IN THE COURT OF THE SPECIAL JUDGE FOR TRIAL OF OFFENCES UNDER S.Cs & S.Ts (POA) ACT-CUM-VI ADDL. METROPOLITAN SESSIONS JUDGE: SECUNDERABAD

Present: **M. JOHNSON,**
Spl. Judge for trial of offences under
SCs & STs(POA) Act cum VI Addl.
Metropolitan Sessions Judge
Secunderabad

MONDAY, THE FOURTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR

CRIMINAL APPEAL No.210 of 2022

From which court this appeal is preferred	XIV Additional Judge-cum-XVIII Additional Chief Metropolitan Magistrate, Secunderabad
No. of the case in that court	***C.C.469 of 2018***
Number of appeal	**CRIMINAL APPEAL No.210 of 2022**
Name & description of appellants/accused No.1 & 2	***1. Susheela Foods & Beverages (P) Ltd.,*** registered office at Plot No.1/A, Sy.No.67, Kachivanisingaram Village, Ghatkesar Mandal, Ranga Reddy district (now at Medchal Malakajgiri district) represented by its Director Mr. C. Prabhakar Reddy. ***2. C. Prabhakar Reddy,*** s/o. Sri C. Jagannadha Reddy, aged about 56 years, Director of ***Susheela Foods & Beverages (P) Ltd.,*** r/o. G-1, Sri Sai Galaxy Palace, 12-5-53/3, Vijaypuri, Tarnaka, Secunderabad.
Name and description of respondent/complainant	***1. Mr. K.S. Raju,*** s/o. Sri K.S. Reddy, aged about 69 years, retired professional, r/o. H.No.128/19, Ravi Society, Mahindra Hills, East Marredpally, Secunderabad.

	2. The State of Telangana represented by Addl. Public Prosecutor.
The Sentence and law under which it was imposed in lower court.	Accused was found guilty and convicted under Sec.252(2) Cr.P.C. and sentenced to undergo simple imprisonment for one year and imposed a fine of Rs.32,55,000/- for the offence under Sec.138 of the NI Act, out of the fine amount of Rs.32,55,000/-, Rs.32,50,000/- shall be paid to the complainant. The remaining fine amount Rs.5000/- fine amount shall be remitted to the State.
Whether, Allowed/ dismissed, confirmed, modified or reversed and if modified the modification.	***DISMISSED***
Date of on or which:	
Presentation:	15.9.2022
Filing:	15.9.2022
Notice issued by the court to appear:	12.10.2022
Bail bonds, if appellant let out on bail.	---
Appellant order to appear	25.11.2022
Hearing	09.02.2024
Judgment:	***04.03.2024***

This Criminal appeal is coming before me for final hearing on ***09.02.2024 i***n the presence of ***Sri K. Sravan Kumar,*** Counsel for the appellant and of ***Sri K. Simon Preeth Kumar,*** Addl.Public Prosecutor for the respondent and upon perusing the petition of appeal, record of evidence and upon duly considering the same, till this day this court delivered the following:-

J U D G M E N T

1. Appellants/ Accused No.1 and 2 aggrieved by the judgment of conviction and sentence passed by the learned XVIII Addl. Chief Metropolitan Magistrate, Secunderabad passed in C.C.No.469 of 2018 dated 17.8.2022 wherein A2 representing A1 was convicted for the offence U/sec. 138 of the Negotiable Instruments Act and sentenced undergo simple imprisonment for a period of one year and to pay fine of Rs.32,55,000/-, out of which Rs.32,50,000/- shall be paid to the complainant towards compensation under Sec.357(1)(b) Cr.P.C. and Rs.5,000/- fine amount shall be remitted to the State, in default of payment of fine, the accused shall suffer simple imprisonment for a period of one month, preferred this appeal before this court.

2. In the grounds of appeal, Appellants submitted as hereunder:

i)That the Judgment of the trial court is contrary to law, facts of the case and evidence on record.

ii) That the trial court committed grave error in convicting the accused only on the basis of presumption U/S.118 and 139 of N.I. Act ignoring the evidence on record.

iii)That the trial court failed to see that the complainant has failed to discharge the initial burden to prove that the complainant has advanced a sum of Rs.30,00,000/- to the accused No.1 and 2.

iv)That the trial court failed to take into consideration of recitals of the Memorandum of Understanding dated 18-03-2014, which is the basis of the case.

v)That the trial court failed to consider that the amount of Rs.30,00,000/- has been paid to the Accused No.3, against whom the case was quashed by the Hon'ble High Court in Crl.P.No.8176 of 2018, dated 01-11-2018.

vi)That the trial court failed to disprove the case of the Complainant, as the Complainant failed to submit the alleged letter, which was addressed by Accused No.2 on behalf of Accused No.1 - Company requesting the Complainant to remit the amount of Rs.30,00,000/- into the account of Accused No.3 being land owner of factory premises.

vii)That the trial court erred in considering that the service of notice to the Accused is sufficient.

viii) That the trial court failed to consider that the alleged amount has been paid by the Complainant to the Accused No.3, who is not all connected or concerned to the business of Accused No.1 and 2.

ix)That the trial court failed to consider that there is no whisper about the issuance of the cheques by the Accused in the Memorandum of Understanding dated 18-03-2014.

x)That the trial court failed to consider, that there is no proof that the cheques were given towards the legal enforceable debt.

xi)That the trial court failed to consider, the Arbitration Clause mentioned in the Memorandum of Understanding dated 18-03-2014.

xii)That the trial failed to see that the cheques in question were issued to the Complainant to make the payment to SME Steels, when he used to manage the office of the Accused No.2-Company for a short period.

xiii) That the trial court failed to consider that PW-1 has clearly stated in his evidence that "It is true that I will make further investment in the Company" and the said statement of the PW-1 itself proves that the amount, which is paid is an investment not a Legal Enforceable Debt

xiv) That the trial court failed to see that the "content of the cheque are filled by his superiors" per contra he said that "it is not true to suggest that the blank signed cheques, were given as security for business transactions". Such contradictory statements of the Complainant/ PW-1 raises a doubt, which ought have considered by the trial court.

xv) That the trial court failed to see that PW-1 has stated that there are two directors for A1-company, but he has made only one director as party to the Case.

xvi) That the trial court ow failed to see whether PW-1 has filed any income tax return to establish about his assets and liabilities that accused is due certain amounts.

It is therefore prayed to set aside the Judgment of conviction and sentence against the Accused in C.C.No.469 of 2028 Dated 17.8.2022 passed by Learned XVIII Addl. Chief Metropolitan Magistrate, Secunderabad and allow the appeal.

3. After filing the criminal appeal by the appellant / accused, this court called for the record from the trial court in CC.No.469 of 2018 and after receipt of the record from the trial court, learned counsel appeared on behalf of the appellant/ accused and also learned counsel for the respondent/ complainant. Thereafter, I have gone through the evidence on record and also the impugned Judgment under appeal in which conviction and sentence passed against accused in CC.No.469 of 2018.

4 Now the points for consideration are:

1)Whether the Judgment of conviction and sentence passed by the learned XVIII Addl. Chief Metropolitan Magistrate, Secunderabad in C.C.No.469 of 2018 dated 17.8.2022 is sustainable under law? and

2)Whether Judgment of conviction and sentence passed in C.C.No.469 of 2018 warrants any interference by this court?

POINT Nos.1 and 2:

5. Before going to appreciate the evidence on record and the Judgment of trial court, it is relevant to mention here that Accused No.2 is the Director of the Accused No.A1. Accused No.3 is the wife of Accused No.2. Complainant got

acquainted with Accused No.2 through common Chartered Accountant namely G.S.Sridhar. Accused No.3 is the land lady of Accused No.1 company who leased her land Accused No.2 as promoter invited the Complainant to invest in Accused No.1 Company and accordingly, they have entered into Memorandum of Understanding on 18.03.2014. As per the said Memorandum of Understanding, there is a Project Implementation Schedule in between Complainant and Accused No.2 where there is recital at para 13 casting an obligation on the Complainant to transfer a sum of Rs.30,00,000/- as investment and thereafter a Shareholder Agreement has to be executed infavour of the Complainant and necessary modification shall be made in Articles of Associations. On 17.03.2014 in pursuance of Memorandum of Understanding and Board Resolution, a letter was addressed by Accused No.2 on behalf of the Accused No.1 Company requesting the Complainant to remit the amount of Rs.30,00,000/- into the account of Accused No.3

being the land owner of factory premises. Accordingly, Complainant on 21.03.2014 remitted the amount into account of Accused No.3 i.e., Central Bank of India, Koti vide SB Account No.3321892711 with IFS Code CBIN0280808 through RTGS through Punjab National Bank and duly fulfilled his part of contractual obligation vide Memorandum of Understanding. But, accused failed to materialize the Shareholder Agreement as agreed and reasons were ascertain. Later Accused No.2 issued two cheques, Cheque bearing No. 293528 dated 19.11.2016 and another Cheque bearing No.293529 dated 19.11.2016 for a sum of Rs.15,00,000/- each drawn on Axis Bank Ltd., Tarnaka, Hyderabad towards discharge of entire enforceable existing of liability of Rs.30,00,000/- which were due and payable to the Complainant. But, on presentation the cheques were dishonoured for the reasons “Funds Insufficient” vide cheque return memos dated 27.12.2016. The complainant issued the legal notice on 23.01.2017 and the same was returned as unclaimed buy all the accused on 28.01.2017, as such the Accused No.. 1 to Accused No. 3 are liable to be prosecuted under section 138 of Negotiable Instruments Act. The sworn statement of the complainant was recorded by the learned XI Additional Chief Metropolitan Magistrate court, Secunderabad and basing on it, case was taken on file U/s 138 of Negotiable Instrument Act and numbered as C.C.No.2340/2017. Thereafter this case was transferred to the learned XVIII Addl. Chief Metropolitan Magistrate Court from XI Additional Chief Metropolitan Magistrate Court, Secunderabad. Case against A3 Smt. C.Padmaja is quashed by Hon'ble High Court vide orders in Crl.P.No.8176 of 2018 dated 01.11.2018. On appearance of Accused No.1 represented by Accused No.2, the copies of this case were served to the accused as contemplated under section 207 Cr.P.C. The accused was examined U/s 251 Cr.P.C and substance of the complaint was read over and explained to the accused in Telugu, he understood the same and denied the offence and claimed to be tried. In order to substantiate the offence, the complainant examined PW1 and PW2 and got marked Exhibits P1 to P9 on his behalf. Ex.P1 is the Cheque bearing No. 293528 dated19.11.2016 for Rs. 15 lakhs, Ex.P2 is the Cheque return memo dated 28.12.2016, Ex.P3 is the Cheque bearing No.293529 dated 19.11.2016 for Rs. 15 lakhs, Ex.P4 is the Cheque return memo dated 28.12.2016, Ex.P5 is the Memorandum of Understanding dated 18.3.2014, Ex.P6 is the Board resolution of accused No.1 dated 17.3.2014, Ex.P7 is the Statement of account, Ex.P8 is the Office copy of legal notice dated 23.1.2017 and Ex.P9 is the Unclaimed registered letters (3 Nos.). After closure of the complainant evidence, the accused was examined U/s 313 Cr.PC and he denied all the incriminating evidence against him in the evidence on record. The accused was examined as DW1 and no documents are marked on his behalf. After conclusion of evidence and after hearing both sides, the learned Addl. Chief Metropolitan Magistrate convicted the accused by delivering Judgment dated 17.8.2022.

6) During the course of hearing of appeal, the learned counsel appearing on behalf of the respondent/ complainant, apart from submitting oral arguments, he also filed written arguments and it is the main contention of the respondent herein that as per the request of the appellant/ accused, the respondent herein deposited a sum of Rs.30 lakhs through RTGS in the account of the wife of the appellant viz. Smt.C.Padmaja Reddy, but as per the Memorandum of Understanding (MOU) under Ex.P5, the appellant failed to execute the share holder agreement in favour of the respondent herein and subsequently in discharge of his liability by way of refund of Rs.30 lakhs, the appellant has issued two cheques under Exs.P1 and P3 but they are dishonoured and consequently, a notice under Sec.138 of the Negotiable Instruments Act was also issued calling upon the appellant to pay the amount covered by the cheque under Ex.P1 for Rs.15 lakhs and Ex.P3 for a sum of Rs.15 lakhs and both the cheques were issued on 19.11.2016 and the legal notice sent to the appellant under Ex.P8 returned "unclaimed" and unclaimed registered letters marked as Ex.P9 (3 nos). Therefore, the contention of the appellant that he has not at all received the legal notice is not tenable and the learned Addl. Chief Metropolitan Magistrate has given a categorical finding in respect of the legal sanctity of the notice sent by the respondent and by invoking the presumptions under Sec.27 of the General Clauses Act and Sec.114 of the Indian Evidence Act and came to conclusion that there was proper service of the notice to the appellant herein and by virtue of the presumption under Sec.139 of the N.I.Act, the accused was convicted. Therefore, absolutely there are no reasonable grounds to interfere with the Judgment of conviction passed by the learned Addl. Chief Metropolitan Magistrate and in support of his

contentions by interpreting the law of presumptions under Secs.27 of the General Clauses Act and Sec.114 of the Indian Evidence Act, and the learned counsel for the respondent/ complainant placed reliance of the following decisions which are referred by the trial court in its Judgment:

1 Vinod Shivappa vs. Nanda Belliappa (Supreme Court)
2 CC Alavi Haji vs. Muhammed & another (Supreme Court)
3 M/s.Ajeet Seeds vs. K.Gopala Krishnaiah (Supreme Court)
4 Priyanka Kumari vs. Shailendra Kumar (Supreme Court)

7) On the other hand, the learned counsel appearing on behalf of the appellant also filed his written arguments and relied on certain case laws filed during the course of hearing and pointed out the legal notice under Sec.138 of the N.I.Act has not been served on the appellant herein and Sec.27 of the General Clauses Act and Sec.114 of the Indian Evidence Act not applicable to the present case in hand and for these contentions, the learned counsel for the appellant relied on a decision reported in K.Narayana Naik vs. M.Shivarama Shetty reported in 2009(2) ALT Crl 199 (SB) wherein it was held by the Hon'ble High Court of Judicature at Bangalore as hereunder:

> "5.Negotiable Instruments Act, 1881, Sec.138 service of notice of demand Proof of Notice sent by registered post Idea behind sending a communication by registered post is that the communication should reach to the hands of addressee himelf. If the addressee was not present, the postman should have left a memo with the inmates of the house asking the addressee to receive the registered post from the post office or to visit the address again on the next day. But, in the instant case, the postman is stated to have handedover the notice to one of the inmates of the house Respondent contending that he had

> not received the notice. Not clear that the signature found on the endorsement was really affixed by the wife of respondent. Signature was put for and on behalf of respondents wife. It was writtn as Sujatha and not Sujaya. Held, service of notice not satisfactorily proved”.

In the same decision, it was also held at para no.18 as hereunder:

> “18. Negotiable Instruments Act, 1881, Sec.138 Dishonour of cheque. Complaint revealing that loan was advanced on condition that respondent/accused should give a post dated cheque. In that view of the matter, it is clear, the cheque issued by respondent to appellant was only a security and not for discharge of any existing debt, as on the date of issuance of said cheque”.

8) The learned counsel placed reliance of another decision as against the contentions of the learned counsel for the respondent and vehemently contended that the presumption under Sec.27 of the General Clauses Act cannot be invoked in the present case in hand and in support of his contention, he relied on a decision reported in V.Haritha vs. Indian Oil Corporation Limited 2014 (1) ALT 567 represented by its Managing Dirctor & others, wherein it was held as hereunder:

> “Though there is a presumption under Sec.27 of General Clauses Act that a registered post letter when properly addressed is deemed to have been served on addressee, it is a rebuttable presumption. The bursden lies on the person who compalins of non-service of such letter. In the instance case, the burden of the petitioner who made such complaint stand discharged by the very admission of the postal authority who found that the letter was delivered wrongly to a person other than the

addressee. Burden, therefore, shifts to 1st respondent/ Corporation to prove that the person to whom the letter was delivered is the authorized person of the petitioner. Admittedly, the letter was delivered to the alleged tenant of the petitioner".

It was further held as hereunder:

"In view of Sec.3 of Post Office Act and Rule 36 of the rules, a registered letter be delivered only to the addressee or his servant or agent or any other person authorized in writing by the addressee to receive the registered post letter R-1 Corporation has not placed any such material as to petitioners authorization to the person to whom the letter was delivered. Even if it is assumed that the person who received the letter is the tenant of petitioner, in the absence of authorization by petitioner, it cannot be taken as deemed service of later on petitioner under those provisions. Presumption contained in Sec.27 of General Clauses Act stands rebutted 1st respondent/Corporation failed to discharge its burden of proving that the registered call letter was served on the petitioner".

9) The learned counsel appearing on behalf of the appellant/ accused pointed out the contents of Ex.P5 MOU, it is his main contention that the said MOU marked as Ex.P5 is not at all an agreement between the parties therein and there is no mention about anything that the respondent/ complainant has invested a sum of Rs.30 lakhs and for the purpose of execution of the share holder agreement and more-over, the said amount of Rs.30 lakhs was allegedly deposited in the account of the wife of the appellant/ accused, but not towards the company of the appellant herein. Therefore, the cheques

issued under Exs.P1 and P3 though signatures are admitted, they are not issued by the appellant in discharge of legally enforceable debt and the MOU marked as Ex.P5 itself is not valid to establish that there is an agreement for repayment of the alleged amount of Rs.30 lakhs and absolutely there is no existing legally enforceable debt on the part of the appellant company represented by accused No.2. For this contentions, the learned counsel for the appellant placed reliance of a decision reported in M/s.Lotus Constructions vs. Government of A.P. & another, (AIR 1997 AP 200) wherein at para nos.19 and 21 it was held as hereunder:

> "19. A reading of the various clauses of the tender would undoubtedly show that a letter of communication of acceptance itself is not enough unless the same is followed by an agreement and if no agreement is entered within the stipulated period shall result in forfeiture of Earnest Money Deposit and the letter of acceptance issued to the tenderer shall be deemed to have been cancelled. Entering into an agreement, thus, is not mere formality; but, one of the necessary conditions for concluding the contract".

> "21. In the facts and circumstance of the case and the terms and conditions attached to the tender, it could be said that there was no concluded contract between the petitioner tenderer and the Tourism Corporation. The Government order proposing to entrust the project of for Development of tourism and inter-related activities to the petitioner cannot be construed as concluded contract. The directions issued through the very same Government order to issue necessary work order for taking up the work after MOUs art signed by both the parties and after finalisation of the terms and conditions

> of the components by the sub-committee would conclusively show that the contract would be concluded only after the finalisation of the terms and conditions. Thus in the absence of MOU/ Agreement no concluded contract could be said to have come into existence".

10) Having regard to the rival contentions of both sides, it is just and necessary to go through the oral evidence and documentary evidence adduced by the respondent/ prosecution. That the crux of the dispute regarding service of legal notice, the contention of the appellant is that there was no valid legal notice served on the appellant/ accused to get attract the offence under Sec.138 of the N.I.Act and the evidence of PWs.1 and 2 as well as DW.1 has not been taken into consideration by the learned trial court and as such, the offence under Sec.138 of the N.I.Act not made out. It is to be noted that a fair reading of Sec.138 of the N.I.Act makes it clear that attribution of liability to the persons who draws the cheque from the account maintained by him for his discharge of his debt or liability. Sec.138 of the N.I.Act speak about the joint liability. Even in a case of joint liability in the case of individual person , a person other than the person, who has drawn the cheque on account maintained by him cannot be prosecuted for the offence under Sec.138 of the N.I.Act. Primarily with interpretation, liability cannot be maintained on the authorized signatory on the part of the company established under the Companies Act.

11) Next comes the question of analyzing whether Sec.141 applies or not, in case of sole trading concern. In this regard, a decision reported in Alaka Kandu Ahbad vs. Amar Shyamprasad Prasad Mishra and another, reported in (2021) 4 SCC 675 para nos.12 and 13, the Hon'ble Apex Court rejected the plea that in case of two or more persons it could be persons considered "other

association of individuals", the Hon'ble Apex court held that Sec.141 of the N.I.Act cannot be made applicable to the individual, as in such scenario, it does not become an offence committed by the company or its corporate or firm or other association of individuals. For this aspect, it is also relevant to mention another decision reported in Raghu Laxminarayana vs. Fine Tubes, 2007(1) ALD (Crl.) 987 (SC) wherein the Apex Court while dealing with the matter relates to Sec.141 levelled against the business concern held at paras 16 and 19 as hereunder:

> "16.The description of the accused in the complaint petition is absolutely vague. A juristic person can be a Company within the meaning of the provisions of the Companies Act, 1956 or a partnership within the meaning of the provisions of the Indian Partnership Act, 1932 or an association of persons which ordinarily would mean a body of persons which is not incorporated under any statute. A proprietary concern, however, stands absolutely on a different footing. A person may carry on business in the name of a business concern, but he being proprietor thereof, would be solely responsible for conduct of its affairs. A proprietary concern is not a Company. Company in terms of the explanation appended to Section 141 of the Negotiable Instruments Act, means any body- corporate and includes a firm or other association of individuals. Director has been defined to mean in relation to a firm, a partner in the firm. Thus, whereas in relation to a Company, incorporated and registered under the Companies Act, 1956 or any other statute, a person as a Director must come within the purview of the said description, so far as a firm is concerned, the same would carry the same meaning as contained in the Indian Partnership Act".

> “19.With the above reasoning, this Court finds that there are justifiable grounds to exercise its jurisdiction vested under Sec.482 of the Cr.P.C. to quash the proceedings initiated against the petitioner as they amount to abuse of process of Court”.

12) Keeping in view the above contentions of the learned counsel appearing on behalf of the appellant/ accused, I have also gone through the oral evidence adduced by the prosecution. The chief evidence of the complainant/ PW.1 is nothing but replica of the contents of the complaint and there is no dispute with regard to the documents marked under Exs.P1 to P9, out of which, Exs.P1 and P3 are the cheques allegedly issued by the appellant in discharge of his liability covered by Ex.P5 MOU dated 18.3.2015. This witness/ PW.1 K.S.Raju was subjected to cross examination by the learned counsel and it is elicited from him that after arising the dispute between the complainant and the accused, as per clause no.13 of Ex.P5, in case of any dispute, it shall be referred to the arbitrator viz. Sridhar (PW.2) and they have to approach the arbitrator/ Sridhar/ PW.2 and then filed this criminal case. But no document filed to establish the fact that PW.1 and the accused/ DW.1 together approached the arbitrator/ PW.2 for resolution of the dispute. Further-more, PW.1 has stated in his cross examination that the legal notice issued to the accused and the same was served. But in fact, the notice under Ex.P8 was returned unserved and the said fact also admitted by PW.1 and the address in the legal notice is the same that was mentioned in the complaint. Accordingly, PW.1 admitted that summons issued to the accused were served in the same address and further stated that he has seen the Memorandum of Articles of

Association (MOAA) of A1 company and he has not filed any copy of such documents of MOAA or Articles of Association (AOA) and further stated that he has not made the Directors of the company as parties to the case and he does not know whether A3 is the Director of the company or not. Pointing out all these facts from the cross examination of PW.1, it is the contention of the learned counsel for the accused that the case against A3 Padmaja Reddy quashed by the Hon'ble High Court and as such, the present case against A1 company represented by A2 herein. But in fact, the accused has not issued Exs.P1 and P3 cheques in discharge of any debt liability as contended by the complainant/ PW.1. More-over, the agreement under MOU Ex.P5 does not reflect the clause, condition or any recital that amount to be deposited through RTGS and what is the amount that intended to invest into the company of the complainant/ PW.1.

13) However, keeping in view the rival contentions of both sides, it is just and necessary to go through the testimony of PW.2, who is common Chartered Accountant for both complainant and PW.1 as well as A1 company and he stated in his affidavit that he knew both parties and as per the resolution passed by A1 company, the accused herein being the Director of A1 company agreed to give two cheques for Rs.15 lakhs each and further assured that he will pay interest amount thereon. Except this, there is nothing deposed by PW.2 in his evidence that after arose of the dispute that he conducted any mediation or arbitration between the parties. However, in the cross examination, PW.2 stated that he did not know whether the complainant mentioned that the cheques were given in his presence and the legal notice issued by PW.1 or not. It is also admitted by PW.2 that "It is true as per para no.11 of Ex.P5, any dispute shall be subject to settlement with the arbitrator G.S.Sridhar (PW.2) and he further admitted and added the dispute only in

respect of MOU. No transaction took place as per para no.8 of MOU which clearly reads “the promoter shall extend his cooperation and support during the due diligence by the investor. After satisfactory due diligence, the partries hereto shall execute a proper share holders agreement which supersedes this MOU. I do not know whether any due diligence the MOU filed before this court. The subject cheques are not mentioned in MOU marked as Ex.P5 and these facts are admitted by PW.2 in his cross examination.

14) Therefore, from the oral evidence of PWs.1 and 2, I have also gone through the evidence of DW.1 C.Prabhakar Reddy and he deposed in his chief examination and categorically admitted that he is the Director of A1 company and PW.1 is known to him through PW.2 Chartered Accountant and further the complainant gave Rs.30 lakhs for the purpose of transferring the land in the name of his wife in favour of the company and there is no mention about Exs.P1 and P3 as well as Ex.P5 that he handedover the cheques in question in connection with the execution of MOU in Ex.P5. He further deposed that he never gave Exs.P1 and P3 cheques to the complainant in discharge of any liability of such refund of the amount transferring to the account of the wife of the accused. He further stated that those cheques were issued to the vendor of SME Steels and further-more, he has not received any legal notice under Ex.P8 so that there is no legally enforceable debt between the accused and the complainant/ PW.1.

15) This witness/ DW.1 was also subjected to cross examination by the counsel for the respondent and DW.1/ A2 did not dispute the address mentioned in the legal notice and he categorically stated that he was not residing in the same address. He further denied all other suggestions and payment of Rs.30 lakhs to the account of the wife of the accused towards investment and as a matter

of fact, the said amount is not paid towards investment, but this amount is allegedly paid to the wife of the accused only for the purpose of the transfer of the land to A1 company and there is no such mention in Ex.P5 MOU. It is further elicited and suggested that the amount of Rs.30 lakhs transferred to the account of the wife of the accused and after execution of Ex.P5, the accused failed to execute the “share holder agreement” and as such, in discharge of refund amount of Rs.30 lakhs, the cheques under Exs.P1 and P3 were issued. However, it is elicited from DW.1 that as on that day Susheela Foods & Beverages Pvt. Ltd is the registered address of A1 company and further suggested that at the time of issuing Exs.P1 and P3 cheques to PW.1, PW.2 was present and again DW.1 stated he was not present at the time of any cheques issued in favour of PW.1. From the above oral evidence of Pws.1 and 2 and DW.1, the crucial aspect to be determined is whether the amount transferred by the complainant/ PW.1 to the account of wife of the accused constitute any valid transaction between the complainant and PW.1 and A1 company represented A2. The statement of account under Ex.P7 appears to have been shows that a sum of Rs.30 lakhs was transferred from the account of the complainant/ PW.1 on 21.3.2014 through cheque bearing No.769022 to Smt.C.Padmaja Reddy, partner or Director of A1 company. Admittedly the case against Pdamaja was quashed by the Hon’ble High Court as per Crl.P.No.8176 of 2018 dated 1.11.2018. Whereas the MOU marked as Ex.P5 dated 18.3.2014, in which, absolutely there is no mention about the cheques purportedly issued by the accused under Exs.P1 and P3. More-over, in Ex.P5, there is specific clause/ recital at serial no.12

> “12. Upon executing this MOU, the investor shall initiate a due diligence which shall be completed within 3 days. Upon satisfactory, due diligence, within 2 days thereafter, the parties to this MOU shall

> execute a valid share holder agreement / investment agreement capturing the essence of this MOU. The Articles of Association of the Company shall be suitably modified to incorporate the SHA as a part of the Articles".

Similarly, clause no.13 also to be looked into which reads as hereunder:

> "13. The investor shall upon execution of the MOU, transfer a sum of Rs.30 lakhs into the account of Smt.C.Padmaja, the land owner, to enable the Promoter to submit the OTS proposal to a nationalized bank on account of Susheela Granites (P) Ltd. After execution of the SHA as stated in para 12 above, this amount shall be treated as a part of the investor's investment into the Company. Till such, time, this amount shall be considered as loan to the Company and its promoter".

16) Therefore, from the above covenants, the transaction of money between the complainant and wife of A2 for the purpose of acquiring the land of Smt.C.Padmaja, but she is not a Director of the said company of A1. Therefore, the crux of the matter is since the amount covered by the cheques under Exs.P1 and P3 paid to Smt.C.Padmaja Reddy subsequent to MOU under Ex.P5 whether constitute legally enforceable debt on the part of the accused No.1/ accused no.2. For this, the trial court has not framed any specific issue or point to determine the legally enforceable debt. Because of the appellant/ accused is not disputed the signatures on under Exs.P1 and P3 cheques, the learned Addl. Chief Metropolitan Magistrate came to conclusion by invoking the presumption under Sec.139 of the N.I.Act that the accused issued cheques

in discharge of the liability on the part of A1 company represented by A2 in relation to the amount transferred to the wife of A2. Therefore, mere admission of signatures on Exs.P1 and P3, the presumption has to be drawn depending on the manner in which the accused has chose to rebut the presumption as the accused let in defence evidence to prove conclusively that there exist no debt or liability at the of time of issuance of the cheques. In the absence of rebutabble evidence being lead, the enquiry would entail as the accused proved non-existence of debt/ liability by preponderance of probabilities by referring to the peculiar circumstances of the case. In the present case, after going through the Judgment of the learned trial court, the perseverity in the approach of the learned Addl. Chief Metropolitan Magistrate is noticeable from the way it proceeded to frame the question at trial. According to the trial court, the question to be decided was whether legally valid and enforceable debt existed qua, the complainant and the cheques in question (Exs.P1 and P3) were issued in discharge of said liability or debt? When the initial framing of the question itself being erroneous, one cannot expect it become to be right. The onus instead of being fixed on the accused has to be fixed on the complainant. The law of proper understanding of the nature of the presumption under Sec.139 of the N.I.Act and its effect has resulted the erroneous finding of the trial court that the complainant is entitled to invoke presumptions under Sec.114 of the N.I.Act and Sec.27 of the General Clauses Act and under Sec.139 of the N.I.Act.

17) Therefore, looking into the overall facts and circumstances of the case, the fundamental error committed by the trial court is whether legally enforceable debt is not determined by the trial court and there is no elucidation of material circumstances/ basis on which the court reach such a conclusion. Therefore, in my considered opinion by virtue of Ex.P5 MOU and

Exs.P1 and P3 are issued in discharge of liability on the part of the appellant is not established. The evidence on record indicates the complainant has intended to invest the money with A1 company, since A2 has not executed share holder agreement, the cheques under Exs.P1 and P3 were presented and filed the present case. Therefore, the finding of the trial court is basing on the presumption under Sec.139 of the N.I.Act without there being any reliable evidence of legally enforceable debt on the part of the appellant/ accused. Presumption, on the other hand literally means "taking as true without examination or proof". In a case reported in Kumar Exports vs. Sharma Carpets reported in (2009) 2 SCC 513 Hon'ble Apex court referred to presumption as devise of use by which the courts are enabled and entitle to pronounce on a issue not withstanding that there is no evidence or sufficient evidence. Therefore, there are two senses in which the phrase the burden of proof is used in the Evidence Act 1872, one is the burden of proof arising as a matter of fact by pleading and the other is the one which deals with the question as to who is the first to prove the particulars. The former is called ""legal burden" and it shifts from one side to other side. Therefore, the legal burden is lies initially on the complainant to prove the "legally enforceable debt" on the part of the appellant/ accused, but there is no such presumption available to the complainant as the service of legal notice is disbelieved as pointed out by the learned counsel for the appellant/ accused herein. Consequently, I am unable to accept with the submissions made by the learned counsel appearing on behalf of the respondent/ complainant, the complainant ie entitled to presumptions available under Secs.114 of the Indian Evidence Act and 27 of the General Clauses Act as well as the legal presumption under Sec.139 of the N.I.Act. As a matter of fact, all those presumptions are rebuttable presumptions since there was no legal notice served on the appellant/ accused and the amount covered by Exs.P1 and

Ex.P3 allegedly transferred by the respondent/ complainant in favour of the wife accused No.2 namely C.Padmaja, whose case was quashed by the Hon'ble High Court. Under these circumstances, the legally enforceable debt on the part of the appellant/ accused is not established and the learned Addl. Chief Metropolitan Magistrate has not discussed and no finding was given to that effect by deciding the aspect of legally enforceable debt or liability on the part of the appellant/ accused. Therefore, there are sufficient grounds to interfere with the Judgment of the trial court.

18) *In the result, the Criminal Appeal preferred by the appellant/ accused is hereby allowed by setting aside the Judgment of the conviction and sentence passed by the learned XVIII Addl. Chief Metropolitan Magistrate, Secunderabad passed in C.C.No.469 of 2018 dated 17.8.2022 and that the appellants/ A2 representing A1 found not guilty of the offence under Sec.138 of the Negotiable Instruments Act and appellant/ accused is hereby acquitted under Sec.255(1) Cr.P.C. The respondent/ complainant is directed to refund the 20% of the compensation amount to the appellant/ accused i.e. Rs.6,50,000/- if any deposited in two installments before the trial court by virtue of order in Crl.MP.No.1328 of 2022, shall be deposited before the trial court within a period of 30 days and thereby the appellant/ accused is entitled to receive the same from the trial court subject to expiry of revision time.*

Typed to my dictation, corrected and pronounced by me in the open Court on this the 4th day of March 2024.

SPL. JUDGE FOR THE TRIAL OF OFFENCES
UNDER S.Cs & S.Ts (POA) ACT-CUM –VI ADDL.
METROPOLITAN SESSIONS JUDGE:
SECUNDERABAD