IN THE COURT OF PRINCIPAL SESSIONS JUDGE, CHENNAI

Present: Thiru.S.Karthikeyan, M.A., M.L., M.Sc., P.G.D.C.F.Sc., P.G.D.D.F.,

Principal Sessions Judge.

Thursday, the 30th day of July, 2026

Criminal Appeal No. 542/2026

(CNR No.TNCH01-009030-2026)

against

C.C.No. 889/2021

(On the file of the Learned XXVII Metropolitan Magistrate,

Saidapet, Chennai)

From what Court the appeal is preferred	:	XXVII Metropolitan Magistrate Saidapet, Chennai.
Number of the case in that Court	:	C.C.No. 889 / 2021
Number of the Appeal	:	C.A.No. 542/2026
Name and description of the Appellants	:	1. Ozone Projects Pvt.Ltd., Rep.by its Director, Mr.S.Vasudevan, New No. 63, Old No. 32, G.N.Chetty Road, T.Nagar, Chennai. 2. Mr. S.Vasudevan, Director, Ozone Projects Pvt.Ltd., New No. 63, Old No. 32, G.N.Chetty Road, T.Nagar, Chennai.
Respondent's name in the appeal.	:	Mr. T.Krishnamurthy, S/o. Mr. Thangavel (Late) 3-A, Temple Trees, 20, New No. 37, Venkatnarayana Road, T.Nagar, Chennai.

The sentence and law under which it was imposed by the lower court	:	The Appellants herein were convicted for an offence punishable U/s. 138 r/w 141 of the Negotiable Instruments Act, 1881 (N.I. Act) and was sentenced to undergo simple imprisonment for a period of 2 years and was directed to pay twice the cheque amount (i.e.) Rs. 2,00,00,000 (Rupees Two Crore Only) as compensation to the Complainant, in default to undergo three months simple imprisonment.
Whether confirmed, modified or reversed; and if modified the	:	In the result, the appeal is allowed. The Judgment of conviction and sentence passed by the learned XXVII Metropolitan Magistrate, Saidapet, Chennai in C.C.No. 889/2021, dated 16.03.2026 is hereby set aside. The bond executed by the appellant is discharged.The amount if any deposited shall be dispersed to appellant herein.

Date of, or on which							
	Presentation	Filing	Notice issued by Court to appear	Bail bond if Appellant has been let out on bail.	Respondent ordered to appear.	Hearing	Order.
C.A.No. 542/ 2026	10.04.2026	10.04.2026	10.04.2026	--	28.04.2026	16.07.2026	30.07.2026

This appeal came up before this court on 16.07.2026 for final hearing in the presence of M/s.R.Ashwin, J.Ramesh, V.Susila, Anirudh, the counsel for the Appellant and of M/s.G.C.Nelson Britto, S.Tharakesh, M.Surya, the counsel for the respondent and upon hearing both sides and upon perusing the case-records and judgment of the trial court and having stood over for consideration till this date, this Court delivered the following:-

JUDGMENT

The present appeal is directed against the judgment of conviction and sentence passed by the learned XXVII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.889/2021, dated 16.03.2026.

2. The Circumstances, which leads to file the present appeal, are as follows:-

The respondent herein has filed the private complaint before the learned V-FTC Metropolitan Magistrate, Saidapet, Chennai for the offence punishable u/s. 138 of NI Act as against the appellants herein and one Srinivasan Gopalan and K. Krishnan. However, the cognizance were taken against the appellant herein. On the side of the complainant, the complainant was examined as P.W.1 and exhibits Ex-P.1 to P.9 were marked. With the evidence of P.W.1, the complainant side evidence was closed. The Accused was examined u/s. 313 of Cr.PC and no witness was examined and no documents were marked on the side of the defence. After hearing both sides, the learned trial court found the appellants guilty of the offence punishable u/s. 138 r/w 141 of NI Act and sentenced the 2nd Accused/appellant to undergo simple imprisonment for a period of 2 years and was directed the appellants to pay twice the cheque amount to the tune of Rs. 2 Crores as compensation to the complainant within two months, failing which the 2nd Accused/appellant shall undergo further period of three months simple imprisonment.

3. Aggrieved by the said decision of conviction and sentence, the Appellants herein are before this court on the following Grounds:

a) The prosecution is fundamentally predicated upon a document styled as a "Agreement" dated 04.06.2020, typed in a Rs.20 Non-Judicial Stamp paper, which forms the very substratum of the alleged liability. A bare reading of the said document reveals that it is entirely one-sided in nature, setting out only the obligations purportedly undertaken by the Appellants, without delineating any corresponding obligations or reciprocal promises on the part of the Complainant. The document is conspicuously silent as to the role, duties, or consideration flowing from the Complainant. Further, it was signed for and on behalf of the Company by the 4th Accused, who had been relieved from the prosecution. In law, as defined under Section 2(e) of the Indian Contract Act, an agreement is a set of reciprocal promises forming consideration for each other. The absence of mutuality and reciprocity strikes at the root of the document. A promise without consideration is merely gratuitous and unenforceable, lacking legal sanctity as it is sans reciprocate consideration. The so-called agreement, being devoid of reciprocal obligations, fails to qualify as a valid agreement in the eye of law.

b) The Appellant places reliance on the principle under Section 25 of the Indian Contract Act. While a promise to pay a time-barred debt may, in certain circumstances, be enforceable, such enforceability presupposes the existence of a valid promise supported by a reciprocal arrangement. In the absence of such reciprocity, the alleged promise remains a bare, unenforceable undertaking and cannot give rise to a legally enforceable debt for the purpose of Section 138 of the Negotiable Instruments Act. The genesis of the transaction itself is vitiated, as it arose from an unregistered, insufficiently stamped Sale Agreement and Construction Agreement, which are neither original, thereby the very admissibility becomes a question mark. As per the terms of the said agreements, the Complainant was obligated to pay the entire consideration of approximately Rs.4.05 Crores within the stipulated time, namely by June 2015. Upon failure to adhere to the payment schedule, the Appellants were contractually entitled to terminate the agreement, forfeit 15% of the amount paid, and refund the balance, subject to the sale of the property to the third parties and realisation of the proceeds from the same.

c) Consequently, assuming that the contractual relationship, if any, existed stood extinguished by June 2018 at the latest, and no subsisting liability survived thereafter. The alleged agreement of the year 2020, therefore, seeks to revive a claim which does not exist. Such a claim cannot constitute a legally enforceable debt unless validated by a lawful and enforceable agreement, which, in the present case, the same is conspicuously absent. Moreover, the so-called agreement is entirely skewed in favour of the Complainant, detailing only what the proposed purchaser namely the Respondent is to receive from the Developer, without stipulating any benefit, right, or remedy in favour of the Developer. There is no provision indicating what the Developer/Appellants stand to gain or what recourse is available to them. This complete lack of mutuality renders the document illusory and unenforceable.

d) In such circumstances, the entire prosecution, being founded upon a one-sided, unenforceable, and time-barred claim, collapses in limine. The alleged liability lacks the essential character of a legally enforceable debt, and the edifice of the complaint, built upon such infirm foundation, is liable to fall in its entirety. The reliance is placed upon the Judgment of the Honourable Telangana High Court in the case “Mirza Ghousia Vs. State of Telangana” dated 19.10.2022 (Crl.P.No: 5126 of 2019). The relevant portion is extracted hereunder:

‘’The said agreement is one-sided agreement which entitles the complainant company to recover an amount of Rs.1.00 lakh in the event of termination of the employment within 24 months. The said agreement, though entered into and signed by the petitioner/Accused, it cannot be held to be a valid agreement. The said agreement empowers the company to take action against the employee, who is the petitioner/Accused herein. However, under no circumstances it entitles the petitioner/employee/ Accused to seek any remedy against the company in the event of the company taking any action which would be inappropriate to the employee. It is not as though that no remedy would be available if an employer does any act in violation of the rights of an employee.”

e) The reliance is also based on another Judgment of the Honourable Andhra Pradesh High Court in the case of “Padala Veera Venkata Satyanarayana Reddy v. State Of Andhra Pradesh And Another” – (2019 SCC ONLINE AP 8) – dt.12th February 2019. The Relevant Portion is extracted hereunder:

“The proposition laid down by the Apex Court that by virtue of Section 25(3), the purpose for which the cheque is issued becomes a promise on the part of the drawer of the cheque, will hold good only if there is a reciprocal promise. The failure of the drawer of the cheque towards premium, to fulfil the promise of paying the premium, would relieve the promised from the obligation that underlies the insurance of the cheque, but does not become a basis for prosecution or action. Such promise which is an agreement becomes exception to the general rule that an agreement without consideration is void, is what is said by the Supreme Court. There was a reciprocal promise in the case before the Apex Court, which can be considered as the consideration. Promise without consideration, would be a gratuitous promise and has no legal force. A mere moral duty to perform a promise, like promise to subscribe to a charitable institution, is without consideration and void.”

f) This ratio is reflected in the judgment of the Hon’ble High Court of Madhya Pradesh reported in a case between Firm Gopal Co. Ltd. v. Firm Hazari Lai and Co., AIR 1963 MP 37. The case of the promisor issuing cheque towards discharge of a time barred debt, would only be a promise to fulfil a moral duty and breach of such promise may subject him to civil liability, if the promise is construed as an agreement or even criminal liability if any criminality is made out from such promise. Section 25 of the Indian Contract Act makes a promise to discharge time barred debt a valid agreement. But such agreement cannot be made a basis for prosecution under Section 138 of N.I. Act

g) The order of taking cognizance and subsequent conviction is vitiated by a fundamental illegality in as much as the proof affidavit filed by the Complainant/Payee, which constitutes the examination-in-chief in a proceeding under Section 138 of the Negotiable Instruments Act, is defective, illegal and not in accordance with law. At the outset, the affidavit is not signed before the authorities provided U/S. 297 CrPC as it then was (presently S.333 BNSS). Section 297 of the Code of Criminal Procedure, mandates the authorities before whom affidavits may be sworn. For ready reference, the provision is extracted hereunder:

“Section 297 - Authorities before whom affidavits may be sworn
(1) Affidavits to be used before any Court under this Code may be sworn or affirmed before—

(a) any Judge or any Judicial or Executive Magistrate, or

(b) any Commissioner of Oaths appointed by a High Court or Court of Session, or

c) any notary appointed under the Notaries Act, 1952 (53 of 1952).

2) Affidavits shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief."

3) The Court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended."

h) In the present case, the affidavit has neither been sworn before any Judge or Magistrate, nor before a Commissioner of Oaths, nor attested by a Notary Public. On this ground alone, the affidavit is not in conformity with Section 297 Cr.P.C. and is liable to be rejected. It is, therefore, a settled position of law that though a defect in verification may be curable, where such defect is not cured, the affidavit remains legally infirm and cannot be relied upon. In the present case, no steps have been taken to cure the defect, rendering the affidavit inadmissible.

i) It is settled position of law that defect in verification or affidavit is curable. But further question is, what happens when the defect is not cured. There is a gulf of difference between a curable defect and the defect continuing in the verification or affidavit without any efforts being made to cure the defect. Since the proof affidavit constitutes the very foundation of the complainant's evidence in a prosecution under Section 138 of the Negotiable Instruments Act, the entire edifice of the prosecution rests upon this defective affidavit. In the absence of a legally valid affidavit, the prosecution case collapses, and the impugned conviction is liable to be set aside.

j) Compensation u/s. 357 Cr.PC cannot be ordered without enquiry. If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or if an appeal be presented, before the decision of the appeal. 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. 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.

k) The Learned Trial Court, while convicting the Appellants under Section 138 read with Section 141 of the Negotiable Instruments Act, has imposed a sentence of two years imprisonment and directed payment of compensation of Rs.2,00,00,000/- (Rupees Two Crore only) to the complainant. The award of such compensation is ex facie arbitrary, excessive, and contrary to settled principles governing exercise of jurisdiction under Section 357(3) of the Code of Criminal Procedure.

l) It is well established that the power to award compensation, though wide, is not unbridled. The amount of compensation must be reasonable, just, and commensurate with the facts and circumstances of the case. Before issuing a direction to pay compensation, the Court is duty-bound to consider the capacity of the Accused to pay such amount and the damages suffered by the Complainant. This necessarily requires an enquiry, even if summary in nature, to assess the financial capability of the Accused, other losses if any, suffered by the payee and other relevant factors. The exercise of such jurisdiction cannot be mechanical or based on mere assumptions. The Court is required to apply its mind to the nature of the transaction, the extent of liability, and the paying capacity of the Accused, and must record reasons, however brief, justifying the quantum of compensation awarded. The absence of such an enquiry or reasoning renders the order arbitrary and unsustainable.

m) In the present case, there is a complete absence of any enquiry, much less a meaningful consideration, as to the financial capacity of the Appellants to pay the compensation amount of Rs.2,00,00,000/- (Rupees Two Crore only). No material has been discussed, nor any reasons assigned by the Learned Trial Court as to how such quantum was arrived at. The order reflects a mechanical exercise of power, devoid of judicial application of mind. The jurisdiction under Section

357(3) Cr.P.C., being wider than the power to impose fine, must be exercised with greater caution and only in appropriate cases. The award of compensation cannot be left to the unguided discretion of the Court, but must be founded on objective criteria and supported by reasons. In the absence of any enquiry and in the absence of reasons, the compensation awarded in the present case is arbitrary and legally unsustainable, and on this ground alone, the impugned order is liable to be interfered with and set aside.

n) The Payee in this case, wanted to purchase a flat/penthouse and paid a portion of the consideration, did not fulfill the obligation to pay the consideration in entirety within the stipulated time. Thereby, loses the option of purchase. The Developer has got a right to pay 85% of the advance received, after retaining 15% of the advance, that too after realising from third parties who purchased the property. In these circumstances, claim of Rs. 3.15 Crores plus a flat for Rs. 50 Lakhs, is without any legal basis or moral grounds. Hence, the finding recorded is perverse and illegal. The sworn statement found in Pg 21 merely refers to Ex.P1 to P9 and does not speak about the contents of the respective documents. No further averments are also found regarding the role of the Accused, nature of crime, etc, indicating that the sworn statement of PW-1 in itself was recorded mechanically. The Appellant humbly prays that this Hon'ble Court may be pleased call for the records in C.C. No.889 of 2021, on the file of XXVII Metropolitan Magistrate, Saidapet, to set-aside the Judgment dated 16th March 2026 convicting the Appellant, by allowing the appeal and acquit the Appellant of the offence punishable under Section 138 of Negotiable Instruments Act.

4. In this appeal, notice was issued to the respondent. Respondent appeared through his counsel. Both side heard. Respondent filed written submissions. Trial court records were called for and perused.

<u>5. Point for determination:-</u>

Whether the judgment of conviction and sentence passed against the Appellants herein is sustainable?

6. ANSWER :

On careful perusal of records, it is found that the respondent herein has presented the private complaint before the trial court with the following averments:

6.1. The 1st Accused herein is a company registered under the provisions of the companies Act. The 2nd Accused is the Managing Director of the 1st Accused. The 3rd Accused is the group Chief Executive Officer of the 1st Accused company. The 4th Accused is an authorized signatory to act and for and on behalf of the 1st Accused. The Accused nos. 2 to 4 are in charge of and are responsible to the 1st Accused for the day to day affairs and conduct of the business of the 1st Accused company in view of their position and role played in dealing with their customers.

6.2. The Accused herein had promoted, a luxury apartment in the name and style as 'The Metro Zone' over an extent of 42.53 acres at Jawaharlal Nehru Road, Anna Nagar, Chennai-20 in the year 2012-2013. The Accused herein have lured the customers to invest their hard earnings. Accordingly, the complainant was also invited to invest in a Pent House bearing Unit No. A1504. Accordingly, an agreement for sale dated 27.06.2013 was entered into to purchase A1504 measuring UDS of 1319 sq. ft., for a sale consideration of Rs.1,51,68,500/- (Rupees One Crore fifty one lakhs sixty eight thousand and five hundred only) and also entered into a Construction Agreement dated 27.06.2013, by which, the Accused undertook to construct a Pent House bearing A1504 in 15th Floor of Tower A at the cost of

Rs.2,48,36,500/- (Rupees two crores forty eight lakhs, thirty six thousand and five hundred only) and promised to deliver the same by the end of June 6/2015 to the complainant.

6.3. There was undue delay in completing the construction and handing over physical possession to the complainant. In fact, the complainant had spent his own money towards flooring, fittings, wood work etc., for his likings with the knowledge of the Accused. Under such circumstances, the complainant was put to shock and surprise by the conduct of the Accused herein, in agreeing to sell the very same Pent House No. A1504 to a third party for a higher rate. Therefore, the Accused have turned against their promise and dishonestly sold the said house to a third party under a Sale Deed dated 05.07.2019 (Doc.No.3087 of 2019). The complainant had approached the Accused on various dates to know the progress of the construction with an offer to pay the balance sale price, but, the Accused were evasive and reluctant.

6.4. The complainant had insisted the Accused to arrange for a meeting. Accordingly, the Accused had arranged a meeting with the complainant and in the course of discussion held, to his shock and dismay, all the Accused had in one voice informed him about the sale of the very same Pent House No. A1504 to a third party for a luxurious price. Immediately, the complaint has expressed his displeasure and anguish. After realizing the seriousness of the issue and to avoid avoidable criminal/civil consequences, all the Accused have joined together and persuaded the complainant to agree for an alternative arrangements, by repenting for their action.

complainant being a man of good repute had graciously come forward to settle the issue amicably.

6.5. During the course of the discussion and deliberation held at the instance of the Accused 2 to 4, at the office of the Accused No. 1, they have come forward to refund the advance amount with interest @ 18% between 2013 and 2020 money spent by the complainant for fittings, flooring, wood work, etc be volitionally offered to pay the economic compensation along with the amount received in advance, to conceal their misdeeds. Further, the Accused had failed to complete the project by handing over physical possession in June, 2015, whereas, they have dragged endlessly for no justifiable cause. Under such circumstances, on mutual consent, both the parties had agreed to cancel the above mentioned two agreements dated 27.06.2013 on the terms agreed.

6.6. During the course of the discussion and deliberation held between the complainant and the Accused, both the parties have arrived at the terms of settlement and thereby the following cheques were issued towards legally enforceable liability. The complainant submits that as promised and agreed under the agreement dated 04.06.2020, the 1st cheque No. 248131 dated 06.06.2020 drawn on YES Bank issued for Rs. 1,00,00,000 (Rupees one crore only) was presented and honoured, and the 2nd cheque No.248132 dated 31.07.2020 drawn on YES Bank issued for Rs. 50,00,000 (Rupees fifty lakhs only) had also been honoured on presentation. However, even before the due date for presenting the 3rd cheque No. 248136 dated 31.08.2020 drawn on YES Bank issued for Rs. 1,00,00,000 (Rupees one crore only), the Accused Nos.1

to 3 through Accused No.4 has requested the complainant not to present the cheque No.248136, with an assurance that the payment through RTGS will be made by them on or before 10.09.2020. On the contrary, the Accused Nos. 1 to 3 had again instructed Accused No.4 to send an email on 09.09.2020 to defer the presentation of the 3rd Cheque No.248136.

6.7. The complainant has again exchanged his human gesture and hopefully waiting that the Accused would act on their reciprocal promises. On the contrary, all the Accused have transferred Rs.50,00,000/- (Rupees fifty lakhs only) through RTGS on 10.09.2020, and promised to pay the remaining due under the 3rd Cheque No.248136 on 25.09.2020. Shockingly, again on the committed dated, the Accused have again instructed their Manager/Finance Mr. Sreehari. to send another email on dated 25.09.2020. Unfortunately, the Accused have 4 neither transferred the balance of Rs.50 lakhs due under the Cheque No. 248136 nor issued a fresh cheque for the said amount.

6.8. The complainant has presented the 4th cheque No. 248137 dated 30.09.2020 issued for Rs. (Rupees One Crore), for collection through his banker namely the Axis Bank, Teynampet Branch, Chennai on 08.10.2020 as promised by the Accused herein under the agreement dated 04.06.2020 but, it was returned unpaid to his shock and dismay on 09.10.2020, by the Axis bank, Teynampet branch as 'payment stopped by the drawer. The complainant was put to unbearable shock after knowing the fact that the cheque has been returned unpaid on account of prior instruction given by the Accused herein 'to stop the payment' since the Accused have miserably failed to maintain sufficient funds to honour their promise given in the above said business commitments. All Accused have joined together and formed a syndicate by issuing "stop payment notice" to the bank with an ill-intention to force the complainant to suffer.

6.9. The dishonour of the cheque in the above said manner clearly reflects un-pragmatic approach of the Accused in the above matter, which is otherwise unwarranted. It clearly proves their motive and clear intention to commit an offence of cheating and criminal misappropriation besides the offence punishable under Sections 138 r/w 142 of the Negotiable Instruments Act, 1881. Therefore, the complainant has Issued a legal notice dated 02.11.2020 under Section 138 (b) of the N.I. Act, 1881. All the Accused have received the notice on 03.11.2020 and issued a false reply dated 07.11.2020.

6.10. Neither the transaction nor the liability covered under the subject cheque are in dispute, whereas, the Accused have taken two strange pleas. They are: i) economic compensation fixed and agreed under the agreement dated 04.06.2020 is unreasonable and unconscionable and ii) they took shelter under Covid 19 by misquoting the provisions of Disaster Management Act, 2005. The 1st Accused a private limited company and the Accused Nos. 2 to 4 are holding responsible position in the 1st Accused. They knew well that they were at fault because of unprecedented delay on their part in handing over physical possession of the house in A1504, and they had committed criminal breach of trust by selling the house to a third party for a luxury rate. Thus, the Accused have on their own voluntarily offered to refund the advance amount of Rs. 1.75 Crores with interest @ 18% between 2013 and 2020, money spent by the complainant towards fittings, flooring, wood work, etc besides compensation. From the date of payment in the year 2013. Further, to avoid avoidable legal consequences and to escape from the clutches of law, the Accused have had negotiation and persuaded the complainant to accept the terms recorded in the agreement dated 04.06.2020. The Accused are not unlettered persons, whereas they know well about the pros and cons and then only they had consciously prepared the agreement dated 04.06.2020 and signed.

6.11. The Accused have missed the march of law in respect of the legal presumption under Sec. 139 of the Act, 1881 r/w 118 thereof. In law, a cheque leaf, voluntarily signed and handed over by the Accused, which is towards some payment, would attract legal presumption under Sec. 138 of the Act, 1881 stand taken by the Accused in their reply notice, if accepted, will shaken the faith of the business community dealing in mercantile and trade practice. Such technicalities and procedural wrangles as projected by the Accused have been strongly deprecated by the constitutional Courts.

6.12. The complainant submits that the offence has been committed within the jurisdiction of the Court. The Accused 2 to 4 are the persons responsible for the day to day affairs and management of the 1st Accused company. In fact, the Accused Nos. 2 to 4 have directly participated in the above mentioned transaction held on various dates, therefore, all of them are vicariously liable for the dishonour of the subject cheque. The Accused 2 to 4 took part in all the dealings of the complainant with the

1st Accused between 2013 and 2020. The complainant has not made all the other Directors, Manager and others as the Accused, whereas, he has arraigned the Accused 2 to 4 because of their specific role in fixing the price under the agreements dated 27.06.2013, breach of their obligations under the agreement, subsequent negotiations, discussion held for alternative arrangements, execution of the subsequent agreement dated 04.06.2020 and above dates. Above all, all the Accused have joined together and took all, they have jointly agreed to pay the amount agreed on same stand in their reply notice dated 17.11.2020.

6.13. The Accused have voluntarily and volitionally with wide open eye have agreed to repay the amount under the terms agreed under the agreement dated 04.06.2020. Now, they are legally estopped from terming the agreement as an unreasonable or unconscionable. They cannot reprobate and approbate to suit their convenience. Be that as it may, this complaint is for dishonour of the subject cheque which raises a legal presumption as to the legally enforceable debt. Indisputably, the Accused have acted upon the terms of the agreement dated 04.06.2020 and made part payments unmindful of Covid 19 or force majeure clause, therefore, they cannot take a prevaricate stand to avoid or escape from their liabilities.

6.14. Since the cheque was dishonoured and returned unpaid on the instruction given by the Accused to the bank to stop the payment, the complainant has issued the statutory legal notice and it was duly received, but, no amount was paid within the time stipulated. Therefore, pleased to take the complaint on file, issue process to the Accused, punish the Accused for the offence under sec. 138 of the Negotiable instruments Act, 1881, besides giving compensation under Sec. 357 Cr.PC., r/w sec. 138 of the N.I. Act and pass such further orders.

7. To substantiate the said complaint, the complainant himself was examined as P.W.1 by way of proof affidavit and exhibited Ex-P.1 to P.9 were marked. P.W.1 was subject to cross examined by the Accused.

8. The first and foremost contention of the learned senior counsel for the appellants is that the proof affidavit filed by the respondent, in lieu of chief examination of P.W.1, is not in consonance with Sec. 297 of Cr.PC r/w Rule 34 of Cr.PC. As per sec. 145 of NI Act 1881, "*Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.*"

9. According to the learned senior counsel for the appellant, the affidavit should be in conformity with Section 297 of Criminal Procedures Code. Sec. 297 of Criminal Procedures Code read as follows:

297.(1) Affidavits to be used before any Court under this Code may be sworn or affirmed before—

a)any Judge or any Judicial or Executive Magistrate, or

b)any Commissioner of Oaths appointed by a High Court or Court of Session, or

c) any notary appointed under the Notaries Act, 1952 (53 of 1952).

(2) Affidavits shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to

believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.

(3) The Court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended conformity with sec. 297 of Cr.PC.

From the above provision, it is very clear that the affidavit to be used before any court under the Code of Criminal Procedure, to be sworn and affirm before any Judge or Judicial Magistrate or any Executive Magistrate or any commissioner of oaths appointed by a High Court or court of Sessions or any notary appointed by a Notary Act, 1952.

10. Further, Sub rule (10) of Rule 34 of Criminal Rules of Practice, prescribes as to how the said affidavit should be verified and the same is extracted herein below for better appreciation:

> "*(10)Every affidavit shall clearly express how much is a statement of the deponent's knowledge and how much is a statement of his belief. The grounds of belief must be stated with sufficient particularity to enable the Court to judge whether it would be safe to act upon the deponent's belief.*"

As per sub rule (10) of Rule 34, every affidavit shall clearly express how much is a statement of the deponent's knowledge and how much is a statement of his belief, and the grounds of belief must be stated with sufficient particularity to enable the court to Judge, whether it would be safe to act upon to the deponent's belief. But in this case, as contended by the learned Senior counsel for the appellants, the affidavit submitted in lieu of the chief examination of P.W.1, was not sworn to in the presence of any of the person mentioned in Sec. 297 of Cr.PC. and the affidavit does not contain the statement that how much of his statement is from his knowledge and how much of statement is from his belief as required under sub rule (10) Rule 34 of the Criminal Rules of Practice, 2019. The learned counsel for the appellant relied on the decision of the Hon'ble Apex Court, in ***A. K. K. Nambiar vs Union Of India & Anr on 28 October, 1969***, wherein the Hon'ble Apex Court has observed as below.

> *".... The appellant filed an affidavit in support of the petition. Neither the petition nor the affidavit was verified. The affidavits which were filed in answer to the appellant's petition were also not verified. The reasons for verification of affidavits are to enable the court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records. The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the court to find out as to whether it will be safe to act on such affidavit evidence. In the present case, the affidavits of all the parties suffer from the mischief of lack of proper verification with the result that the affidavits should not be admissible in evidence."*

11. Further, the learned counsel for the appellant relied on the decision of the Hon'ble High Court of Madras in a case ***State Vs. S.Kannan and others***, reported in MANU/TN/1172/2015, wherein the Hon'ble High Court of Madras, after considering the various decisions on this point, held as follows:-

> *"Thus the principle laid down by the constitutional Bench of the Hon'ble Apex Court would denote that an affidavit must be in consonance with order XIX Rule 3 of C.P.C. But as stated already, the affidavit filed by the petitioner is not in the prescribed format. So, I am of the view that the affidavit is defective in nature. So, the affidavit filed by the petitioner seeking for custodial interrogation of the respondents cannot be construed as the one contemplated u/s.76 of the Tamil Nadu Criminal Rules of Practice."*

12. Further, the learned senior counsel for the Appellant relied on the decision of the Hon'ble High Court of Punjab and Haryana in a case Santhokh Singh @ shoka Vs. The State of Punjab, reported in 2002 SCC online 1134, wherein the Hon'ble High Court of Punjab and Haryana held as follows:-

> *"It was held by this court that the verification is not correct as to make the affidavit admissible in evidence. The learned lower appellate court has not even adverted to the facts of the case in Ravel Singh's case (supra) and held the same to be distinguishable. I am of the considered opinion that the matter is squarely covered by the Judgments of this court mentioned above. Therefore, the affidavits Exhibits P-G, P-H and P-I were not admissible in evidence. Excluding these affidavits, it cannot be said that the sample which was sent for analysis was the same which was tested by the chemical examiner and for which report exhibit P-P has been sent."*

13. From the above decisions relied on by the learned Senior Counsel for the Appellant, it is very clear that the affidavit filed in lieu of the chief examination, does not in conformity with Sec. 297 of Cr.P.C and Rule 34 of Criminal Rules of Practice'2019 and therefore it is defective.

14. The learned counsel for the respondent contended that the affidavit was sworn before the Advocate at Saidapet Bar Association and merely because the affidavit does not contain the statement as what are all the statement is made from out of his knowledge and what are all the statement out of his knowledge from his out of his belief will not make the affidavit impermissible. Further, he submitted that the deponent entered into the witness box and was administered oath. On oath, the complainant has submitted that his affidavit is to be treated as chief examination. Therefore, the said argument of the learned counsel for the appellant is to be rejected.

15. As found supra, the affidavit filed in lieu of chief examination is not in conformity with Section 297 of Cr.P.C and rule 34 of Criminal Rules of Practice. It is true that the said defect is curable in nature, however, the said defect was not cured either before the trial court or before this court. Therefore, this court is of the considered view that the findings whatever rendered by the learned Trial Court based on the said defective affidavit is ought to be set aside.

16. The next contention of the learned senior counsel for the appellant is that the documents referred to in the affidavit were marked as Ex-P1 to P.9 without any proof of said documents. Therefore, the learned senior counsel for the appellant contended that though there was no objection to mark those documents at the time of its marking, the documents are inadmissible in evidence which can be raised at any time and even at the appellate stage. According to the learned Senior Counsel for the appellant, a document becomes inadmissible in evidence unless the author thereof is examined; the contents thereof cannot be held to have been proved unless he is examined and subjected to cross-examination in a court of law. The learned senior counsel for the appellant relied on the decision of the Hon'ble Apex Court in a case ***Malay Kumar Ganguly Vs. Dr.Sukumar Mukherjee and others***, (2009) 9 Supreme Court Cases 221, wherein the Hon'ble Apex Court in para 37, 38 held as follows:

> "*37. It is true that ordinarily if a party to an action does not object to a document being taken on record and the same is marked as an exhibit, he is estopped and precluded from questioning the admissibility thereof at a later stage. It is, however, trite that a document becomes inadmissible in evidence unless the author thereof is examined; the contents thereof cannot be held to have been proved unless he is examined and subjected to cross-examination in a court of law. The document which is otherwise*

inadmissible cannot be taken in evidence only because no objection to the admissibility thereof was taken.

38. In a criminal case, subject of course, to the shifting of burden depending upon the statutes and / or the decisions of the superiors courts, the right of an Accused is protected in terms of Article 21 of the Constitution of India. The procedure laid in that behalf, therefore, must be strictly complied with Exp. 4, 5 and 6 in our opinion are not admissible in evidence in the criminal trial."

17. From the above it is very clear that, mere marking of documents does not amounts to proof of it. In this case, Ex-P.1 is the agreement for sale deed dated 27.06.2013, which was executed by the complainant in favour of the 1st appellant. The said agreement was produced by the complainant himself. Therefore, Ex-P.1 and P.2 are marked only through author and he was subjected to cross examination with regard to the above documents. Therefore, it cannot be said that the said documents are not proved. Ex-P.3 is the sale deed was executed between Ozone Projects Private Limited in favour of Dignity Enterprises Private limited. The author of the said documents was not examined before this court and therefore, the said documents is not proved before the court. Ex-P.4 is executed by the 1st appellant in favour of the complainant and the complainant has produced the same and therefore Ex-P.4 is executed and Ex-P.4 is proved. Ex-P.5, the cheque was issued in his favour. Ex-P.6 returned issued by and received by the complainant. Ex-P.7 issued by the complainant, Ex-P.9 is the reply was received by him, therefore all these documents were proved through the complainant. Hence, the said contention of the learned senior counsel for the appellant is not sustainable.

18. The next contention of the learned senior counsel for the appellant is that Ex-P.1 sale agreement clause 13 states that in view of the pendency of certain litigations

already disclosed with purchasers and the consideration of the scheduled property in favour of the purchasers, false claims doubts and encumbrance caused by any litigations or order passed by any proceedings, the vendor hereby agrees to indemnify and keep indemnify the purchaser of and damages not exceeding the amount received by the purchaser provided scheduled property is retransferred by the purchasers to the vendor or its nominees for a period of three years from the date of booking or till the date of registration of sale deed whichever is earlier.

19. Further, as per Ex-P.2 construction agreement, the clause 5(b) in the event of delay or default by the allottees to pay the balance cost of the construction as per the payment schedule, the developers is entitled to terminate its agreement by issuing the notice calling upon the allottees to pay the unpaid amounts due within 7 days from the date of such notice. The allottees failed to pay the same, the agreement should be terminated and in the discretion of the developer and allottees are forfeit to the developer, 50% of the amount paid as damages and balance amount paid by the allottees shall be refunded by he developer, but without any interest and compensation of whatsoever nature only after receipt of moneys extend to the developer entering into the construction agreement with new customer in respect of the said residential unit. The allottee agrees that upon the termination of said agreement, the allottee will not have any other way whatsoever.

20. Despite the said agreement, the purchasers has paid only a sum of Rs.1,75,00,000/- towards part of sale consideration and liable to pay the balance

payment of Rs. 2,25,05,000/-. When the owner developers sought for balance payments, the purchasers sought for cancellation and refund of the amount paid together with the economic compensation. Therefore, both the parties have agreed to cancel the agreement dated 27.06.2013 and entered into Ex-P.4 agreement.

21. As per Ex-P.4 agreement, the owner developer had agreed to repay a sum of Rs.1,75,00,000/- and to pay an economic compensation of Rs.3,50,00,000/-. According to the learned senior counsel for the appellant, as per the said agreement, already a sum of Rs. 2,00,00,000/- was paid. The owner developer has agreed to pay a further sum of Rs. 1 crore, and handed over a post dated cheque bearing No. 248137 dated 30.09.2020 for a sum of Rs. 1 Crore drawn on Yes Bank. Further, the developer agreed to pay Rs.90,00,000/- and handed over a post dated cheque bearing No. 248138 dated 31.10.2020 drawn on Yes Bank.

22. However, the learned senior counsel for the appellant contended that Ex-P.4 agreement does not supported by any consideration. The learned counsel for the appellant contended that the as per clause 22 of the Ex-P.2, construction agreement, in the event of any dispute arising under the agreement, the same shall be settled by a sole arbitrator. However, the respondent has failed to invoke the said arbitration clause within 3 years from the date of alleged cause of action. Therefore, as on the date of entering into Ex.P4 agreement, the respondent’s claim of compensation is completely time barred. Therefore, according to the learned senior counsel for the appellant, the agreement dated 04.06.2020, does not create any obligation on the

appellant in the absence of any consideration on the part of the respondent. The learned senior counsel for the appellant relied upon the decision of the Hon’ble High Court of Andhra Pradesh at Amravati***, in Padala Veera Venkata Satyanarayana Reddy Vs. State of AP and another***, reported in 2019 SCC online AP 8, wherein at para no. 8 of the decision, the Hon’ble Andra Pradesh held as below:

> *“8. The proposition laid down by the Apex Court that by virtue of Section 25(3), the purpose for which the cheque is issued becomes a promise on the part of the drawer of the cheque, will hold good only if there is a reciprocal promise. The failure of the drawer of the cheque towards premium, to fulfil the promise of paying the premium, would relieve the promised from the obligation that underlies the insurance of the cheque, but does not become a basis for prosecution or action. Such promise which is an agreement becomes exception to the general rule that an agreement without consideration is void, is what is said by the Supreme Court. There was a reciprocal promise in the case before the Apex Court, which can be considered as the consideration. Promise without consideration, would be a gratuitous promise and has no legal force. A mere moral duty to perform a promise, like promise to subscribe to a charitable institution, is without consideration and void.*
>
> *This ratio is reflected in the judgment of the Hon'ble High Court of Madhya Pradesh reported in a case between Firm Gopal Co. Ltd. v. Firm Hazari Lai and Co., AIR 1963 MP 37. The case of the promisor issuing cheque towards discharge of a time barred debt, would only be a promise to fulfil a moral duty and breach of such promise may subject him to civil liability, if the promise is construed as an agreement or even criminal liability if any criminality is made out from such promise. Section 25 of the Indian Contract Act makes a promise to discharge time barred debt a valid agreement. But such agreement cannot be made a basis for prosecution under Section 138 of N.I. Act. A cheque issued for discharge of debt no doubt carries a promise to discharge the time barred debt but, for a prosecution under Section 138 N.I. Act, there should be a legally enforceable debt by the date of issuance of cheque. Such cheque becomes an agreement between the promisor and promised and becomes enforceable, but does not allow prosecution. Unless there is a legally enforceable debt, the cheque issued, promising to discharge a time barred debt will not make the promisor liable under Section 138 of the N.I. Act. In*

a case under Section 138 of N.I. Act, the issuance of the cheque itself must be towards a legally enforceable debt. Hence, the reasoning given by the Hon'ble High Court of Bombay does not persuade this Court."

23. The learned counsel for the appellant further relied on the decision of the Hon'ble High Court of Telangana at Hyderabad in a case, Mirza Ghousia Vs. State of Telangana dated 19.10.2022, wherein the Hon'ble High Court of Telangana in para no. 6 held as follows:-

"*The said agreement is one sided agreement which entitles the complainant company to recover an amount of Rs. 1 Lakh in the even of termination of the employment within 24 months. The said agreement, though entered into and signed by the petitioner/Accused, it cannot be held to be a valid agreement. The said agreement empowers the company to take action against the employee, who is the petitioner/Accused herein. However, under no circumstances it entitles the petitioner/employee/Accused to seek any remedy against the company in the event of the company taking any action which would be inappropriate to the employee. It is not as though that no remedy would be available if an employer does any act in violation of the rights of an employee."*

24. Further, the learned counsel for the Appellant relied on the decision of the Hon'ble Apex court in Reddappa and Others Vs. Branch Manager, Insurance company limited, 2018 SC 595, wherein the Hon'ble Apex Court held as follows:

"A contract is based on reciprocal promise. Reciprocal promises by the parties are condition precedents for a valid contract. A contract furthermore must be for consideration."

25. According to the learned senior counsel for the Appellant, Ex-P.4 agreement is considered to be an one side agreement without any reciprocity and therefore, it is not supported by consideration. Even assuming that the said agreement was entered into between the 1st appellant and the respondent, in view of the obligation under Ex-P.1

and P.2, according to the learned counsel for the appellant, as per clause 13 of Ex-P1 sale agreement, the respondent is entitled to damages not exceeding the amount received from the purchaser. Further, as per Ex-P.2 construction agreement, the respondent agreed that the 1st appellant can deduct 15 of the amount paid towards for damages, in the event of any damages committed by the respondent. Therefore, as per Ex-P1 and P.2, the respondent is entitled to only the amount which was already paid towards purchase of the property, or - 15% of the said amount.

26. From Ex-P.4 agreement, the 1st appellant made to agree for refund of Rs.1,75,00,000/-. and apart from that a sum of Rs. 3,15,00,000/- towards Economic compensation. As on the date of the said agreement, there exists no right to claim compensation and therefore, the agreement to economic compensation is without consideration. The cause of action is no longer exits as on the date of entering into Ex-P.4 agreement. Whatever agreed is not supported by the consideration. Further as per sec. 25 of the Indian Contract Act, an agreement without consideration is void. Unless they full any of the instances stipulated in clauses (1)(2)(3) of Section 25 of Indian Contract Act. The case in hand does not fall in any one of the clauses. Hence, it is not enforcible as per law. The learned counsel for the appellant, relied upon the decision of the Hon'ble Apex Court in Kotak Mahindra Bank Limited Vs. Kew Precision Parts Private Limited and others, reported in (2022) 9 SCC 364 wherein the Hon'ble Apex Court observed as below:

> *"30. In this appeal, it is contended that the last offer of 20th December, 2018 was followed by an agreement. Whether there was such agreement or not would have to be considered by the Adjudicating Authority. To invoke Section 25(3), the following conditions must be satisfied:-*

(i) It must refer to a debt, which the creditor, but for the period of limitation, might have enforced;

(ii) There must be a distinct promise to pay such debt, fully or in part;

(iii) The promise must be in writing, and signed by the debtor or his duly appointed agent.

31. Under Section 25(3), a debtor can enter into an agreement in writing, to pay the whole or part of a debt, which the creditor might have enforced, but for the limitation of a suit in law. A written promise to pay the barred debt is a valid contract. Such a promise constitutes novation and can form the basis of a suit independent of the original debt, for it is well settled that the debt is not extinguished, the remedy gets barred by passage of time as held by this Court in Bombay Dyeing and Manufacturing Company Limited vs. State of Bombay1.

32. Section 25(3) applies only where the debt is one which would be enforceable against the defendants, but for the law of limitation. Where a debt is not binding on the defendant for other reasons, and consequentially not enforceable against him, there is no question of applicability of Section 25(3).

33. There is a distinction between acknowledgment under Section 18 of the Limitation Act, 1963 and a promise within the meaning of Section 25 of the Contract Act. Both promise and acknowledgment in writing, signed by a party or its agent authorised in that behalf, have the effect of creating a fresh starting of limitation. The difference is that an acknowledgment under Section 18 of the Limitation Act has to be made within the period of limitation and need not be accompanied by any promise to pay. If an acknowledgment shows existence of jural relationship, it may extend limitation even though there may be a denial to pay. On the other hand, Section 25(3) is only attracted when there is an express promise to pay a debt that is time barred or any part thereof. Promise to pay can be inferred on scrutinising the document. Only the promise should be clear and unconditional."

27. Further, the learned counsel for the appellant relied on the decision of the Hon'ble High Court of Kerala in a case ***Sasseriyil Vs. Devassia,*** wherein the Hon'ble High Court of Kerala held as below:-

6. The only question that arises for consideration in this appeal is whether the respondent who issued the cheque in question in discharge of a time barred debt is liable under Section 138 of the Negotiable Instruments Act. In this case, the complainant had admitted that the loan was advanced to the Accused in January, 1988 and the cheque was issued in February, *1991. Thus, by the time the cheque was issued, the debt was barred by limitation since there was no valid acknowledgement of the liability within the period of limitation. According to the learned counsel for the appellant, the promise made by the Accused to repay the time barred debt would come within the purview of Section 25(3) of the Indian Contract Act. No doubt, the promise to pay a time barred cheque (debt) is valid and enforceable, if it is made in writing and signed by the person to be charged therewith. But, it is clear from Section 138 of the Negotiable Instruments Act that in order to attract the penal provisions in the bouncing of a cheque in Chapter XVII, it is essential that the dishonoured cheque should have been issued in discharge, wholly or in part, or any debt or other liability of the drawer to the payee. The explanation to Section 138 defines the expression debt or other liability as a legally enforceable debt or other liability. The explanation to Section 138 reads as under :-*

Explanation :- For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability.

7. Thus, Section 138 is attracted only if the cheque is issued for the discharge of a legally enforceable debt or other liability. In this case, admittedly, the cheque in question was issued in discharge of a time barred debt. It cannot be said that a time barred debt is a legally enforceable debt. In this connection, it is also relevant to note the decision of the Andhra Pradesh High Court reported in Girdhari Lal Rathi v. P.T.V. Ramanujachari 1997 (2) Crimes 658. It has been held in that case that if a cheque is issued for a time barred debt and it is dishonoured, the Accused cannot be convicted under Section 138 of the Negotiable Instruments Act simply on the ground that the debt was not legally recoverable. I am fully in agreement with the view expressed by the learned Judge in the decision referred to above.”

28. As contended by the learned senior counsel for the appellant, the cause of action for raising a dispute and seeking for reference to an arbitrator as per clause 22 of Ex-P.2 agreement arose in the month of June 2015 itself. As per Article 27 of Limitation Act, for compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency, the suit should be laid within 3 years, from when the time specified arise or the contingency happen.

29. Therefore, for filing a suit claiming damages arose in this case or seeking an reference of the dispute to an arbitrator expires in the month of June 2018 itself. In June 2020, there is no subsisting cause of action either for filing a suit or for seeking for a reference to an arbitrator. Even Sub section 3 of Section 25 of the Indian Contract Act permits an acknowledgment of debt only when the debt exists. Therefore, Ex.P4 cannot be treated as an acknowledgement of debt also.

30. In this case, the conjoint reading of Ex-P.1 and P2, makes it clear that the respondent is entitled to either the money already paid i.3 Rs. 1,75,00,000/- or a sum minus 15% of the said sum towards damages. Even in the absence of any damages the respondent is entitled to only a sum of Rs. 1,75,00,000/- with reasonable interest. Therefore, the agreement of payment of Rs. 3,15,00,000/- in the absence of any reciprocal promises or existing debt is not supported by consideration and therefore the same cannot be a legally enforceable contract. Though the respondent claimed that he made certain improvements in the flat, that was neither stated in Ex.P4 agreement nor was it proved before the Trial Court. Therefore, the cheque issued to discharge of the said compensation is not legally enforceable debt or other illegality. Therefore, the offence u/s. 138 of NI Act does not attract in this case.

31. Apart from that, the learned senior counsel for the appellant further contended that even assuming that the respondent is entitled to the said sum of Rs.3,15,00,000/- is liquidated damages, it is only an actionable claim, unless the entitlement of liquidated damages is adjudicated and damages assessed by the decree of a court, it

cannot be a termed as a debt. The learned senior counsel for the appellant relied on the decision of the Hon'ble Apex Court in Union of India Vs. Raman Iron Foundary, reported in (1974) 2 SCC 231, wherein the Hon'ble Apex Court in para 11 held as follows:

"*It, therefore makes no difference in the present case that the claim of the appellant is for liquidated damages. It stands on the same footing as a claim for unliquidated damages. Now, the law is well settled that a claim for unliquidated damages does not give rise to a debt until the liability is adjudicated and damages assessed by a decree or order of a court or other adjudicatory authority. When there is a breach of contract, the party who commits the breach does not to instanti incur any pecuniary obligation, nor does the party complaining of the breach becomes entitled to a debt due from the other party. The only right which the party aggrieved by the breach of the contract has is the right to sue for damages.*"

32. Sec. 73 of Indian Contract Act reads as follow:-

73. Compensation for loss or damage caused by breach of contract.—

When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

From the above provision, it is very clear that when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the useful course of things from such breach or which the parties knew, when they made the contract to be likely to result from the breach of it. Sec.

73 makes it further clear that the compensation is not to be given for any remote and indirect loss or damage sustained by the reason of the breach.

33. Further, Section 74 of Indian Contract Act, reads as follows:-

> " *74. Compensation for breach of contract where penalty stipulated for.-* *When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.*
>
> *Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.*
>
> *Exception.—When any person enters into any bail-bond, recognizance or other instrument of the same nature or, under the provisions of any law, or under the orders of the Central Government or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.*
>
> *Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.*"

From the above provision, it is very clear that even if a sum is named in the contract as the amount to be paid because of such breach, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for. Therefore, in view of Sections 73 and 74 of the Indian Contract Act, the party who suffers a breach can claim only reasonable compensation from party who has breached even if a sum is named in the contract, that does not ipso facto creates an obligation on the part of the party at breach, to pay the amounts stipulated but a reasonable compensation.

34. The Hon’ble Apex Court in Union of India Vs. Raman Iron Foundary cited supra makes it very clear that, what would be a reasonable compensation is to be adjudicated by a decree of a civil court. That cannot be done by some other proceedings like Sec. 138 of Negotiable Instruments Act which is summary in nature. On this aspects also, the prosecution of this case is to be failed.

35. The learned senior counsel for the appellant further relied on the decision of the Hon’ble Apex Court in ***Dilip S. Dahanukar Vs. Kotak Mahindra Co.Ltd. And another,*** reported in (2007) 6 SCC 528, to say that the jurisdiction to award compensation u/s. 357 cannot exercised at the whims and caprice of a judge. It must be reasonable and not arbitrary. Before, issue a direction for compensation, the capacity of the Accused must be judged. The Hon’ble Apex Court at para no. 38 held as below:

> *“The purpose of imposition of fine and or grant of compensation to a great extent must be considered having the relevant factors therefor in mind. It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of the Accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way, may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but sub-section (3) of section 357 does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. Such a jurisdiction cannot exercised at the whims and caprice of a judge.”*

In this case, the learned Trial Court has not conducted any enquiry even in a summary way as to the entitlement of compensation and the quantum of compensation and merely fixed the compensation in a mechanical way twice the cheque amount and therefore, it is liable to be set aside in view of the authoritative pronouncement of the Hon’ble Apex Court in the decision cited supra.

36. Though the learned senior counsel for the appellant contended that the imposition of conviction and consecutive sentence in the Judgment given on the same day is bad in view of the decision of the Hon’ble High Court of Madras in a case Sheik Madhar Vs. State of Tamil Nadu rep. by its Principal Secretary to the Government, Home prohibition and exercise department and others reported in (2020) SCC Online Mad 1008: (2020) 3 MWN (Cri) 234, this court, in the foregoing paragraphs, concluded that the conviction itself is not sustainable in view of the absence of any enforceable debt, therefore, this court does not venture to answer the said question.

<u>37. Result:</u>

In the result, the appeal is allowed. The Judgment of conviction and sentence passed by the learned XXVII Metropolitan Magistrate, Saidapet, Chennai in C.C.No. 889/2021, dated 16.03.2026 is hereby set aside. The bond executed by the appellant is discharged. The amount if any deposited shall be disbursed to appellant herein.

Dictated to the stenographer, transcribed by him, corrected and pronounced by me in the open Court, on this the 30th day of July, 2026

KARTHIKEYAN SHANMUGAM

Digitally signed by KARTHIKEYAN SHANMUGAM
Date: 2026.07.30 20:09:01 +0530

PRINCIPAL SESSIONS JUDGE.
CHENNAI