

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL NO. 285 of 2018****With****R/CRIMINAL APPEAL NO. 288 of 2018****With****R/CRIMINAL APPEAL NO. 289 of 2018****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE V.P. PATEL**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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**ASHISHBHAI DURLABHBHAI MULANI****Versus****SUCHIT SADH, PROPRIETOR, S. K. AGENCIES, & 1 other(s)**

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**Appearance:****MR H D KATHAROTIYA(3984) for the Appellant(s) No. 1****MR VAIBHAV A VYAS(2896) for the Appellant(s) No. 1****MS. JIRGHA JHAVERI, APP for the Opponent(s)/Respondent(s) No. 2****MS. RICHA SHAH(7541) for the Opponent(s)/Respondent(s) No. 1**

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**CORAM: HONOURABLE MR.JUSTICE V.P. PATEL****Date : 28/02/2020****ORAL JUDGMENT**

1. The present appellant the original complainant (for short ‘Complainant’) has filed the appeal No. 285 of 2018 under Section 378 of the Criminal Procedure Code (for short ‘the Code’) being aggrieved and dissatisfied with the judgment and order of acquittal dated 04.12.2017 passed by the learned 2<sup>nd</sup>

Additional Chief Judicial Magistrate, Surat (for short learned Magistrate) in Criminal Case No. 973/2016, wherein the respondent original accused (for short 'Accused') has been acquitted under Section 255(1) of the Code for the offence under Section 138 of the Negotiable Instruments Act(for short the NI Act).

1.1 The present appellant the original complainant has filed the appeal No. 288 of 2018 under Section 378 of the Code being aggrieved and dissatisfied with the judgment and order of acquittal dated 04.12.2017 passed by the learned 2<sup>nd</sup> Additional Chief Judicial Magistrate, Surat in Criminal Case No. 1127/2016, wherein the respondent accused has been acquitted under Section 255(1) of the Code for the offence under Section 138 of the NI Act.

1.2 The present appellant the original complainant has filed the appeal No. 289 of 2018 under Section 378 of the Code being aggrieved and dissatisfied with the judgment and order of acquittal dated 04.12.2017 passed by the learned 2<sup>nd</sup> Additional Chief Judicial Magistrate, Surat in Criminal Case No. 945/2016, wherein the respondent accused has been acquitted under Section 255(1) of the Code for the offence under Section 138 of the NI Act.

2. Heard learned advocate Mr Vaibhav Vyas for the appellant and learned advocate Ms Richa Shah for respondent no.1 Accused and learned APP Ms Jirga Jhaveri for the respondent State.

3. The complainant and the accused have entered into business transaction and accused got the job work done from the firm of the complainant for which the complainant had raised 30 bills. The accused had issued seven cheques to the complainant which were returned unpaid for which the complainant has filed 3 criminal cases (CC No.973/2016, CC NO.1127/2016, CC No. 945/2016). The above appeals are filed by the complainant against the acquittal judgment and order dated 4/12/2017 passed by the learned Magistrate. Through

the transaction of above three cases are common (30 Bills); all the original Bills are produced in Criminal case no. 1127/2016 and copy thereof are produced in other two cases 973/2016 and 975/2016; there is a provision under section 219 and 220 of 'The Code' for cases to be charged with and tried at once; The accused had filed an applications at Exhibit -13 in all 3 cases to consolidated 3 cases: Learned Magistrate has kept these applications fix for hearing and not decided till end of the Trial, but reasons best known to the Magistrate decided the criminal cases and delivered the judgments separately.

3.1 The transaction of the above three cases/Appeals are common and The learned advocates for the parties are agree to decide these appeals by common judgment. Therefore it is decided to disposed of these three appeals by common judgment.

#### **Facts of the case:**

4. As per the complaint, the prosecution case is that the complainant is engaged with the business work of Digital Printing of clothes and the said business is carried out in the name of 'True Colours' which is a proprietorship firm and the complainant is the proprietor thereof. The Accused is also engaged in business of purchase and sale of cloth and for that purpose he gets it digitally printed. The Accused undertakes his business in the name of 'SK Agencies' which is also proprietorship firm and the accused is the proprietor thereof. That the accused get the job work done from the complainant for which the complainant has raised 30 bills. The accused has got the job work done to the tune of Rs.12,64,170/- of the said 30 bills.

4.1 The detail of bills mentioned in the complaint as well as in the three notices which reads as under:

No.	Date	Bill No.	Amount	No.	Date	Bill No.	Amount
1	20/11/14	1319	75140	16	12/08/14	1431	19440
2	21/11/14	1319	57780	17	12/08/14	1432	29120

3	24/11/14	1344	59140	18	12/10/14	1442	22620
4	25/11/14	1354	107700	19	12/10/14	1443	17480
5	26/11/14	1361	77260	20	12/10/14	1448	8100
6	26/11/14	1362	28060	21	12/12/14	1462	43460
7	27/11/14	1375	27720	22	23/12/14	1512	56360
8	27/11/14	1376	20760	23	30/12/14	1561	1880
9	28/11/14	1379	34860	24	31/12/14	1563	18800
10	12/02/14	1402	102220	25	01/02/15	1570	27260
11	12/03/14	1408	56260	26	01/03/15	1573	83000
12	12/04/14	1417	79524	27	01/05/15	1581	15060
13	12/06/14	1426	5861	28	01/06/15	1585	45520
14	12/06/14	1427	16000	29	01/07/15	1586	20500
15	12/08/14	1430	48240	30	13/01/15	1588	6750
<b>TOTAL AMOUNT</b>							<b>12,64,170</b>

4.2 On all the bills of job work raised by the complainant there is signature on behalf of the accused as receiver of the goods on which the job work was dully carried out. That the accused had given seven cheques for the payment of the above bills. The complaint was filed for the below mentioned cheque:

No	Cheque No	Date	Amount	Criminal case	Reason for Return
1	122442	29/10/2015	1,36,312/-	973/2016 CrA. 285/18	Payment stop by Drawer
2	122444	22/10/2015	80269/-		
3	122437	14/08/2015	1,95,684/-	1127/2016 CrA. 288/18	Fund Insufficient
4	122438	17/08/2015	2,10,889/-		
5	122439	17/08/2015	2,39,400/-		
6	122440	29/10/2015	1,99,901/-	945/2016 CrA. 289/18	Payment Stop by Drawer
7	122441	24/10/2015	1,94,610/-		

4.3 These cheques were drawn on Oriental Bank of Commerce Surat. The said cheques were issued by the accused towards part payment of the above referred outstanding amount. The above mentioned cheques were presented on 04.11.2015 by the complainant in his bank account maintaining with IDBI

Bank Surat. The said cheques were returned unpaid with endorsement of “funds insufficient /payment stop by drawer”. The bank has informed by cheque return memo on 05.11.2015 to the complainant. The complainant had issued statutory demand notice to the accused on 20.11.2015 by RPAD which was served upon the accused on 23.11.2015.

4.4 The accused has neither replied to the statutory notice nor did such payment to the complainant. The complainant was constrained to file the complaints before the learned 2<sup>nd</sup> Addl. Chief Judicial Magistrate on 23.12.2015, for the offences punishable under Section 138 of the NI Act. The complaints were registered being CC No 973/2016, CC No.1127/2016 and CC No 945/2016.

**Arguments on behalf of the Appellant.**

5. Learned advocate for the appellant has argued that the impugned judgment and order passed by the learned Magistrate are absolutely illegal, arbitrary, perverse and against law and evidence on record of the case. That the learned Magistrate has erred in not considering the fact that there was ample evidence on the record of the case so as to bring home the conviction of the accused for the offence with which he was charged. The learned Magistrate has not appreciated the oral as well as documentary evidence in proper perspective.

5.1 That the learned Magistrate has failed to appreciate that the bills drawn by the complainant over the accused were not even disputed by the accused and the same were duly exhibited as well. That the issuance of cheques is not disputed. That there was correspondence between the parties as regards to the transaction and the job work done by the complainant. The learned Magistrate has erroneously held that the goods were defective and that there was some error in accounts.

5.2 It is further argued that the ingredients of the offences under section 138

of the NI Act are established by producing cogent evidence on record by the complainant. The defence is not tenable in the eyes of law and the accused cannot escape from the clutches of the law. It is further submitted that the complainant has established his case and requests to allow the appeal and convict the accused for the offence charged against him.

### **Arguments on behalf of the respondent-accused**

6. Learned advocate Ms Ruchi Shah for the respondent has argued that the amount of Rs.2,70,000/- was paid after the cheques were issued. Therefore, the complaint cannot be filed for the part payment received by the complainant and rest of the amount is not paid by the accused. It is further argued that the goods were defective and the defence is raised in the cross examination. At the most the complainant can file the suit before the civil court. No reply to the notice cannot be considered as adverse against the accused.

6.1 It is further argued that no ingredients are established for the offence punishable under section 138 of the NI Act. That the learned Magistrate has rightly acquitted the accused. It is also submitted that the order passed by the learned Magistrate is true, correct and valid in the eyes of law and there is no requirement to interfere the findings of the learned Magistrate. Therefore she requests to dismiss the appeal with costs.

### **Arguments on behalf of the State**

7. Learned APP has supported the arguments advanced by the learned advocate for the appellant. Considering the facts and circumstances of the case it appears that the offence is made out. The appeal to be allowed and the accused is required to be convicted for the offence punishable under Section 138 of Negotiable Instruments Act.

### **Proceedings before the trial Court**

8. The learned Magistrate has examined the complainant under Section 200 of the Code and registered the complaints as criminal case no.973/2016,

CC No 1127/2016 and CC No 945/2016. The complainant has filed an affidavit in chief examination under section 145 of the NI Act and produced documentary evidence. The learned Magistrate was of the opinion that there is sufficient ground for proceeding, therefore taken cognizance of an offence and issued summons to the accused under section 204 of the code.

8.1 The accused has appeared through learned advocate and defended the case. Considering Section 143 of the NI Act, the learned Magistrate has recorded the plea of the accused under section 251(1) read with Section 262(1) of the code on 16.07.2016. The accused has not pleaded guilty but claimed for trial.

#### **Oral and documentary evidence by complainant.**

9. The complainant has produced following evidence in CC No 973/2016 before learned Magistrate.

<b>Sr.</b>	<b>Description</b>	<b>Exh.</b>
1	Affidavit in chief examination under sec. 145 of the NI Act	4
2 to 31	Certified copies of bills (Mark 3/1 to Mark 3/30)	15 to 44
32	Original cheque no 122442	45
33	Original cheque no 122444	46
34	Cheque cheque no 122442 return memo	47
35	Cheque cheque no 122444 return memo	48
36	Demand Notice original	49
37	Register AD slip	50
38	Register AD slip	51
39	Post net tracing report	52
40	Post net tracing report	53
41	Audit report cum income tax return 2015-16	63
42	VAT registration certificate	64
	Closing pursis	66

9.1 The complainant has produced following evidence in CC No 1127/2016 before learned Magistrate.

<b>Sr.</b>	<b>Description</b>	<b>Exh.</b>
1	Affidavit in chief examination under sec. 145 of the NI Act	4
2 to 31	original bills (Mark 3/1 to Mark 3/30	15 to 44
32	Original cheque no 122437	45
33	Original cheque no 122438	46
34	Original cheque no 122439	47
34	Cheque cheque no 122437 return memo	48
35	Cheque cheque no 122438 return memo	49
36	Cheque cheque no 122439 return memo	50
37	Demand Notice original	51
38	Register AD slip	52
39	Register AD slip	53
40	Post net tracing report	54
41	RPAD Acknowledgment receipt	55
41	Audit report cum income tax return 2015-16	65
	Closing pursis	67

9.2 The complainant has produced following evidence in CC No 945/2016 before learned Magistrate.

<b>Sr.</b>	<b>Description</b>	<b>Exh.</b>
1	Affidavit in chief examination under sec. 145 of the NI Act	4
2 to 31	Certified copies of bills (Mark 3/1 to Mark 3/30	15 to 44
32	Original cheque no 122440	45
33	Original cheque no 122441	46
34	Cheque cheque no 122440 return memo	47
35	Cheque cheque no 122441 return memo	48
36	Demand Notice original	49
37	Register AD slip	50
38	Register AD slip	51
39	Post net tracing report	52
40	RPAD Acknowledgment receipt	53
41	Audit report cum income tax return 2015-16	63



42	VAT registration certificate	64
	Closing pursis	66

9.3 After filing of closing pursis by the complainant, the matter was kept for further statement. The further statements of the accused in all three cases were recorded under section 313 of the code wherein the accused has denied the case of the prosecution, wherein he has admitted some of the circumstances against him. It is further stated the bills were send but the complainant has not acted as per the conditions of the Bills. The said facts is not mentioned in the notice. The complainant has not delivered the goods as per the condition of the bill. That instead of filing civil suit before civil court he has filed false complaint.

9.4 The accused has not examined himself as witness. He has not examined any other witness on his behalf. After hearing learned advocate for the complainant and learned advocate for the accused the impugned order is passed.

### **Merits of the case**

10. Before going into the merits of the case, it is beneficial to place here under the aim and object of the NI Act, which reads as under

#### **(A) AIR 2003 SC 2035 Goaplast Pvt. Ltd Appellant v. Shri Chico Ursula D'Souza and another Respondents**

*Para 3 “For appreciating the issue involved in the prsent case, it is necessary to refer to the object behind introduction of Chapter XVII containing Sections 138 to 142. This Chapter was introduced in the Act by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (Act 66 of 1988) with the object of inculcating faith in the efficacy of banking operations and giving credibility to negotiable instruments in business transactions and in order to promote efficacy of banking operations. With the policy of liberalisation adopted by the country which brought about increase in international trade and commerce, it became necessary to inculcate faith in banking. World trade is carried through banking operations rather than cash transactions. The amendment was intended to create an atmosphere of faith and reliance on banking system. Therefore, while considering the question of applicability of Section 138 of the Act to a*

*situation presented by the facts of the present case, it is necessary to keep the objects of the legislation in mind. If a party is allowed to use a cheque as a mode of deferred payment and the payee of the cheque on the faith that he will get his payment on the due date accepts such deferred payment by way of cheque, he should not normally suffer on account of non payment. The faith, which the legislature has desired that such instruments should inspire in commercial transactions would be completely lost if parties are as a matter of routine allowed to interdict payment by issuing instruction to banks to stop payment of cheques. In today's world where use of cash in day to day life is almost getting extinct and people are using negotiable instruments in commercial transactions and plastic money for their daily needs as consumers, it is all the more necessary that people's faith in such instruments should be strengthened rather than weakened. Provisions contained in Sections 138 to 142 of the Act are intended to discourage people from not honouring their commitments by way of payment through cheques. It is desirable that the Court should ban 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 postdated 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 post-dated cheque. If stoppage of payment of a post-dated cheque is permitted to take the case out of the purview of S. 138 of the Act, it will amount to allowing the party to take advantage of his own wrong."*

**(B) (2019) 4 SCC 197 Para 9 Bir Singh – Appellant Versus Mukesh Kumar**

*Para 9. The object of Section 138 of the Negotiable Instruments Act is to infuse credibility to negotiable instruments including cheques and to encourage and promote the use of negotiable instruments including cheques in financial transactions. The penal provision of Section 138 of the Negotiable Instruments Act is intended to be a deterrent to callous issuance of negotiable instruments such as cheques without serious intention to honour the promise implicit in the issuance of the same.*

**(C) (2018) 1 SCC 560 M/s. Meters and Instruments Private Limited & Anr. Versus Kanchan Mehta**

*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", Rangappa v. Sri Mohan (2010) 11 SCC 441. 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 the 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) of the Cr. P.C. provides for payment of compensation for the loss caused by the offence out of the fine, R. Vijayan v. Baby (2012) 1 SCC 260. Where fine is not imposed, compensation can be awarded under Section 357(3) Cr.P.C. to the person who suffered loss. Sentence in default can also be imposed. The object of the provision is not merely penal but to make the accused honour the negotiable instruments, Lafarge Aggregates & Concrete India (P) Ltd. v. Sukarsh Azad (2014) 13 SCC 779.*

11. Learned trial Court has relied upon the judgment reported in AIR 2009 SC Supp 2022 **Jugesh Sehgal Vs. Shamsher Singh Gogi** wherein the Apex Court has held as under:

*“9. It is manifest that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled:*

*(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;*

*(ii) The cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;*

*(iii) that 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;*

*(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the 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 the bank;*

*(v) the payee or the holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;*

*(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice;*

*10. Being cumulative, it is only when all the afore-mentioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act."*

**Facts admitted by the respondent/accused**

12. Considering the facts of the complaint, the oral as well as documentary evidence produced by the complainant before the trial court and answer given by the Accused in further statements recorded under Section 313 of the code, the following facts are admitted by the accused.

- (a) The transaction between the parties is commercial transaction for doing job work of digital printing on cloth. That the job work is done by the complainant for the clothes of respondent accused.
- (b) The bills for amount of Rs.12,64,170/- for which the job work was raised by the complainant, the said amount is shown without deducting the amount of Rs. 2,70,000/- paid by him.
- (c) The bills were raised by the complainant for the amount of Rs.12,64,170/-. The details as regards to bill no, amount, date are mentioned in the notice as well as in the complaint which is narrated in para 4 herein before.
- (d) The seven cheques were issued by the accused drawn from the oriental Bank of Commerce account maintained by the him. But the accused has instructed to the complainant not to present such cheques before bank. In-spite of such instruction the complainant had presented the cheques.
- (e) That on the return of cheques that the complainant has issued demand notice dated 20.11.2015 under Section 138 of the NI Act through his advocate, it is admitted that he has received the notice. some contents of notice are also admitted by the accused.
- (f) Respondent accused has admitted the RPAD slip at Exh. 52, 53

postal online status Exh. 54 and acknowledgment receipt at Exh 55 in respective cases.

### **I) Drawing of cheques by the respondent accused.**

13. Here in this case the accused has admitted in further statement that he had issued the cheques the particulars are mentioned as below:

No	Cheque No	Date	Amount	Criminal case	Name of Bank
1	122442	29/10/2015	1,36,312/-	973/2016 CrA. 285/18	Oriental Bank of Commerce
2	122444	22/10/2015	80269/-		
3	122437	14/08/2015	1,95,684/-	1127/2016 CrA. 288/18	Oriental Bank of Commerce
4	122438	17/08/2015	2,10,889/-		
5	122439	17/08/2015	2,39,400/-		
6	122440	29/10/2015	1,99,901/-	945/2016 CrA. 289/18	Oriental Bank of Commerce
7	122441	24/10/2015	1,94,610/-		

13.1 There is no dispute about issuance of above cheques and signature of the accused on such cheques. It is proved that the cheques were drawn by the respondent on an account maintained by him in a bank for payment of the amount of money to the complainant.

### **II) Cheques issued for debt or liability**

14. It is the case of the complainant that the accused is engaged in the business of purchase and sale of clothes and for that purpose it requires digitally printed. That the accused get the job work done from the firm of the complainant, for which the complainant has raised various bills. The details of the bills mentioned in paragraph 1 of the complaint. Further such facts also stated in the affidavit in chief examination under Section 145 of NI Act at Exh.4. It is also stated that the amount of bills is Rs.12,64,170/- for which the respondent accused has issued cheques. That the bills were received by the accused and signed by him.

14.1 Considering the cross examination of the complainant and answer given by the accused, following defence is raised.

- (a) Amount of Rs.2,70,000/- is paid as part payment.
- (b) The conditions mentioned in bills are not complied with i.e. no time for payment is mentioned.
- (c) 24% interest will be charged therefore it is civil disputes.
- (d) Goods were defective therefore not liable for payment.
- (e) Complainant was informed not to present cheques before bank as the amount is to be settled.

14.2 On perusing the bills produced at Exh.15 to 44 before the learned Magistrate the following conditions/ terms are mentioned in the bills.

- (I) Goods once sold will not be taken back or exchange*
- (ii) Any complaint regarding Rf. defect of delivered goods will be considered with in two days only.*
- (iii) payment with in \_\_\_\_ days.*
- (iv) Interest @ 24% will be charged after due date*
- (v) Any complaint for goods should be made with in 3 days. After that no complaint will be entertained.*
- (vi) We will not responsible for any loss or damage during transit.*
- (vii) Subject to Surat jurisdiction.*

14.3 There is specific condition no.2 i.e. “Any complaint regarding Rf, defect of delivered goods will be considered within 2 days only”. As per condition no 3 any complaint for goods should be made with in 3 days thereafter that no complaint will be entertained. As per terms of contract no grievance is made about defect of goods. It is not the case of the accused that he has made any grievance in writing to the complainant within 2 days from the receipt of the goods. No documentary evidence is produced by the accused.

14.4 If no period is prescribed for payment and if terms as regards to interest @24% will be charged after due date, do not resolve the liability of payment under Section 138 of the NI Act.

**Whether Part payment exculpate liability of offence?**

15 The learned Magistrate has discussed in the judgment para 12 and 13 that the complainant has proved that goods were delivered; bills were raised; the accused has issued cheques; the cheque's returned memo are proved under Section 146 of the NI Act; the demand notice was raised; notice is served to the accused; the complainant has also proved the execution of cheques under Section 118 and 139 of NI Act. But learned Magistrate has observed in para 13.1 and 13.2 that though the amount of Rs.2,70,000/- is received by the complainant, he has not stated anything in notice as well as in complaint and in affidavit in chief examination that material fact is suppressed by the complainant. That no explanation is given by the complainant. **Now the question is, whether the part payment of cheque amount exonerate the liability under Section 138 of the NI Act?**

15.1 Kerala High Court in case of R. Gopikuttan Pillai Vs. Sankara Narayanan Nair delivered in Cr.A No.270 of 1997 on 19.03.2003, the issue regarding part payment of the amount of cheque was considered while dealing with cases under NI Act. which reads as under

*“Para 11. In a prosecution under Section 138 of the Negotiable Instruments Act an accused/ drawer of the cheque is bound to prove payment of the amount due under the cheque to the payee within 15 days from the date of receipt of the notice. But this does not mean that the accused who had already made part payments in discharge of the liability under the cheque prior to the presentation of the cheque cannot plead and prove such discharge prior to the presentation of the cheque and prior to the receipt of the notice of demand. In the instant case we have convincing evidence to show that under Exts. D1 and D2 an amount of Rs. 45,631/- was paid to and received by the complainant. The complainant would contend that these amounts are received under a totally different transaction. But I find merit in the contention of the learned Counsel for the respondent-accused, which contention was accepted by the learned Magistrate, that the complainant has not succeeded in establishing this plea. At least for the sake of arguments, therefore, I accept the contention that an amount of Rs. 45,631/- has been paid to and received by the complainant towards the liability under Ext. P1 cheque.*

*12. But even this cannot be a valid plea for exculpation. Part payment of*

the amount due under the cheque whether before or after the date of receipt of the notice of demand under Section 138 cannot absolve the accused of his culpability. Definitely he has to pay, to avoid liability, the entire amount due within 15 days of receipt of the notice (including, of course, the amount if any paid earlier.)

13. In the instant case even if payments under Exts. D1 and D2 were taken into account, the accused cannot succeed for the reason that those payments, even if accepted, do not amount to discharge of liability contemplated under Section 138. Still an amount exceeding Rs. 27,000/- (72,750--45,361) remains to be paid even if I accept the plea of discharge under Exts. D1 and D2.

16. The interesting question whether the remedy under Section 138 of the Negotiable Instruments Act would be available to a complainant who has bona fide accepted part payments, towards the cheque amount before presentation of the cheque for encashment deserves to be considered. No precedent binding or persuasive on this specific aspect has been brought to my notice. According to me it would be unreasonable to deny the advantage/benefit of Section 138 of the Negotiable Instruments Act to such a payee merely because he had indulgently accepted part payment towards the liability under the cheque before the cheque was presented for encashment. Such an interpretation would defeat and stultify the ultimate purpose of Section 138 of the Negotiable Instruments Act.

17. I am conscious that in an appropriate case the question may arise for consideration whether dishonour of the cheque was on the ground of insufficiency of funds if the funds were sufficient to pay the outstanding liability but not the entire liability under the cheque. That question does not specifically arise for consideration in this case. According to me the dishonour of the cheque, even in such a case where the amount available in the account is sufficient to cover the outstanding liability but not sufficient to cover the entire amount liable to be paid under the cheque, would be for want of sufficient funds. As the drawer can, as indicated earlier, avoid culpable liability by proving discharge under proviso (c) of the entire amount (including the payments made prior to the dishonour of the cheque), this interpretation is not likely to result in any failure/miscarriage of justice. If the honouring of the cheque for the entire amount by the Bank were to result in any excess payments being made, civil remedy to claim return of the amount would be available to the drawer. If the purpose of Section 138 of the Negotiable Instruments Act is to ensure that the cheque transaction has as much credibility as a cash transaction, the interpretation that partial discharge of liability under the cheque prior to presentation of the cheque for encashment would extinguish the remedy under Section 138 of the Negotiable Instruments Act for a payee must certainly be avoided. Such a myopic



interpretation would not advance the purpose and object of this legislation which attempts to usher in a new commercial morality essential for the health and growth of the economy.”

15.2 The defence of part payment of amount of cheque does not **exculpate** the drawer of the cheque on following counts.

- (i) The object of Section 138 of NI Act is to infuse credibility to negotiable instruments including cheques and to encourage and promote the use of cheques in financial transactions.
- (ii) The penal provision of Section 138 of NI Act is intended to be a deterrent to callous issuance of cheques without serious intention to honour the promise implicit in the issuance of the same. (2019) 4 SCC 197.
- (iii) If defence of part payment is allowed, the ill advised or unscrupulous litigant may get unlawful advantage and frustrate the legislature intend.
- (iv) Defence of part payment may be considered at the stage of sentence or awarding compensation to the complainant.
- (v) As per terms of contract no grievance is made about defect of goods.

### **Book of Account**

16. The another defence is raised that books of accounts are not produced. Learned Magistrate has dealt with this contention in para 13.3 of his judgment. He has relied upon the judgment of Apex Court delivered in Pradip Buragohain V. Pranati Phukan reported in 2010 AIR SCW 6032. Learned Magistrate has observed in para 13.4 to 13.6 of his judgment that the transaction is for the period of financial year 2014-15, whereas audit report is produced 2015-16. Further it is also mentioned that only audit report is produced but other books of account material, ledger of the accused are not produced. That as per schedule 8 of Ex.65 the amount of Rs.14,82,207/- is mentioned where as amount of Rs.12,64,170/- is stated in complaint. That there is discrepancy in figure actually due. The complainant has remained silent

about part payment of Rs.2,70,000/- and concluded that the transaction is doubtful and burden is discharged by accused.

It is true that non production of document by the party goes against him and adverse inference may be drawn. but in this case there is no dispute as regards to the transaction is concerned. There fore the cited judgment is not helpful to the Accused.

16.1 Hon'ble Apex Court has held in case of Birsingh Vs. Mukeshkumar reported in 2019(4) SCC 197 that

*“Para 21. In passing the impugned judgment and order dated 21-11-2017, the High Court mis-construed Section 139 of Negotiable Instruments Act, which mandates that unless **the contrary is proved**, it is to be presumed 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. Needless to mention that the presumption contemplated under Section 139 of the Negotiable Instruments Act, is a rebuttable presumption. However, the onus of proving that the cheque was not in discharge of any debt or other liability is on the accused drawer of the cheque.*

*22. In Hiten P. Dalal vs. Bratindranath Banerjee (2001) 6 SCC 16, this Court held that both Section 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. Following the judgment of this Court in State of Madras vs. Vaidyanatha Iyer<sup>4</sup>, this Court held AIR 1958 SC 61 that it was obligatory on the Court to raise this presumption.*

*25. In Laxmi Dyechem vs. State of Gujarat & Ors. (2012) 13 SCC 375, this Court reiterated that in view of Section 139, it has to be presumed that a cheque was issued in discharge of a debt or other liability but the presumption could be rebutted by adducing evidence. The burden of proof was however on the person who wanted to rebut the presumption. This Court held “however, this presumption coupled with the object of Chapter XVII of the Act leads to the conclusion that by countermanding payment of a post dated cheque, a party should not be allowed to get away from the penal provision of Section 138 of the Act”.*

*27. In K.N. Beena vs. Muniyappan and Another (2001) 8 SCC 458, this Court held that in view of the provisions of Section 139 of the Negotiable Instruments Act read with Section 118 thereof, the Court had to presume that the cheque had been issued for discharging a debt or liability. The said presumption was rebuttable and could be rebutted by*

*the accused by proving the contrary. But mere denial or rebuttal by the accused was not enough. The accused had to prove by cogent evidence that there was no debt or liability. This Court clearly held that the High Court had erroneously set aside the conviction, by proceeding on the basis that denials/averments in the reply of the accused were sufficient to shift the burden of proof on the complainant to prove that the cheque had been issued for discharge of a debt or a liability. This was an entirely erroneous approach. The accused had to prove in the trial by leading cogent evidence that there was no debt or liability.*

*42. In the absence of any finding that the cheque in question was not signed by the respondent-accused or not voluntarily made over to the payee and in the absence of any evidence with regard to the circumstances in which a blank signed cheque had been given to the appellant-complainant, it may reasonably be presumed that the cheque was filled in by the appellant-complainant being the payee in the presence of the respondent-accused being the drawer, at his request and/or with his acquiescence. The subsequent filling in of an unfilled signed cheque is not an alteration. There was no change in the amount of the cheque, its date or the name of the payee. The High Court ought not to have acquitted the respondent-accused of the charge under Section 138 of the Negotiable Instruments Act.”*

16.2 The learned Magistrate has not truly appreciated facts regarding transaction in the case on hand. Book of account does not required on following reasons

- (a) Respondent- accused has admitted the transaction in further statement that bills are received by him but complainant has not acted as per conditions of the bills. It is further stated that instead of filing suit, complainant has filed complaint.
- (b) That the complainant has produced bills for which payments is due.
- (c) The Audit Report reflect the name of SK Agency and Saanch Enterprise as sundry debtors.
- (d) That the notice and its contents are admitted by accused in further statements u/s 313 of the Code.
- (e) The presumption as regards to non production of books of accounts is not applicable when transaction is admitted by the accused.
- (f) The contract between the parties and conditions mentioned in the bills, as far as defence of defective goods is available to the accused

as discussed in earlier Paras.

- (e) The books of accounts do not require for defence regarding defective goods, part payment of due amount.

17. Upon perusing the bills it appears that some bills are signed by the receiver. That the complainant had issued demand notice. During further statement the accused has admitted that the notice is received by him and he has not replied to the said notice. The complainant has also stated that the date of the bills and the amount of 30 bills that is Rs. 12,64,170/-. That the accused has neither examined himself on oath nor examined any other person on his behalf. During the cross-examination there is nothing revealed that the bills were not raised and the job work was not carried out. There is no reason to issue the cheques.

Considering the facts and circumstances of the case, the contents of the affidavit filed by the complainant and documentary evidence produced on record, the complainant has proved that cheques have been issued by the accused for the discharge of debt and liability of the accused.

### **III) Presentation of Cheques during validity period and returned by bank as unpaid**

18. The complainant has produced the original cheques at below mentioned exhibit no. and dates

No	Criminal case	Date	Cheque No	Date of presentation	Date of returned
1	973/2016	29/10/2015	122442	4.11.15	5.11.15
2	CrA. 285/18	22/10/2015	122444	4.11.15	5.11.15
3	1127/2016 CrA. 288/18	14/08/2015	122437	4.11.15	5.11.15
4		17/08/2015	122438	4.11.15	5.11.15
5		17/08/2015	122439	4.11.15	5.11.15
6	945/2016	29/10/2015	122440	4.11.15	5.11.15
7	CrA. 289/18	24/10/2015	122441	4.11.15	5.11.15

The accused has admitted in his further statement that the cheques were issued by him. There is no dispute as regards to the signature on the cheque by the drawer. Upon perusing the cheques it reflect that the validity period in all these cheques is three months.

18.1 It is the say of the complainant that the cheques were presented by him on 04.11.2015 before the IDBI bank and the same are returned by the IDBI bank with cheque return memo dated 05.11.2015. The cheque return memo are produced before the learned Magistrate. In all these cheques return memo with endorsement of “funds insufficient/ Payment stopped by drawer”.

18.2 Considering the documentary evidence produced on record it appears that the complainant has proved that the cheques issued by the accused on 14.08.2015 and on 17.08.2015. The validity of the cheques were three months and they have been presented before the bank within three months. It is also proved that the cheques are returned by the bank unpaid with the endorsement “funds insufficient/Payment stopped by drawer”.

#### **IV) Issuance of Notice**

19. It is the case of the applicant and also mentioned in the affidavit at Exh.4 that the complainant has issued notice through his advocate at Exh.49,51 and 49 respectively in above three cases to the accused. Notices are produced in the respective cases. It is further stated that the notice was served through RPAD. That the complainant has produced registered AD slip at Exh. 52 and 53 and online status report at Exh. 54, acknowledgment report at Exh. 55. During further statement the accused have admitted that he has received the notice. It is pertinent to note that the accused has not replied to the said notice. The cheques were returned on 05.11.2015 the notice was issued on 20.11.2015, the said notice was issued by the complainant within 30 days from the receipt of the information from the bank regarding dishonour of those cheques. Thus considering the above evidence, the payee ie. the complainant has issued written demand notice for the cheque amount to the accused with in prescribed time limit.

**V) Non-payment of cheque amount. / Failure of payment of cheque amount.**

20. It is the case of the complainant that the amount is not paid by the accused and no reply is made to the demand notice issued to him. It is the case of the accused that he has paid Rs.2,70,170/- after the cheque was presented before the Bank. The complainant has denied in his cross-examination that he has received Rs.2,70,000/- before the cheque was issued. It is admitted by the complainant that the accused has transferred Rs.2,70,000/- from his Karnataka Bank account to complainant's account after the cheques were issued. Thus, the complainant has proved that the accused/ drawer of cheques fails to make payment of the cheque amount to the complainant payee within 15 days of the receipt of the notice.

21. Learned advocate for the appellant has cited the judgment reported in AIR 2010 SC 1898

*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. 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.*

22. Considering the ratio laid down in the above judgment and the fact that the amount was due of Rs.12,64,170/- of which, only Rs. 2,70,000/- is paid and the full amount of cheque is not paid. The respondent accused has failed to pay the amount of cheque that the part payment of amount of cheque cannot resolve his criminal liability under Section 138 of the NI Act.

23. In view of the discussion herein above the complainant prosecution has proved that the accused has drawn the cheques on an account maintained by him in a bank for the payment of certain amount of money to the complainant from out of that account. The cheques have been issued for the discharge of the

debt or liability towards complainant. That the cheques have been presented to the bank within a period of its validity. That cheques are returned by the bank unpaid within the endorsement of insufficient fund /payment stop by the drawer to honor the cheques from that account by an agreement made with the bank. The payee/ complainant of the cheque made a demand for the payment of the said amount of money by giving a demand notice in writing to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. The accused/ drawer of such cheques fails to make payment of said amount of money of the cheque to the complainant payee within 15 days of the receipt of the said notice. Thus, all ingredients for the offence punishable under Section 138 of NI Act are satisfied that the accused who had drawn the cheques can be deemed to have committed an offence under Section 138 of the NI Act.

### **Power of Appellate Court**

24. In the case of Chandrappa & Ors Vs. State of Karnataka reported in 2007(4) SCC 415. The Hon'ble Supreme Court has considered certain decisions on the subject of the power of appellate court in acquittal appeal and derived the general principles which reads as under:

*“(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;*

*(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;*

*(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.*

*(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*

*(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court”*

25. This Court has considered the ratio laid down by the Hon'ble Supreme Court as above for general principles regarding the power of appellate court while dealing the acquittal appeal. That the apex court has held that the appellate court has full power to re-appreciate and reconsider the evidence. This court has considered and re-appreciated the evidence on record and found that learned Magistrate has not relied upon the admissible substantive piece of evidence; The learned Magistrate has totally ignored the rules of evidence ie statutory presumption, burden of proof and law laid down by the Apex Court; has erred in believing the part payment of the amount of cheques exculpate the accused drawer of the cheques; has wrongly considered that the accused has discharged the burden shifted on him or rebutted the presumption that the holder of cheques received the cheques of the nature referred to in section 138, for the discharge in whole or in part of any debt or other liability. Learned Magistrate has falsely appreciated that the presumption under Section 114(g) of the evidence Act is in favour of the accused and non production of the bank account is necessary in-spite of admission of transaction by the accused.

It is further observed that the prosecution has produced such evidence by which, one can conclude only and only the conviction. That there are no two reasonable conclusions possible on the basis of evidence on record in this case. That learned Magistrate has wrongly come to the conclusion and acquitted the accused which amounts to miscarriage of justice. Therefore, the judgment of the trial court is required to be altered and the appeal is required to be allowed.



**Consolidation of cases**

26. Upon perusing the record and proceedings, this Court has found that an applications at Exh.13 were given by the accused to consolidate the criminal case No. 973 of 2016, 1127 of 2016 and Criminal case No. 945/2016 and consider the matter as a single case. It is also stated in the application that these three cases are arising out of the same transaction, three different complaints are filed and the accused and complainant are also same in all the three cases therefore, requested to consolidate the case and decide in accordance with law. Such application was fixed for hearing by the learned Magistrate and thereafter, reasons best known to the Magistrate, no order is passed on such application till final disposal of the case and the same applications remains undecided.

26.1 It is beneficial to place hereunder to quote section 219, 220 of Cr.P.C which reads as under:

***Sec. 219. Three offences of same kind within year may be charged together.***

*(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.*

*(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860 ) or of any special or local law:  
Provided ...”*

***Sec. 220. Trial for more than one offence.***

*(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.”*

26.2 On combine reading of above Section 218, 219 and 220 of the Code, it is clear that generally for distinct offence there shall be separate charge and separate trial, but trials may be combined on application of the accused, if accused is not likely to prejudice, if more offences than one of the same king committed by the person within a space of twelve months or offences are

arising in one series of acts so connected together as to form the same transaction.

26.3 The respondent accused had filed an application to consolidate three criminal cases, stating reasons that the cases are arising out of the same transactions, complainant and accused are the same in all three cases. But no order was passed by the learned Magistrate. It appears from the record that evidence lead by the complainant are common (original bills are produced in CC No 1127/2016 and copies thereof are produced in other two cases), complainant and accused are same, the period of offences is twelve months, the offences are arising in our series of acts so connected together as to form the same transaction, therefore the criminal cases i.e. Criminal case No.973/ 2016, 1127/ 2016 and 945/2016 were required to be tried together. If such cases were tried accused definitely not get prejudiced but benefited. These trial are conducted separately but for sentence is concerned they are required to be taken together under Section 427 read with section 429 of the Code.

### **Sentence for the offence**

27. Now as far as the sentence is concerned, I quote the principle governing to punishment and aim and object of the NI Act for sentencing.

**27.1** Hon'ble Apex Court has held in case of Birsingh Vs. Mukeshkumar reported in 2019(4) SCC 197; 2019 4 SCC 197; 2019 3 Supreme 129; 2019 0 Supreme(SC) 126;

*Para 28. In R. Vijayan vs. Baby and Another, (2012) 1 SCC 260 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 realization 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.*

*Para 29. In R. Vijayan vs. Baby and Another (supra) this Court observed that unless there were special circumstances, in all cases of conviction, the Court should uniformly exercise the power to levy fine up to twice the cheque amount and keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss, direct payment of such amount as compensation. This Court rightly observed that uniformity and consistency in deciding similar cases by different courts not only increases the credibility of the cheque as a Negotiable Instrument but also the credibility of the Courts of Justice.*

*Para 44. The appeals are allowed. The judgment 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.*

## **27.2** The object of the provision was described as both punitive

*“Para 7 ...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 the 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) of the Cr. P.C. provides for payment of compensation for the loss caused by the offence out of the fine, R. Vijayan v. Baby (2012) 1 SCC 260. Where fine is not imposed, compensation can be awarded under Section 357(3) Cr.P.C. to the person who suffered loss. Sentence in default can also be imposed. The object of the provision is not merely penal but to make the accused honour the negotiable instruments, Lafarge Aggregates & Concrete India (P) Ltd. v. Sukarsh Azad (2014) 13 SCC 779.”*

*“Para 12. The sentence prescribed under Section 138 of the Act is upto 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) Cr.P.C. 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 Court. The direction to pay compensation can be enforced by default sentence under Section 64 IPC and by recovery procedure prescribed under Section 431 Cr.P.C., Hari Kishan v. Sukhbir Singh (1988) 4 SCC 551; Suganthi Suresh Kumar v. Jagdeeshan (2002) 2 SCC 420; K.A. Abbas H.S.A. v. Sabu Joseph (2010) 6 SCC 230; R. Mohan v. A.K. Vijaya Kumar (2012) 8 SCC 721; and Kumaran v. State of Kerala (2017) 7 SCC 471.”*

*“Para 18. From the above discussion following aspects emerge:*

*ii) 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.”*

28. On perusing the record learned Magistrate has not passed any order under Section second proviso of subsection (1) of Section 143 for requiring the sentence of imprisonment for a term exceeding one year may have to be passed or undesirable to try the case summarily trial is conducted summarily. Therefore, sentence or imprisonment for a term exceeding one year and fine exceeding five thousand rupees cannot be passed.

28.1 It is pertinent to note here that the Accused is engaged in the same type of business on the name of ‘Saanch Enterprises’ which is also a proprietorship firm and respondent no 1 is the proprietor thereof. The accused has issued eight cheques to the Complainant for the transaction of Rs 1276580/-. the complainant has filed another three criminal cases for the dishonour of eight cheques. the complainant has filed another three criminal appeals no.286/2018, 287/2018 and 290/2018 against the acquittal order passed by the same judge for the dishonour of eight cheques. Part payment of Rs 2,70,000/ is made by the accused to the complainant against the total transaction of fifteen cheques. This factor is also required to be taken into consideration while imposing sentence and fine

29. In view of the discussion herein above, fact and circumstances of the

case, object of the NI Act, ratio laid down by the Apex Court in the above referred cases, the finding of the learned magistrate is perverse, illegal and contrary to the law. Considering the evidence on record, I am of the opinion that the prosecution has proved the charge leveled against the Accused Therefore, appeal filed by the appellant original complainant is required to be allowed and accordingly allowed. Hence, following order is passed.

**:::FINAL ORDER :::**

(i) The present Criminal Appeal Nos. 285/2018, 288/2018 and 289/2018 are allowed and the impugned acquittal judgment and order dated 04.12.2017 for the offence under section 138 of the NI Act passed in Criminal case No.973/ 2016, 1127/ 2016 and 945/2016 by the learned 2<sup>nd</sup> Additional Chief Judicial Magistrate, Surat are hereby quash and set aside.

(ii) The Respondent No 1 Accused Suchit Sadh, proprietor, S.K. Agencies, is convicted under Section 255(1) of the Code for the offence under Section 138 of the Negotiable Instruments Act in Criminal case No.973/ 2016, 1127/ 2016 and 945/2016 collectively.

(iii) The Respondent No 1 Accused is sentenced only to fine of Rs. 16,00,000 (Sixteen lakhs). The fine shall be deposited in the Trial Court within ten days from the date of receipt of this judgment, failing which the accused shall under go sentence of simple imprisonment of one year. The accused is entitled to set off for a period of detention already undergone during the investigation and trial.

(iv) Out of the fine paid by the accused, an amount of Rs.15,50,000/-(Rupees Fifteen lakh and fifty Thousand Only) shall be paid as compensation to the Appellant complainant under section 357 of the Code by account payee cheque on proper verification.

(v) On failing to deposit the amount of fine within stipulated time, the appellant shall surrender before the trial court, failing which trial court shall issue non-bailable warrant to proceed for execution of sentence in accordance with law.

(vi) Bail bond of the Accused stands cancelled.

(vii) Rules made absolute. There shall be no order as to costs.

(viii) Registry is directed to send copy of judgment to the concerned Trial Court for certification under Section 388 of the Code.

(ix) Record and Proceedings be sent back to the Court concerned forthwith.

P.B.TALREJA / JNW

**(V. P. PATEL,J)**