with the expression “suit” in Section 446 of the Act. If so read it can only refer to any civil proceedings and criminal proceedings have to be excluded. Therefore, no permission was required to be taken

108 2001 SCC OnLine Del 67 : (2001) 58 DRJ 424

103 *S.V. Kandeekar v. V.M. Deshpande*, (1972) 1 SCC 438

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from Company Court for filing criminal complaint either against the Company or against its Directors.”

- a** **95.** Shri Mehta’s reliance on *Indorama Synthetics (India) Ltd. v. State of Maharashtra*¹⁰⁹, is also misplaced, for the reason that the finding of the Bombay High Court that Section 138 proceedings were not included in Section 446 of the Companies Act only follows the reasoning of the earlier judgments on the scope of Section 446 of the Companies Act. Significantly, given the object of Section 446 of the Companies Act, it was held that a
- b** Section 138 proceeding is not a proceeding which has a direct bearing on the collection or distribution of assets in the winding up of a company. The ultimate conclusion of the Court is contained in para 30, which reads as follows: (SCC OnLine Bom)

- c** “30. Thus, there is a long line of decisions making the position clear that the expression “suit or legal proceedings”, used in Section 446(1) of the Companies Act, can mean only those proceedings which can have a bearing on the assets of the companies in winding up or have some relation with the issue in winding up. It does not mean each and every civil proceedings, which has no bearing on the winding up proceedings, or criminal offences where the Director of the Company is presently liable for penal action.”

- d** **96.** As the language, object, and context of Section 22(1) of the SICA and Section 446(2) of the Companies Act are far removed from Section 14(1) IBC, none of the aforesaid judgments have any application to Section 14 IBC and are therefore distinguishable.

- e** **97.** Shri Mehta then relied upon *Power Grid Corpn. of India Ltd. v. Jyoti Structures Ltd.*¹¹⁰, in which the Delhi High Court held that a Section 34 application to set aside an award under the Arbitration and Conciliation Act, 1996 would not be covered by Section 14 IBC. This judgment does not state the law correctly as it is clear that a Section 34 proceeding is certainly a proceeding against the corporate debtor which may result in an arbitral award against the corporate debtor being upheld, as a result of which, monies would then be payable by the corporate debtor. A Section 34 proceeding is a proceeding against the corporate debtor in a court of law pertaining to a challenge to an
- f** arbitral award and would be covered just as an appellate proceeding in a decree from a suit would be covered. This judgment does not, therefore, state the law correctly.

- g** **98.** Shri Mehta then relied upon *Inderjit C. Parekh v. V.K. Bhatt*¹¹¹. This judgment dealt with a moratorium provision contained in the Bombay Relief Undertakings (Special Provisions) Act, 1958. In the context of a prosecution under Para 76(a) of the Employees’ Provident Fund Scheme, 1952 this Court held: (SCC pp. 315-16, paras 6-8)

“6. The object of Section 4(1)(a)(iv) is to declare, so to say, a moratorium on actions against the undertaking during the currency of the notification declaring it to be a relief undertaking. By sub-clause (iv),

- h** 109 2016 SCC OnLine Bom 2611 : (2016) 4 Mah LJ 249
110 2017 SCC OnLine Del 12189 : (2018) 246 DLT 485
111 (1974) 4 SCC 313 : 1974 SCC (L&S) 268

any remedy for the enforcement of an obligation or liability against the relief undertaking is suspended and proceedings which are already commenced are to be stayed during the operation of the notification. Under Section 4(1)(b), on the notification ceasing to have force, such obligations and liabilities revive and become enforceable and the proceedings which are stayed can be continued. These provisions are aimed at resurrecting and rehabilitating industrial undertakings brought by inefficiency or mismanagement to the brink of dissolution, posing thereby the grave threat of unemployment of industrial workers. “Relief undertaking” means under Section 2(2) an industrial undertaking in respect of which a declaration under Section 3 is in force. By Section 3, power is conferred on the State Government to declare an industrial undertaking as a relief undertaking, ‘as a measure of preventing unemployment or of unemployment relief’. Relief undertakings, so long as they continue as such, are given immunity from legal actions so as to render their working smooth and effective. Such undertakings can be run more effectively as a measure of unemployment relief, if the conduct of their affairs is unhampered by legal proceedings or the threat of such proceedings. That is the genesis and justification of Section 4(1)(a)(iv) of the Act.

7. Thus, neither the language of the statute nor its object would justify the extension of the immunity so as to cover the individual obligations and liabilities of the Directors and other officers of the undertaking. If they have incurred such obligations or liabilities, as distinct from the obligations or liabilities of the undertaking, they are liable to be proceeded against for their personal acts of commission and omission. The remedy in that behalf cannot be suspended nor can a proceeding already commenced against them in their individual capacity be stayed. Indeed, it would be strange if any such thing was within the contemplation of law. Normally, the occasion for declaring an industry as a relief undertaking would arise out of causes connected with defaults on the part of its Directors and other officers. To declare a moratorium on legal actions against persons whose activities have necessitated the issuance of a notification in the interest of unemployment relief is to give to such persons the benefit of their own wrong. Section 4(1)(a)(iv) therefore advisedly limits the power of the State Government to direct suspension of remedies and stay of proceedings involving the obligations and liabilities in relation to a relief undertaking and which were incurred before the undertaking was declared a relief undertaking.

8. Para 38(1) of the Employees’ Provident Funds Scheme, 1952 imposes an obligation on “the employer” to pay the provident fund contribution to the Fund within 15 days of the close of every month. The Scheme does not define “employee” but Para 2(m) says that words and expressions which are not defined by the Scheme shall have the meaning assigned to them in the Employees’ Provident Funds Act. Section 2(e)(ii) of that Act defines an “employer”, to the extent material, as the person who, or the authority which, has the ultimate control over the affairs of an establishment and where the said affairs are entrusted to a manager, Managing Director or managing agent, such manager, Managing Director

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a or managing agent. Thus the responsibility to pay the contributions to the Fund was of the appellants and if they have defaulted in paying the amount, they are liable to be prosecuted under Para 76(a) of the Scheme which says that if any person fails to pay any contribution which he is liable to pay under the Scheme, he shall be punishable with six months' imprisonment or with fine which may extend to one thousand rupees or with both. Such a personal liability does not fall within the scope of Section 4(1)(a)(iv) of the Act."

b 99. Significantly, this Court in *Inderjit C. Parekh*¹¹¹ did not hold that the moratorium provision would not extend to criminal liability. On the contrary, on the assumption that it would so extend, a distinction was made between personal liability of the Directors of the undertaking and the undertaking itself, stating that as the "employer" under the Employees' Provident Fund Scheme would only refer to those individuals managing the relief undertaking and not the relief undertaking itself, the personal liability of such persons would not fall within the scope of the moratorium provision. This judgment also, therefore, does not, in any manner, support Shri Mehta.

c 100. Lastly, Shri Mehta relied upon *Directorate of Enforcement v. Axis Bank*¹¹², and in particular, on paras 127, 128 and 146 to 148 for the proposition that an offence under the Prevention of Money-Laundering Act could not be covered under Section 14(1)(a). The Delhi High Court's reasoning is contained in paras 139 and 141, which are set out hereinbelow: (SCC OnLine Del)

d "139. From the above discussion, it is clear that the objects and reasons of enactment of the four legislations are distinct, each operating in different field. There is no overlap. While RDBA has been enacted to provide for speedier remedy for banks and financial institutions to recover their dues, SARFAESI Act (with added chapter on registration of secured creditor) aims at facilitating the secured creditors to expeditiously and effectively enforce their security interest. In each case, the amount to be recovered is "due" to the claimant i.e. the banks or the financial institutions or the secured creditor, as the case may be, the claim being against the debtor (or his guarantor). The Insolvency Code, in contrast, seeks to primarily protect the interest of creditors by entrusting them with the responsibility to seek resolution through a professional (RP), failure on his part leading eventually to the liquidation process.

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e 141. This Court finds it difficult to accept the proposition that the jurisdiction conferred on the State by PMLA to confiscate the "proceeds of crime" concerns a property the value whereof is "debt" due or payable to the Government (Central or State) or local authority. The Government, when it exercises its power under PMLA to seek attachment leading to confiscation of proceeds of crime, does not stand as a creditor, the person alleged to be complicit in the offence of money-laundering similarly not acquiring the status of a debtor. The State is not claiming the prerogative

h 111 *Inderjit C. Parekh v. V.K. Bhatt*, (1974) 4 SCC 313 : 1974 SCC (L&S) 268
112 2019 SCC OnLine Del 7854 : (2019) 259 DLT 500

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to deprive such offender of ill-gotten assets so as to be perceived to be sharing the loot, not the least so as to levy tax thereupon such as to give it a colour of legitimacy or lawful earning, the idea being to take away what has been illegitimately secured by proscribed criminal activity.” (emphasis in original)

This *raison d'être* is completely different from what has been advocated by Shri Mehta. The confiscation of the proceeds of crime is by the Government acting statutorily and not as a creditor. This judgment, again, does not further his case.

Whether natural persons are covered by Section 14 IBC

101. As far as the Directors/persons in management or control of the corporate debtor are concerned, a Sections 138/141 proceeding against them cannot be initiated or continued without the corporate debtor—see *Aneeta Hada*³. This is because Section 141 of the Negotiable Instruments Act speaks of persons in charge of, and responsible to the Company for the conduct of the business of the Company, *as well as the Company*. The Court, therefore, in *Aneeta Hada*³ held as under: (SCC pp. 686-88, paras 51, 56 & 58-59)

“51. We have already opined that the decision in *Sheoratan Agarwal*¹¹³ runs counter to the ratio laid down in *C.V. Parekh*¹¹⁴ which is by a larger Bench and hence, is a binding precedent. On the aforesaid ratiocination, the decision in *Anil Hada*¹¹⁵ has to be treated as not laying down the correct law as far as it states that the Director or any other officer can be prosecuted without impleadment of the Company. Needless to emphasise, the matter would stand on a different footing where there is some legal impediment and the doctrine of *lex non cogit ad impossibilia* gets attracted.

* * *

56. We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not to be imposed affecting the rights of persons, whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the Company. The learned counsel for the respondents have vehemently urged that the use of the term “as well as” in the section is of immense significance and, in its tentacle, it brings in the Company as well as the Director and/or other officers who are responsible for the acts of the Company and, therefore, a prosecution against the Directors or other officers is tenable even if the Company is not arraigned as an accused. The words “as well as” have to be understood in the context.

* * *

³ *Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241

¹¹³ *Sheoratan Agarwal v. State of M.P.*, (1984) 4 SCC 352 : 1984 SCC (Cri) 620

¹¹⁴ *State of Madras v. C.V. Parekh*, (1970) 3 SCC 491 : 1971 SCC (Cri) 97

¹¹⁵ *Anil Hada v. Indian Acrylic Ltd.*, (2000) 1 SCC 1 : 2001 SCC (Cri) 174

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a 58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the Company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the Company” appearing in the section make it absolutely unmistakably clear that when the Company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the Company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.

b 59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in *C.V. Parekh*¹¹⁴ which is a three-Judge Bench decision. Thus, the view expressed in *Sheoratan Agarwal*¹¹³ does not correctly lay down the law and, accordingly, is hereby overruled. The decision in *Anil Hada*¹¹⁵ is overruled with the qualifier as stated in para 51. The decision in *Modi Distillery*¹¹⁶ has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

c 102. Since the corporate debtor would be covered by the moratorium provision contained in Section 14 IBC, by which continuation of Sections 138/141 proceedings against the corporate debtor and initiation of Sections 138/141 proceedings against the said debtor during the corporate insolvency resolution process are interdicted, what is stated in paras 51 and 59 in *Aneeta Hada*³ would then become applicable. The legal impediment contained in Section 14 IBC would make it impossible for such proceeding to continue or be instituted against the corporate debtor. Thus, for the period of moratorium, since no Sections 138/141 proceeding can continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Sections 141(1) and (2) of the Negotiable Instruments Act. This being the case, it is clear that the moratorium provision contained in Section 14 IBC would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act.

Conclusion

g 103. In conclusion, disagreeing with the Bombay High Court and the Calcutta High Court judgments in *Tayal Cotton (P) Ltd. v. State of*

114 *State of Madras v. C.V. Parekh*, (1970) 3 SCC 491 : 1971 SCC (Cri) 97

113 *Sheoratan Agarwal v. State of M.P.*, (1984) 4 SCC 352 : 1984 SCC (Cri) 620

115 *Anil Hada v. Indian Acrylic Ltd.*, (2000) 1 SCC 1 : 2001 SCC (Cri) 174

h 116 *U.P. Pollution Control Board v. Modi Distillery*, (1987) 3 SCC 684 : 1987 SCC (Cri) 632

3 *Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241

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*Maharashtra*¹¹⁷ and *MBL Infrastructions Ltd. v. Manik Chand Somani*¹¹⁸, respectively, we hold that a Sections 138/141 proceeding against a corporate debtor is covered by Section 14(1)(a) IBC.

104. Resultantly, the civil appeal is allowed and the judgment under appeal is set aside. However, the Sections 138/141 proceedings in this case will continue both against the Company as well as the appellants for the reason given by us in paras 101 and 102 above as well as the fact that the insolvency resolution process does not involve a new management taking over. We may also note that the moratorium period has come to an end in this case.

Criminal appeal arising out of SLP (Criminal) Diary No. 32585 of 2019

105. Delay condoned. Leave granted.

106. Shri S. Nagamuthu, learned Senior Advocate appearing on behalf of the appellant, has made various submissions before us. Suffice it to state that his first submission is that as a moratorium is imposed against the corporate debtor w.e.f. 10-7-2017, the Section 138 complaint that was preferred on 19-9-2017 must be quashed.

107. On the facts of this case, three cheques—for INR 25,00,000 dated 31-5-2017, for INR 25,00,000 dated 30-6-2017, and for INR 23,51,408 dated 31-7-2017 were issued by the appellant in favour of the respondent. Before the cheques could be presented for payment, on 10-7-2017, the adjudicating authority admitted a petition by an operational creditor under Section 9 IBC and imposed a moratorium under Section 14. The three cheques were presented for payment, but were returned citing “insufficient funds” as the reason on 4-8-2017. The legal notice to initiate proceedings under Section 138 of the Negotiable Instruments Act was issued by the respondent on 12-8-2017. As no payment was forthcoming within the time specified, the respondent preferred a complaint against the corporate debtor alone on 19-9-2017.

108. The respondent did not dispute the aforesaid dates, only reiterating that the High Court was right in dismissing¹¹⁹ a quash petition filed by the appellant under Section 482 CrPC.

109. Since the complaint that has been filed in the present case is against the corporate debtor alone, without joining any of the persons in charge of and responsible for the conduct of the business of the corporate debtor, the complaint needs to be quashed, given our judgment¹²⁰ in Civil Appeal No. 10355 of 2018. The judgment under appeal, dated 2-4-2019¹¹⁹, is therefore set aside and the appeal is allowed.

Criminal appeals arising out of SLPs (Criminal) Nos. 10587, 10857, 10550, 10858, 10860, 10861 and 10446 of 2019

110. Leave granted. On the facts of these cases, all the complaints filed by different creditors of the same appellant under Section 138 read with Section 141 of the Negotiable Instruments Act were admittedly filed long

117 2018 SCC OnLine Bom 2069 : (2019) 1 Mah LJ 312

118 2019 SCC OnLine Cal 9097

119 *Nag Leathers v. Saroj Leathers*, 2019 SCC OnLine Mad 38924

120 Set out in paras 1 to 104, above.

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before the adjudicating authority admitted a petition under Section 7 IBC and imposed moratorium on 19-3-2019.

- a* **111.** Given our judgment¹²⁰ in Civil Appeal No. 10355 of 2018, the said moratorium order would not cover the appellant in these cases, who is not a corporate debtor, but a Director thereof. Thus, the impugned order issuing a proclamation under Section 82 CrPC cannot be faulted with on this ground. The appeals are therefore dismissed.

Criminal appeal arising out of SLPs (Criminal) Nos. 2246-47 of 2020

- b* **112.** Leave granted.

- 113.** In this case, the two complaints dated 12-3-2018 and 14-3-2018 under Section 138 read with Section 141 of the Negotiable Instruments Act were filed by the respondent against the corporate debtor along with persons in charge of and responsible for the conduct of business of the corporate debtor. On 14-2-2020, the adjudicating authority admitted a petition under Section 9 IBC against the corporate debtor and imposed a moratorium. The impugned interim order dated 20-2-2020 is for the issuance of non-bailable warrants against two of the accused individuals.

- c* **114.** Given our judgment¹²⁰ in Civil Appeal No. 10355 of 2018, the moratorium provision not extending to persons other than the corporate debtor, this appeal also stands dismissed.

- d* ***Criminal appeal arising out of SLP (Criminal) No. 2496 of 2020***

- 115.** Leave granted. In the present case, a complaint under Section 138 read with Section 141 of the Negotiable Instruments Act was filed by Respondent 1 against the corporate debtor together with its Managing Director and Director on 15-5-2018. It is only thereafter that a petition under Section 9 IBC, filed by Respondent 1, was admitted by the adjudicating authority and a moratorium was imposed on 30-10-2018. The impugned judgment dated 16-10-2019¹²¹ held that a petition under Section 482 CrPC to quash the said proceeding would be rejected as Section 14 IBC did not apply to Section 138 proceedings.

- e* **116.** The impugned judgment is set aside in view of our judgment¹²⁰ in Civil Appeal No. 10355 of 2018, and the complaint is directed to be continued against the Managing Director and Director, respectively.

Criminal appeal arising out of SLP (Criminal) No. 3500 of 2020

- f* **117.** Leave granted. The complaint in the present case was filed by the respondent on 28-7-2016. An application under Section 7 IBC was admitted by the adjudicating authority only on 20-2-2018 and moratorium imposed on the same date. The impugned judgment rejected a petition under Section 482 CrPC on the ground that Section 138 proceedings are not covered by Section 14 IBC.

- g* **118.** The impugned judgment is set aside in view of our judgment¹²⁰ in Civil Appeal No. 10355 of 2018, and the complaint is directed to be continued against the appellant.

- h* ¹²⁰ Set out in paras 1 to 104, above.

¹²¹ *Gian Chand & Sons (P) Ltd. v. Mahavir Traders*, 2019 SCC OnLine P&H 3535

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Criminal appeal arising out of SLPs (Criminal) Nos. 5638-51 of 2020, 5653-68 of 2020

119. Leave granted. In these appeals, the appellants have approached us directly from the learned Magistrate's impugned orders. The learned Magistrate has held that Section 14 IBC would not cover proceedings under Section 138 of the Negotiable Instruments Act. As a result, warrants of attachment have been issued under Section 431 read with Section 421 CrPC against various accused persons, including the corporate debtor and persons who are since deceased. While setting aside the impugned judgments, given our judgment¹²⁰ in Civil Appeal No. 10355 of 2018, we remand these cases to the Magistrate to apply the law laid down by us in Civil Appeal No. 10355 of 2018, and thereafter decide all other points that may arise in these cases in accordance with law.

Writ Petitions (Criminal) Nos. 330 and 339 of 2020, Writ Petition (Civil) No. 982 of 2020, Writ Petitions (Criminal) Nos. 297 and 342 of 2020, Writ Petitions (Civil) Nos. 1417 and 1439 of 2020, 18 of 2021, Writ Petitions (Criminal) Nos. 9 and 26 of 2021

120. All these writ petitions have been filed under Article 32 of the Constitution of India by erstwhile Directors/persons in charge of and responsible for the conduct of the business of the corporate debtor. They are all premised upon the fact that Section 138 proceedings are covered by Section 14 IBC and hence, cannot continue against the corporate debtor and consequently, against the petitioners.

121. Given our judgment¹²⁰ in Civil Appeal No. 10355 of 2018, all these writ petitions have to be dismissed in view of the fact that such proceedings can continue against erstwhile Directors/persons in charge of and responsible for the conduct of the business of the corporate debtor.

¹²⁰ Set out in paras 1 to 104, above.

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3J

(BEFORE N.V. RAMANA, C.J. AND SURYA KANT AND A.S. BOPANNA, JJ.)

TRIYAMBAK S. HEGDE

.. Appellant;

Versus

SRIPAD

.. Respondent.

Criminal Appeals Nos. 849-50 of 2011[†], decided on September 23, 2021

A. Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — Ss. 118 and 139 — Presumptions thereunder — Invocation and rebuttal of — Principles summarised

B. Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — Ss. 139, 118 and 138 — Presumptions under Ss. 139 and 118 — Whether validly invoked — Accused whether can lead evidence to rebut the same for the first time in appeal — Such evidence whether enough to rebut the presumption — Determination of

— Accused proposing a contention to rebut said presumption for first time before High Court without even stating it before trial court or Sessions Court — Such contention being without any proper explanation, held, untenable — High Court going to validity of agreement for sale in proceedings arising out of S. 138 of the NI Act, 1881 — Unwarrantedness of — On facts, judgment of conviction passed by Magistrate restored with modified fine amount

— Appellant complainant had entered into agreement for sale (Ext. P-6) with respondent-accused — It was agreed that respondent-accused would sell house at Rs 4,00,000 and appellant complainant paid 3,50,000 towards consideration amount — As the house stood in the name of father of respondent-accused and he had no authority to sell it, appellant complainant demanded his amount — Therefore, respondent-accused issued a cheque for sum of Rs 1,50,000 — This cheque got dishonoured and there was no response to notice issued under the Act — Therefore, appellant complainant initiated legal proceedings against respondent-accused — JMFC convicted respondent-accused with simple imprisonment of six months and fine of Rs 2,00,000 — It was also ordered that if respondent-accused defaulted in payment, he would suffer imprisonment for further period of three months and appellant complainant entitled for sum of Rs 1,95,000 (out of Rs 2,00,000 as ordered by JMFC) as compensation — Both parties preferred appeals against this judgment — These appeals were dismissed by Sessions Court — Respondent-accused preferred revision before High Court and his petition was allowed

[†] Arising from the Judgment and Order in *Sripad v. Triyambak S. Hegde*, 2009 SCC OnLine Kar 947 (Karnataka High Court, Criminal Revision Petitions Nos. 1282 and 1481 of 2006, dt. 1-12-2009) [Reversed]

a — On facts held, respondent-accused had agreed to sell his house — Advance amount of Rs 3,50,000 was paid in this regard — As he did not have proper title to sell, cheque was issued towards part-payment of sum — Since signature on agreement to sell (Ext. P-6) and dishonoured cheque (Ext. P-2) was not disputed, presumption under Ss. 118 and 139 of the Act arose

b — During hearing before High Court, respondent-accused contended that a relative of appellant complainant was junior advocate of the counsel who represented respondent-accused in civil case — Thus, his counsel was in dominant position to make respondent-accused sign agreement to sell and dishonoured cheque — There was no explanation whatsoever to indicate the reasons for which such necessity arose for him to secure signatures of respondent-accused, if there was no transaction between them — This story was proposed for first time before High Court without being any such contention before the subordinate courts — Respondent-accused did not state any such fact in his statement under S. 313 CrPC nor did he state about it in appellate stage before Sessions Court — Respondent-accused was defended by counsel whose junior advocate was relative of appellant complainant — Respondent-accused did not bring issue of forced signatures to knowledge of his counsel nor did he change advocate — Thus, it appears to be ex facie afterthought

d — If cheque was not voluntarily secured, then it is difficult to comprehend as to why it was drawn only for Rs 1,50,000 — Appellant complainant would have mentioned entire consideration amount of Rs 3,50,000 — Natural conduct would have been to secure all advanced money — Hence, presumption raised in this case was not successfully rebutted by respondent-accused

e — Further, High Court erred in examining validity of agreement to sell (Ext. P-6) while hearing dishonour of cheque case — It was not beyond the scope of the nature of the litigation — Such examination could have been done in suit for specific performance cases

f — Hence, judgment of conviction recorded by JMFC restored — Looking into background of respondent-accused and reasons for transactions, Supreme Court modified imprisonment by imposing enhanced fine — Now, respondent-accused to pay Rs 2,50,000 as fine and if he defaults then required to undergo imprisonment for six months — It was clarified that appellant complainant entitled to receive sum of Rs 2,40,000 (Paras 14, 15, 17 and 18 to 25)

Held :

g As the signature in the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of the NI Act, 1881 can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Section 139 of the NI Act enjoins on the court to presume that the holder of the cheque received it for the discharge of any debt or liability. The burden was on the accused to rebut the aforesaid presumptions. (Para 14)

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The principles in regard to the presumptions that may be raised under Sections 118 and 139 of the NI Act, 1881 and the rebuttal thereof, can be summarised as under—

(1) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability. a

(2) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities. b

(3) To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

(4) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden. c

(5) It is not necessary for the accused to come in the witness box to support his defence. (Para 15)

Whether there is rebuttal or not would depend on the facts and circumstances of each case. (Para 17) d

K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510 : 1999 SCC (Cri) 1284; *Basalingappa v. Mudibasappa*, (2019) 5 SCC 418 : (2019) 2 SCC (Cri) 571, summarised *K. Bhaskaran v. Sankaran Vaidhyan Balan*, (1999) 7 SCC 510 : 1999 SCC (Cri) 1284, affirmed *Basalingappa v. Mudibasappa*, (2019) 5 SCC 418 : (2019) 2 SCC (Cri) 571, affirmed in law but distinguished on facts

K. Chinnaswamy Reddy v. State of A.P., AIR 1962 SC 1788 : (1963) 1 Cri LJ 8, distinguished *Sripad v. Triyambak S. Hegde*, 2009 SCC OnLine Kar 947, reversed *Sankaran Vaidhyan Balan v. K. Bhaskaran*, Criminal Appeal No. 234 of 1995, order dated 23-10-1998 (Ker), cited e

C. Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — S. 138 vis-à-vis offences under Penal Code, 1860 — Gravity of complaint under S. 138 of the NI Act cannot be equated with offences under Penal Code, 1860 (Para 24) f

Kaushalya Devi Massand v. Roopkishore Khore, (2011) 4 SCC 593 : (2011) 2 SCC (Civ) 410 : (2011) 2 SCC (Cri) 472, affirmed

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on page(s)

Chronological list of cases cited

1. (2019) 5 SCC 418 : (2019) 2 SCC (Cri) 571, *Basalingappa v. Mudibasappa* 748f, 750a
2. (2011) 4 SCC 593 : (2011) 2 SCC (Civ) 410 : (2011) 2 SCC (Cri) 472, *Kaushalya Devi Massand v. Roopkishore Khore* 752c-d g
3. 2009 SCC OnLine Kar 947, *Sripad v. Triyambak S. Hegde (reversed)* 745a, 746b, 752e-f
4. (1999) 7 SCC 510 : 1999 SCC (Cri) 1284, *K. Bhaskaran v. Sankaran Vaidhyan Balan* 748d
5. Criminal Appeal No. 234 of 1995, order dated 23-10-1998 (Ker), *Sankaran Vaidhyan Balan v. K. Bhaskaran* 748e-f h
6. AIR 1962 SC 1788 : (1963) 1 Cri LJ 8, *K. Chinnaswamy Reddy v. State of A.P.* 751a

The Judgment of the Court was delivered by

A.S. BOPANNA, J.— The appellant is before this Court assailing the
a common order dated 1-12-2009 in *Sripad v. Triyambak S. Hegde*¹ passed by the High Court of Karnataka. Through the said order, the learned Single Judge has allowed Criminal Revision Petition No. 1282 of 2006 filed by the respondent herein. Criminal Revision Petition No. 1481 of 2006 filed by the appellant herein has been dismissed. Consequently, the conviction of the respondent, ordered by the learned Judicial Magistrate and affirmed by the learned Session
b Judge is set aside.

2. The case of the appellant is that the respondent who was known to him for the past few years approached the appellant and informed that due to his financial difficulty he intends to sell the house situate in Sirsi Town. The appellant agreed to purchase the same for the negotiated total sale consideration of Rs 4,00,000 (Rupees four lakhs only). An agreement dated 6-6-1996 was
c executed by the respondent while receiving the advance amount of Rs 3,50,000 (Rupees three lakhs fifty thousand only). Subsequently, when the appellant made certain enquiries, he learnt that the house stood in the name of the father of the respondent and the respondent did not have the authority to sell the same. In that view, the appellant demanded the return of Rs 3,50,000 (Rupees three lakhs fifty thousand only) which he had paid as the advance amount. The respondent
d instead of paying the entire amount, issued a cheque dated 17-5-1998 for the sum of Rs 1,50,000 (Rupees one lakh fifty thousand only) being part of the amount. The appellant presented the cheque for realisation on 20-5-1998 when it came to be dishonoured with the endorsement “insufficient funds”.

3. The appellant, therefore, got issued a notice informing the respondent about the cheque being dishonoured and also demanding payment of the cheque amount. The respondent, though received the notice, failed to respond to the
e same. In that view, the appellant filed a complaint under Section 200 of the Criminal Procedure Code (for short “CrPC”) on 14-7-1998 in the Court of the Judicial Magistrate, First Class (for short “JMFC”) at Sirsi which was registered as Criminal Case No. 790 of 2000. Through the said complaint, the appellant sought prosecution of the respondent under Section 138 of the Negotiable Instruments Act, 1881 (for short “the NI Act”). The learned JMFC
f after providing opportunity to both the parties convicted the respondent through the judgment dated 9-6-2005 for the offence punishable under Section 138 of the NI Act; sentenced the respondent to undergo simple imprisonment for six months and to pay the fine of Rs 2,00,000 (Rupees two lakhs only). In default of payment of the fine amount, the accused was ordered to undergo simple imprisonment for a further period of three months. Out of the fine amount,
g Rs 1,95,000 (Rupees one lakh ninety-five thousand only) was ordered to be paid to the appellant as compensation.

4. The respondent herein claiming to be aggrieved by the said judgment dated 9-6-2005 passed by the JMFC, filed an appeal before the District and Sessions Judge, Uttara Kannada, Karwar in Criminal Appeal No. 57 of 2005. The appellant herein also filed an appeal in Criminal Appeal No. 65 of 2005
h before the District and Sessions Judge seeking that the sentence imposed

1 2009 SCC OnLine Kar 947

on the respondent by the learned JMFC be enhanced, as the compensation of Rs 1,95,000 (Rupees one lakh ninety-five thousand only) ordered to be paid to the appellant is insufficient. The learned Sessions Judge having re-examined the matter and on reassessing the evidence dismissed both the appeals through separate judgments both dated 22-4-2006. The respondent herein, in that view, filed the revision petition in Criminal Revision Petition No. 1282 of 2006 and the appellant herein filed the connected Revision Petition No. 1481 of 2006 before the High Court. The learned Single Judge, as noted, has allowed¹ the revision petition filed by the respondent herein and set aside the conviction order passed by the learned JMFC, which had been confirmed by the learned Sessions Judge. It is in that background, these appeals have arisen for consideration.

5. We have heard Mr Rajesh Inamdar, learned counsel for the appellant, Mr G.V. Chandrasekar, learned counsel for the respondent and perused the appeal papers.

6. Before the learned Magistrate, the appellant had examined himself as PW 1 and got marked the documents at Exts. P-1 to P-6. The deposition of the appellant as PW 1 indicated that the appellant and the respondent were known to each other for about 7 to 8 years prior to the transaction in question. In that view, in the year 1996 the respondent approached the appellant, explained his financial difficulties and due to his financial need, offered to sell the property situate in Sirsi. In that light, the price was finalised at Rs 4,00,000 (Rupees four lakhs only) and on executing an agreement dated 6-6-1996 (Ext. P-6), the advance amount of Rs 3,50,000 (Rupees three lakhs fifty thousand only) was paid. The balance amount of Rs 50,000 (Rupees fifty thousand only) was to be paid at the time of registration and the transaction was to be completed within six months.

7. It is alleged that the respondent kept on postponing the registration on one pretext or the other. Therefore, on an enquiry the appellant learnt that the property was in fact in the name of the father of the respondent and the respondent was not the absolute owner. Since the respondent was not authorised to sell, the appellant proceeded to cancel the agreement and demanded to pay back the advance amount. In that view, the cheque dated 17-5-1998 (Ext. P-2) was drawn by the respondent for the sum of Rs 1,50,000 (Rupees one lakh fifty thousand only) which was towards part of the advance amount paid by him. The cheque on being presented was however dishonoured. The memo issued by the bank was marked as Ext. P-3. The notice issued by the appellant and the postal receipt was marked as Exts. P-4 and P-5. The respondent did not choose to tender any rebuttal evidence in the Court of JMFC, though he disputed the incriminating circumstances which were put to him while recording the statement under Section 313 CrPC.

8. In that background, the learned JMFC on taking note that the signature on the agreement dated Ext. P-6, more particularly on the cheque at Ext. P-2 being admitted, it raised presumption under Sections 118 and 139 of the NI Act, which had not been rebutted. Therefore, the learned JMFC convicted the respondent. As noted, the learned Sessions Judge on reappreciating the

1 *Sripad v. Triyambak S. Hegde*, 2009 SCC OnLine Kar 947

a evidence had confirmed the conviction and sentence. The respondent however put forth the contention in the revision petition only at the time of argument, that the appellant did not pay the amount but his signature had been secured on the cheque (Ext. P-2) and the agreement (P-6) under peculiar circumstances. It was contended on his behalf that he was a party to a case in the Court of the Civil Judge, Sirsi wherein he had engaged the services of an advocate by name Mr Rama Joshi. It was his further case that Mr Vishwanath Hegde who is the junior of Mr Rama Joshi happens to be the relative of the appellant herein. He, thus being in a dominant position had obtained the signature.

b 9. The learned Single Judge having accepted the said contention which was raised in the revision for the first time during arguments proceeded to hold that the appellant had not discharged the burden of proving that he had paid Rs 3,50,000 (Rupees three lakhs fifty thousand only) to the respondent and that the cheque had been issued towards payment of a part of the same. The learned Single Judge was also of the opinion that the agreement at Ext. P-6 cannot be
c believed, as well.

d 10. Mr Rajesh Inamdar, the learned counsel appearing on behalf of the appellant has contended that the signature on the documents at Ext. P-6 and the cheque at Ext. P-2 is not disputed by the respondent. In that view, it is contended that the learned JMFC was justified in raising a presumption against the respondent and convicting him since there was no rebuttal evidence or contrary material whatsoever. It is contended that the document at Ext. P-6 was relied to indicate that there was a transaction entered into between the parties towards which the payment was made but the manner in which the High Court has adverted to the said document is beyond the scope of the requirement in a proceeding under Section 138 of the NI Act. In that circumstance, it is
e contended that the learned Single Judge has proceeded at a tangent and has set aside the concurrent judgments of the courts below, though limited scope was available in a revision petition.

f 11. Mr G.V. Chandrasekar, the learned counsel for the respondent submitted that the trial court and the lower appellate court has not examined the case in its correct perspective. Instead, merely because the signature on the cheque was admitted the courts jumped to the conclusion by raising a presumption, though there was no evidence on record to show that the appellant possessed the funds and the same had been actually paid by him to the respondent to constitute legally recoverable debt. It is contended that the High Court was justified in examining and concluding with regard to the circumstance under which the cheque had been signed and, in that light, had set aside the conviction. The order therefore does not call for interference is
g his contention.

h 12. From the facts arising in this case and the nature of the rival contentions, the record would disclose that the signature on the documents at Exts. P-6 and P-2 is not disputed. Ext. P-2 is the dishonoured cheque based on which the complaint was filed. From the evidence tendered before the JMFC, it is clear that the respondent has not disputed the signature on the cheque. If that be the position, as noted by the courts below a presumption would arise under

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Section 139 in favour of the appellant who was the holder of the cheque.
Section 139 of the NI Act reads as hereunder:

“139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.”

13. Insofar as the payment of the amount by the appellant in the context of the cheque having been signed by the respondent, the presumption for passing of the consideration would arise as provided under Section 118(a) of the NI Act which reads as hereunder:

“118. Presumptions as to negotiable instruments.—Until the contrary is proved, the following presumptions shall be made:

(a) of consideration: that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration.”

14. The abovenoted provisions are explicit to the effect that such presumption would remain, until the contrary is proved. The learned counsel for the appellant in that regard has relied on the decision of this Court in *K. Bhaskaran v. Sankaran Vaidhyan Balan*² wherein it is held as hereunder: (SCC pp. 516-17, para 9)

“9. As the signature in the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Section 139 of the Act enjoins on the Court to presume that the holder of the cheque received it for the discharge of any debt or liability. The burden was on the accused to rebut the aforesaid presumption. The trial court was not persuaded to rely on the interested testimony of DW 1 to rebut the presumption. The said finding was upheld³ by the High Court. It is not now open to the accused to contend differently on that aspect.”

15. The learned counsel for the respondent has however referred to the decision of this Court in *Basalingappa v. Mudibasappa*⁴ wherein it is held as hereunder: (SCC pp. 432-33, paras 25-26)

“25. We having noticed the ratio laid down by this Court in the above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:

25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

2 (1999) 7 SCC 510 : 1999 SCC (Cri) 1284

3 *Sankaran Vaidhyan Balan v. K. Bhaskaran*, Criminal Appeal No. 234 of 1995, order dated 23-10-1998 (Ker)

4 (2019) 5 SCC 418 : (2019) 2 SCC (Cri) 571

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a 25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

b 25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

c 25.5. It is not necessary for the accused to come in the witness box to support his defence.

d 26. Applying the preposition of law as noted above, in facts of the present case, it is clear that signature on the cheque having been admitted, a presumption shall be raised under Section 139 that the cheque was issued in discharge of debt or liability. The question to be looked into is as to whether any probable defence was raised by the accused. In cross-examination of PW 1, when the specific question was put that cheque was issued in relation to loan of Rs 25,000 taken by the accused, PW 1 said that he does not remember. PW 1 in his evidence admitted that he retired in 1997 on which date he received monetary benefit of Rs 8 lakhs, which was encashed by the complainant. It was also brought in the evidence that in the year 2010, the complainant entered into a sale agreement for which he paid an amount of Rs 4,50,000 to Balana Gouda towards sale consideration. Payment of Rs 4,50,000 being admitted in the year 2010 and further payment of loan of Rs 50,000 with regard to which Complaint No. 119 of 2012 was filed by the complainant, copy of which complaint was also filed as Ext. D-2, there was burden on the complainant to prove his financial capacity. In the year 2010-2011, as per own case of the complainant, he made payment of Rs 18 lakhs. During his cross-examination, when financial capacity to pay Rs 6 lakhs to the accused was questioned, there was no satisfactory reply given by the complainant. The evidence on record, thus, is a probable defence on behalf of the accused, which shifted the burden on the complainant to prove his financial capacity and other facts.”

g 16. In that light, it is contended that the very materials produced by the appellant and the answers relating to lack of knowledge of property details by PW 1 in his cross-examination would indicate that the transaction is doubtful and no evidence is tendered to indicate that the amount was paid. In such event, it was not necessary for the respondent to tender rebuttal evidence but the case put forth would be sufficient to indicate that the respondent has successfully rebutted the presumption.

h 17. On the position of law, the provisions referred to in Sections 118 and 139 of the NI Act as also the enunciation of law as made by this Court needs no reiteration as there is no ambiguity whatsoever. In, *Basalingappa*

*v. Mudibasappa*⁴ relied on by the learned counsel for the respondent, though on facts the ultimate conclusion therein was against raising presumption, the facts and circumstances are entirely different as the transaction between the parties as claimed in the said case is peculiar to the facts of that case where the consideration claimed to have been paid did not find favour with the Court keeping in view the various transactions and extent of amount involved. However, the legal position relating to presumption arising under Sections 118 and 139 of the NI Act on signature being admitted has been reiterated. Hence, whether there is rebuttal or not would depend on the facts and circumstances of each case.

18. In the instant facts, as noted, the case put forth was that there was a transaction between the parties where the respondent had agreed to sell the house towards which an advance amount of Rs 3,50,000 (Rupees three lakhs fifty thousand only) was paid. The cheque issued by the respondent was towards part repayment of the advance amount since the appellant realised that the respondent did not have proper title to the property and the transaction could not be carried forward. Since the signature on the agreement (Ext. P-6) and more particularly the dishonoured cheque (Ext. P-2) was not disputed, the presumption as provided in law had arisen. Such presumption would remain till it is rebutted. The question however is as to whether, either from the material available on record or the nature of contentions put forth it could be gathered that the presumption had been rebutted by the respondent.

19. As noted by the High Court, the contention of the respondent was that the relative of the appellant was the junior in the office of his advocate, Mr Rama Joshi, who represented the respondent in a civil case. In that light, it was further contended that due to such dominant position, the respondent was made to sign on the agreement and the cheque though the money had not been paid. The said story was urged for the first time before the High Court. There is no such suggestion or admission to that effect as contended by the learned counsel for the respondent. In fact, the suggestion made to PW 1 in his cross-examination is to contend that the cousin of the appellant was an advocate and as to whether he had consulted him before entering into the agreement, to which PW 1 has answered that he did not find the need to do so. The admission that his cousin is an advocate does not lead to the conclusion that he had admitted that he was in a dominant position.

20. The learned Single Judge however while accepting the said story has referred to certain discrepancies in the agreement (Ext. P-6) relating to the details of the property and the appellant having admitted with regard to not having visited the property or having knowledge of the location of the property. Such consideration, in our opinion, was not germane and was beyond the scope of the nature of litigation. The validity of the agreement in the manner as has been examined by the learned Single Judge may have arisen if the same was raised as an issue and had arisen for consideration in a suit for specific performance of the agreement. The decision in *K. Chinnaaswamy Reddy v. State*

⁴ (2019) 5 SCC 418 : (2019) 2 SCC (Cri) 571

a of A.P.⁵ relied on by the learned counsel for the respondent would not be of assistance in the present facts. Firstly, in the said decision this Court has expressed the limited power available to the High Court in revision petition. Even otherwise, we have disapproved the manner in which the learned Single Judge has proceeded to examine the matter on contentions which were not raised as a foundation before the trial court. In the instant case, the said agreement (Ext. P-6) had been relied upon only to the limited extent to indicate that there was a transaction between the parties due to which the amount to be repaid had been advanced. To that extent, the document had been proved in evidence and such evidence had not been discredited in the cross-examination.

b 21. Further, though the respondent had put forth the contention that a relative of the appellant was the junior of his advocate and he has used his dominant position to secure the signature on the cheque, there is absolutely no explanation whatsoever to indicate the reason for which such necessity arose for him to secure the signatures of the respondent, if there was no transaction whatsoever between the parties. That apart, the said story even to be examined was put forth for the first time before the High Court. As is evident from the records, the notice issued by the appellant intimating the dishonourment of the cheque and demanding payment, though received by the respondent has not been replied. In such situation, the first opportunity available to put forth such contention if true was not availed. Even in the proceedings before the learned JMFC, the respondent has not put forth such explanation in the statement recorded under Section 313 CrPC nor has the respondent chosen to examine himself or any witness in this regard. The said contention had not been raised even in the appeal filed before the learned Sessions Judge.

c 22. Further, the story as put forth apart from being an afterthought, ex facie appears to be contrary to the records since the contention on behalf of the respondent is that the dominant position of the junior advocate in the office of Mr Rama Joshi was used to secure the signature when the respondent had engaged the said advocates in an earlier civil case. From the cause title in the present case, in Criminal Case No. 790 of 2000 before the JMFC, it is seen that Mr Rama Joshi is the same learned advocate who had defended the respondent in this litigation. If what was being stated was the true fact, the respondent would have brought the same to the notice of the said advocate and in such situation would not have engaged the same advocate against whose junior he had a grievance and engage him to represent the case relating to dishonour cheque which was of the same subject-matter. Further, if the cheque was secured in such circumstance and was not voluntary, it is difficult to comprehend as to why it would have been drawn for Rs 1,50,000 (Rupees one lakh fifty thousand only) only when it is the case of the appellant that the advance amount paid was Rs 3,50,000 (Rupees three lakh fifty thousand only) and had to get back the entire advance paid. The natural conduct would have been to secure for the full amount if that was the situation. Keeping all these aspects in view, the case put forth by the respondent does not satisfy the requirement of rebuttal even if tested on the touchstone of preponderance of probability. Therefore, in the present facts, it cannot be held that the

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⁵ AIR 1962 SC 1788 : (1963) 1 Cri LJ 8

presumption which had arisen in favour of the appellant had been successfully rebutted by the respondent herein. The High Court therefore was not justified in its conclusion.

23. Having arrived at the above conclusion, it would be natural to restore the judgment of the learned JMFC. Though in that regard, we confirm the order of conviction, we have given our thoughtful consideration relating to the appropriate sentence that is required to be imposed at this stage, inasmuch as; whether it is necessary to imprison the respondent at this point in time or limit the sentence to imposition of fine. As noted, the transaction in question is not an out and out commercial transaction. The very case of the appellant before the trial court was that the respondent was in financial distress and it is in such event, he had offered to sell his house for which the advance payment was made by the appellant. The subject cheque has been issued towards repayment of a portion of the advance amount since the sale transaction could not be taken forward.

24. In that background, what cannot also be lost sight of is that more than two and half decades have passed from the date on which the transaction had taken place. During this period there would be a lot of social and economic change in the status of the parties. Further, as observed by this Court in *Kaushalya Devi Massand v. Roopkishore Khore*⁶, the gravity of complaint under the NI Act cannot be equated with an offence under the provisions of the Penal Code, 1860 or other criminal offences. In that view, in our opinion, in the facts and circumstances of the instant case, if an enhanced fine is imposed it would meet the ends of justice. Only in the event the respondent-accused not taking the benefit of the same to pay the fine but committing default instead, he would invite the penalty of imprisonment. Hence, appropriate modification is made to the sentence in the manner as indicated hereinbelow:

25. For all the aforesaid reasons, the following order:

25.1. The order dated 1-12-2009 passed by the High Court in *Sripad v. Triyambak S. Hegde*¹ are set aside.

25.2. The conviction ordered in CC No. 790 of 2000 by the learned JMFC is restored.

25.3. The sentence to undergo simple imprisonment for six months and fine of Rs 2,00,000 (Rupees two lakhs only) is however modified. The respondent-accused is instead sentenced to pay the fine of Rs 2,50,000 (Rupees two lakhs fifty thousand only) within three months. In default of payment of fine the respondent-accused shall undergo simple imprisonment for six months.

25.4. From the fine amount, a sum of Rs 2,40,000 (Rupees two lakhs forty thousand only) shall be paid to the appellant-complainant as compensation.

25.5. Appeals Nos. 849-50 of 2011 are accordingly allowed in part.

25.6. The pending applications, if any, stand disposed of.

⁶ (2011) 4 SCC 593 : (2011) 2 SCC (Civ) 410 : (2011) 2 SCC (Cri) 472
¹ 2009 SCC OnLine Kar 947

2022 SCC OnLine SC 1131

In the Supreme Court of India
(BEFORE M.R. SHAH AND B.V. NAGARATHNA, JJ.)

P. Rasiya ... Appellant(s);
Versus

Abdul Nazer and Another ... Respondent(s).

Criminal Appeal Nos. 1233-1235 of 2022 (Arising out of SLP (Crl.) Nos. 7430-7432/2022 @ D. No. 13470 of 2019)

Decided on August 12, 2022

ORDER

1. Delay condoned.
2. Leave granted.

3. We have heard Shri Shinoj K. Narayanan, learned Advocate, appearing for the appellant and Shri Mohammad Sadique T.A., learned Advocate, appearing for respondent No. 1.

4. Feeling aggrieved and dissatisfied with the impugned common judgment order dated 26.07.2017 passed by the High Court of Kerala at Ernakulam in Criminal Revision Petition Nos. 637, 638 & 639 of 2017, by which the High Court has allowed the said Revision Applications and has acquitted the respondent No. 1-accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short "the N.I. Act") by reversing the concurrent findings recorded by both the Courts below, the original Complainant has preferred the present Appeals.

5. The learned trial Court convicted the accused for the offence punishable under Section 138 of the N.I. Act and sentenced to undergo simple imprisonment for three months in each case. The learned trial Court also sentenced to pay a fine of Rs. 5,00,000/- and, in default of payment of fine, to undergo simple imprisonment for a further period of six months. The learned trial Court also further ordered that, if the fine amount is realized, the same shall be given to the Complainant as compensation under Section 357(1)(b) of the Cr.P.C.

6. In the appeal preferred by the accused, the learned Sessions Court dismissed the appeal and confirmed the conviction for the offence punishable under Section 138 of the N.I. Act. However, considering the old age of the accused interfered with the order of sentence and ordered that instead of three months simple imprisonment the accused to undergo the sentence of simple imprisonment till the rising of the Court. The first Appellate Court also passed an order to pay a fine of Rs. 5,00,000/- and, in default, to undergo simple imprisonment for a period of six months and if the fine amount is realized, the same shall be given to the Complainant as compensation under Section 357(1)(b) of the Cr.P.C.

7. Feeling aggrieved and dissatisfied with the judgment and orders passed by the Appellate Court affirming the conviction of the accused under Section 138 of the N.I. Act, the accused preferred three different Revision Applications before the High Court. By the impugned common judgment and order, the High Court has reversed the concurrent findings recorded by both the courts below and has acquitted the accused on the ground that, in the complaint, the Complainant has not specifically stated the nature of transactions and the source of fund. However, the High Court has failed to note the presumption under Section 139 of the N.I. Act. As per Section 139 of the N.I. Act, it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for discharge, in whole or

in part, of any debt or other liability. Therefore, once the initial burden is discharged by the Complainant that the cheque was issued by the accused and the signature and the issuance of the cheque is not disputed by the accused, in that case, the onus will shift upon the accused to prove the contrary that the cheque was not for any debt or other liability. The presumption under Section 139 of the N.I. Act is a statutory presumption and thereafter, once it is presumed that the cheque is issued in whole or in part of any debt or other liability which is in favour of the Complainant/holder of the cheque, in that case, it is for the accused to prove the contrary. The aforesaid has not been dealt with and considered by the High Court. The High Court has also failed to appreciate that the High Court was exercising the revisional jurisdiction and there were concurrent findings of fact recorded by the courts below.

8. In view of the above and for the reasons stated above, the impugned common judgment and order passed by the High Court is not sustainable and the same deserves to be quashed and set aside.

9. Under the circumstances, the impugned judgment and order passed by the High Court acquitting the accused for the offence punishable under Section 138 of the N.I. Act is hereby quashed and set aside and the order passed by the learned trial Court convicting the accused for the offence punishable under Section 138 of the N.I. Act confirmed/modified by the learned Sessions Court is hereby restored. Now, the accused be dealt with as per the order passed by the first Appellate Court/Sessions Court.

10. The present Appeals are, accordingly, allowed to the aforesaid extent.

11. The accused is granted two months' time to pay the fine, as ordered by the learned first Appellate Court.

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 13470/2019

(Arising out of impugned final judgment and order dated 26-07-2017 in CRLRP No. 637/2017 26-07-2017 in CRLRP No. 638/2017 26-07-2017 in CRLRP No. 639/2017 passed by the High Court Of Kerala At Ernakulam)

P. Rasiya.....Petitioner(s)

Versus

Abdul Nazer and Another.....Respondent(s)

(IA No. 70700/2019-CONDONATION OF DELAY IN FILING and IA No. 70703/2019-EXEMPTION FROM FILING O.T.)

Date: 12-08-2022 This matter was called on for hearing today.
(BEFORE M.R. SHAH AND B.V. NAGARATHNA, JJ.)

For Petitioner(s) Mr. Shinoj K. Narayanan, Adv.

Ms. Niveditha R Menon, Adv.

Mr. Aditya Verma, Adv.

Mr. K. Rajeev, AOR

For Respondent(s) Mr. Mohammed Sadique T.A., AOR

Mr. Alim Anvar, Adv.

Mr. Nishe Rajen Shonker, AOR

Mr. Sriram Parakkat, Adv.

UPON hearing the counsel the Court made the following
ORDER

12. Delay condoned.

13. Leave granted.

14. The present Appeals are allowed to the extent as indicated in the signed order.
15. Pending applications, if any, stand disposed of.

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