D. Atchyutha Reddy Vs The State of A.P. and Another

Court: Andhra Pradesh High Court

Date of Decision: Oct. 30, 2009

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 190, 200, 239, 251, 313
Evidence Act, 1872 â€" Section 3
General Clauses Act, 1897 â€" Section 27
Negotiable Instruments Act, 1881 (NI) â€" Section 118, 138, 139, 27
Penal Code, 1860 (IPC) â€" Section 415, 420

Citation: (2010) 1 ALD(Cri) 59 : (2009) 3 ALT(Cri) 210 : (2010) 3 CivCC 13 : (2010) CriLJ 1265 : (2010) 2 RCR(Civil) 860 : (2010) 2 RCR(Civil) 880 : (2010) 2 RCR(Criminal) 860

Hon'ble Judges: B. Seshasayana Reddy, J

Bench: Single Bench

Advocate: C. Padmanabha Reddy and M. Venkatram Reddy, for the Appellant; Additional Public Prosecutor (for No. 1) and N. Ratan Babu, Party-in-Person, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

B. Seshasayana Reddy, J.
In both these revisions, the complainant and the accused are same. Both these Criminal Revision Cases relate

to a cheque bearing No. 412223. dated 5-9-2004 issued by the accused. Therefore, they were heard together and are being disposed of this

Common Judgment.

2. Background facts in a nutshell leading to filing of both these Criminal Revision Cases by the accused in C.C. Nos. 711 of 2006 and 35 of 2007

on the file of VII Additional Chief Metropolitan Magistrate, at Hyderabad, are:

a) Accused-D. Atchyutha Reddy is a film producer and director. According to the complainant-N. Ratan Babu, he and accused got acquaintance

with each other for the past several years and they were family friends. The complainant contends that the accused borrowed Rs. 2.50 lakhs on 5-

4-2003 in the presence of one M. Dayakar, who is known to both of them. The accused after receiving the amount issued a post-dated cheque for

Rs. 2.50 Lakhs. The cheque is dated 5-9-2004. He presented the cheque in Andhra Bank, Saifabad Branch, for collection and the same came to

be returned with an endorsement "account closed". The complainant issued a notice u/s 138(b) of the Negotiable Instruments Act, 1881, (for

short, "the N.I. Act") to the accused to make good the amount covered under the cheque in question. The accused received the notice, but he did

not respond. The accused stated to have closed the account on 24-1-2003 i.e. much earlier to the issuance of the cheque. Ex. P1 is the cheque.

Ex. P2 is the cheque return memo. Ex. P3 is the office copy of the notice and Ex. P4 is the acknowledgment. The complainant filed the complaint

on 5-11-2004 before Additional Chief Metropolitan Magistrate at Hyderabad, under Sections 190 and 200, Cr.P.C. for the offence u/s 138 of

the N.I. Act. The learned Magistrate, after recording the sworn statement of the complainant, took cognizance of the offence u/s 138 of the N.I.

Act, registering the case as C.C. No. 711 of 2006. On 14-3-2006, the complainant also filed a complaint under Sections 190 and 200, Cr. PC.

for the offence u/s 420. IPC. The learned Additional Chief Metropolitan Magistrate, after recording the sworn statement of the complainant, took

cognizance of the offence u/s 420, IPC registering the case as C.C. No. 35 of 2007.

b) On appearance of the accused and on furnishing copies of documents, the learned Magistrate examined the accused u/s 251, Cr.P.C. in cheque

bouncing case and u/s 239, Cr.P.C. in cheating case. The accused denied the accusations leveled against him and pleaded not guilty for the

offences under Sections 138 of the N.I. Act and 420, IPC.

c) In both the cases, the complainant examined himself as P.W. 1 and examined two more witnesses viz. M. Dayakar and Alapati Trinadha Rao as

P.Ws. 2 and 3. P.W. 2 M. Dayakar claims to be present on the date of borrowing and also on the date on which the cheque in question came to

be issued by the accused. N. Rajesh Babu, who is the son of the complainant is stated to have filled the contents of the cheque. According to the

complainant, the accused read the contents of the cheque and confirmed the contents therein as correct and signed thereon and handed over the

same to him with instructions to deposit the cheque on the date mentioned thereon.

d) P.W. 3 is the Deputy Bank Manager of Andhra Bank, Nampally Branch, wherein the accused maintained the account bearing No. ASB

500009. According to him, the accused closed the account on 24-1-2003. Whereas, the complainant/P.W. 1 presented Ex. P1 cheque after the

closure of the account. Ex. P2 is the cheque return memo. Ex. P5 is the copy of bank statement of account of the accused in respect of Account

bearing No. ASB 500009.

e) It is the plea of the accused that the complainant took blank undated promissory notes and cheques and made use of the blank promissory notes

and cheques and filed various suits against him by the complainant, his wife-Rajeswari and his son-Rajesh Babu and that there did not exist the

relationship of creditor and debtor between him and the complainant. Except marking Certified Copy of the complaint in C.C. No. 35 of 2007 as

Ex. D1, which is filed by the complainant, he did not choose to adduce any evidence.

f) The learned Magistrate, considering material brought on record and on hearing the counsel appearing for the parties, found the accused guilty for

the offences under Sections 138 of the N.I. Act and 420, IPC and convicted him accordingly and sentenced him to suffer rigorous imprisonment

for two years and pay a fine of Rs. 3.000/- in default to suffer simple imprisonment for three months for each of the offences, by judgments dated

20-10-2008. Assailing the judgments of conviction and sentence passed in C.C. No. 711 of 2006 and C.C. No. 35 of 2007, the accused filed

Crl. Appeal Nos. 337 and 338 of 2008 on the file of II Additional Metropolitan Sessions Judge at Hyderabad. The learned Additional

Metropolitan Sessions Judge, on reappraisal of the evidence brought on record and on hearing the counsel appealing for the parties, did not find

any valid ground to interfere with the conviction and sentence of the accused for the offences under Sections 138 of the Negotiable Instruments

Act and 420, IPC and accordingly, dismissed both the appeals, by judgments dated 30-3-2009. Hence, both these Criminal Revision Cases by

the accused. More precisely, Crl. R. C. No. 602 of 2009 is directed against the judgment dated 30-3-2009 passed in Crl. A. No. 337 of 2008

and whereas, Crl. R.C. 603 of 2009 is directed against the judgment dated 30-3-2009 passed in Crl. A. No. 338 of 2008.

3. Heard Sri. C. Padmanabha Reddy, Learned Senior Counsel appearing for the petitioner/accused and the 2nd respondent-party in person.

4. Learned Senior Counsel submits that the trial Court as well as the lower appellate Court misread the provisions of Sections 118 and 139 of the

N. I, Act and thereby conclusions arrived at by both the Courts below are unsustainable. In elaborating his arguments, learned senior counsel

contended that there is no presumption as to the existence of debt and, therefore, once the petitioner denies the very existence of debt, initially

burden lies on the complainant to prove the existence of debt as on the date of issuance of the cheque in question. Learned Senior Counsel would

also contend that as On 5-4-2003, the date of issuance of the cheque in question, there were various amounts totaling Rs. 15.00,000/- allegedly

due to the son and wife of 2nd respondent-complainant and in which case the version of 2nd respondent-complainant and in which case the

version of 2nd respondent complainant that he had lent Rs. 2,50,000/- as a hand loan on 5-4-2003 is highly improbable and unbelievable. A

further contention has been raised that P.W. 2 is a stock witness on behalf of 2nd respondent-complainant in all the cases to speak of lending

money by 2nd respondent-complainant as well as issuing cheques by the petitioner accused and, therefore, no credence could be given to his

testimony and once his testimony is discarded, there is no other evidence to support the version of 2nd respondent-complainant that he lent money

to the petitioner-accused on 5-4-2003. The lending of money by 2nd respondent-complainant to the petitioner-accused in the given facts and

circumstances, is highly doubtful in which case the initial burden with regard to existence of debt stands unproved and the result of which makes the

provisions of Sections 118 and 139 of the N.I. Act inapplicable. Even otherwise the presumptions under Sections 118 and 139 of the N. I. Act

available in favour of the 2nd respondent-complainant have been rebutted by the petitioner-accused through several circumstances brought out in

the evidence of P.Ws. 1 and 2.

5. Learned Senior Counsel also contended that some of the suits filed by the wife and son of 1st respondent ended in dismissal on the ground of

the suit pro-notes being not supported by consideration and the dismissal of the said suits lends support to the circumstances brought out by the

petitioner in the evidence of P.Ws. 1 and 2 and in which case the conviction and sentence of the petitioner-accused u/s 138 of the N. I. Act and

Sec, 420 of IPC is liable to be set aside. Learned Senior Counsel placed on record the photostat copies of the judgments passed in O.S. Nos.

1535 of 2006, 1133 of 2005, 2378 of 2003, 1134 of 2005 and 2277 of 2003.

6. As seen from the photostat copies of the judgments, suits filed by N. Rajesh Babu, son of 2nd respondent in O. S. Nos. 1535 of 2006, 1134 of

2005 and 2277 of 2003 and the suits filed by N. Rajeshwari. wife of 2nd respondent being O. S. Nos. 1133 of 2005 and 2378 of 2003 on the

file of VII Additional Senior Civil Judge, FTC, CCC, Hyderabad ended in dismissal.

7. Learned Senior counsel took me to the evidence of P.Ws. 1 and 2 in great detail to convince that the presence of P.W. 2 at the time of lending

as well as issuance of the cheque is highly unbelievable.

8. The 2nd respondent contends that the trial Court as well as the appellate Court considered the evidence brought on record in right perspective

and found the petitioner-accused guilty for the offence u/s 138 of the N. I. Act and Section 420 of IPC. He also contended that there is no

consistency in the defence of the petitioner and that itself is sufficient to infer that he failed to rebut the presumptions under Sections 118 and 139 of

the N. I. Act. The 2nd respondent took me to the plea advanced by the petitioner in the quash petitions and suggestions put to P.W. 1 in the cross

-examination and the statements of the petitioner u/s 313, Cr.P.C. to convince that there is no consistency in the plea advanced by the petitioner.

He also cited innumerable decisions of the Supreme Court, this Court and various other High Courts on the aspect of presumptions under Sections

118 and 139 of the N. I. Act. He would also submit that the very fact of issuance of the cheque after the account had been closed indicates his

fraudulent intention from the inception and that itself is sufficient to sustain the conviction of the petitioner for the offence u/s 420, IPC. The

decisions cited by the 2nd respondent-complainant are:

(1) Hiten P. Dalal Vs. Bratindranath Banerjee,

(2) K.N. Beena Vs. Muniyappan and Another,

(3) K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another,

(4) Maruti Udyog Ltd. Vs. Narender and Others,

(5) OPTS Marketing (P) Ltd. and others Vs. State of A.P. and another,

(6) K.S. Anto v. Union of India 1993 (76) Comp Cas 105

(7) Satishkumar Jain Vs. Krishnagopal Sarda,

(8) State of Rajasthan v. Jaktab Sybdaran Cenebt Ubdystrues Ltd. 1996 DCR 633 SC

(9) Gorantla Venkateswara Rao Vs. Kolla Veera Raghava Rao and Another,

(10) Satish Jayantilal Shah Vs. State of Gujarat,

(11) P.S.A. Thamotharan v. Dalmia Cements (B) Ltd. 2005 (1) DCR 85 (Mad)

(12) P.K. Manmadhan Kartha Vs. Sanjeev Raj and Another,

(13) C.C. Alavi Haji Vs. Palapetty Muhammed and Another,

(14) Joseph Jose Vs. J. Baby and State of Kerala,

(15) M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another,

(16) Veralaxmi v. Syed Kasim Hussain 1962 (2) An. WR 137

(17) Mrs. K. Sudersanam Vs. S. Venkatarao,

(18) Munagala Yadgiri v. Pittala Veeriah 1958 (1) AWR 413.

(19) Rajuladevula Srinu and Srinivas v. State of A.P. 2005 ALD (Cri) 38

(20) State of Andhra Pradesh Vs. Kanda Gopaludu,

(21) M. Ravi and Others Vs. Mr. Elumalai Chettiar,

(22) Ashok Yeshwant Badave Vs. Surendra Madhavrao Nighojakar and Another,

(23) Bhola Nath Arora and Another Vs. The State,

(24) N. Devindrappa Vs. State of Karnataka, .

9. Section 138 of N. I. Act reads as under:

Section 138 Dishonour of cheque for insufficiency, etc., of funds in the account -Where any cheque drawn by a person on an account maintained

by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part of any

debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to

honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be

deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term

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

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it was drawn or within the period of its

validity, whichever is earlier.

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by

giving a notice, in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of

the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due

course of the cheque, within fifteen days of the receipt of the said notice.

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

10. Section 138 of the N.I. Act has three ingredients, viz. (I) that there is a legally enforceable debt; (ii) that the cheque was drawn from the

account of bank for discharge in whole or in part of any debt or other liability which pre-supposes a legally enforceable debt; and (iii) that the

cheque so issued had been returned due to insufficiency of funds. The proviso appended to the said section provides for compliance of legal

requirements before a complain petition can be acted upon by a Court of law. "Section 139 of the Act merely raises a presumption in regard to the

second aspect of the matter. Existence of legally recoverable debt is not a matter of presumption u/s 139 of the N. I. Act. It merely raises a

presumption in favour of a holder of the cheque that the same has been issued for discharge of any debt or other liability. An accused for

discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the

materials already brought on records. An accused has a constitutional right to maintain silence. Standard of proof on the part of an accused and

that of the prosecution in a criminal case is different.

11. The N. I. Act contains provisions raising presumptions as regards the negotiable instruments u/s 118(a) of the Act as also u/s 139 thereof. The

said presumptions are rebuttable. Whether the presumption rebutted or not would depend upon the facts and circumstances of each case. The

Supreme Court clearly laid down in catena of decisions that the standard of proof in discharge of the burden in terms of Sections 118 and 139 of

the N.I. Act being the preponderance of a probability, the inference thereof can be drawn not only from the material brought on record but also

from the reference to the circumstances upon which the accused relied upon. The burden to rebut the presumptions on the accused is not as high

as that of the prosecution.

12. u/s 118, unless the contrary is proved, it is to be presumed that the Negotiable Instrument (including a cheque) had been made or drawn for

consideration. u/s 139 the Court has to presume, unless the contrary was proved, that the holder of the cheque received the cheque for discharge,

in whole or in part of a debt or liability. Thus, in complaints u/s 138, the Court has to presume that the cheque had been issued for a debt or

liability. This presumption is rebuttable. However, the burden of proving that a cheque had not been issued for a debt or liability is on the accused.

The Supreme Court in Hiten P. Dalal Vs. Bratindranath Banerjee, , while dealing with sections 138 and 139 of N.I. Act held that whenever a

cheque was issued to the complainant for a specific amount, there is a presumption that it is towards discharge of legally enforceable debt. In the

event of dispute, the burden is on the accused to prove that there is no subsisting liability as on the date of issuing of cheque and the proof must be

sufficient to rebut the presumption and mere explanation is not sufficient. The Supreme Court further held as follows:

(20) The appellant''s submission that the cheques were not drawn for the ""discharge in whole or in part of any debt or other liability'' is answered

by the third presumption available to the Banks u/s 139 of the Negotiable Instruments Act. This section provides that ""it shall be presumed, unless

the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in

part, of any debt or other liability."" The effect of these presumptions is to place the evidential burden on the appellant of proving that the cheque

was not received by the Bank towards the discharge of any liability.

(21) Because both Sections 138 and 139 require that the Court ""shall presume"" the liability of the drawer of the cheques for the amounts for which

the cheques are drawn, as noted in The State of Madras Vs. A. Vaidyanatha Iyer, it is obligatory on the Court to raise this presumption in every

case where the factual basis for the raising of the presumption had been established. ""It introduced an exception to the general rule as to the burden

of proof in criminal cases and shifts the onus on to the accused"" (ibid). Such a presumption is a presumption of law, as distinguished from a

presumption of fact which describes provisions by which the Court ""may presume"" a certain state of affairs. Presumptions are rules of evidence and

do not conflict with the presumption of innocence, because by the latter all that is meant is that the prosecution is obliged to prove the case against

the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the

accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.

(22) In other words, provided the facts required to form the basis of a presumption of law exists, no discretion is left with the Court but to draw

the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary.

A fact is said to be proved when, ""after considering the matters before it the Court either believes it to exist or considers its existence so probable

that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists"". Section 3 : Evidence Act.

Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the Court in support of the defence

that the Court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that

of the ""prudent man.

The above referred decision has been referred to by the Supreme Court in subsequent decision in K.N. Beena Vs. Muniyappan and Another, .

13. I do not wish to burden the judgment by referring to the propositions of law laid down in the cases cited by 2nd respondent-complainant. It is

suffice to refer the judgment of the Supreme Court in Krishna Janardhan Bhat Vs. Dattatraya G. Hegde, wherein after referring to various earlier

judgments is observed as under:

(33) We are not oblivious of the fact that the said provision has been inserted to regulate the growing business, trade, commerce and industrial

activities of the country and the strict liability to promote greater vigilance in financial matters and to safeguard the faith of the creditor in the drawer

of the cheque which is essential to the economic life of a developing country like India. This, however, shall not mean that the Courts shall put a

blind eye to the ground realities. Statute mandates raising of presumption but it slops at that. It does not say how presumption drawn should be

held to have rebutted. Other important principles of legal jurisprudence, namely presumption of innocence as human rights and the doctrine of

reverse burden introduced by Section 139 should be delicately balanced. Such balancing acts, indisputably would largely depend upon the factual

matrix of each case, the materials brought on record and having regard to legal principles governing the same.

14. There is obligation on the part of the Court to raise the presumptions under Sections 118 and 139 of the N.I. Act in every case where the

factual basis for raising of the presumption had been established.

15. It is well settled that a notice returned with endorsement ''unclaimed'' by the address can be presumed to have been served on him. In this

connection, a reference to Section 27 of the General Clauses Act will be useful. The section reads as under:

27. Meaning of service by post : Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any

document to be served by post, whether the expression ""serve"" or either of the expressions ""give"" or ""send"" or any other expression is used, then,

unless a different intention appeal''s, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post,

a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the

ordinary course of post.

A similar question came up for consideration before the Supreme Court in K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, , wherein it

has been held as under:

(24) No doubt Section 138 of the Act does not require that the notice should be given only by ""post"". Nonetheless the principle incorporated in

Section 27 (quoted above) can profitably be imported in a case where the sender has despatched the notice by post with the correct address

written on it. Then it can be deemed to have been served on the sendee unless he proves that it was not really served and that he was not :

responsible for such non-service. Any other interpretation can lead to a very tenuous position as the drawer of the cheque who is liable to pay the

amount would resort to the strategy of subterfuge by successfully avoiding the notice.

(25) Thus, when a notice is returned by the sendee as unclaimed such date would be the commencing date in reckoning the period of 15 days

contemplated in Clause (d) to the proviso of Section 138 of the Act. Of course such reckoning would be without prejudice to the right of the

drawer of the cheque to show that he had no knowledge that the notice was brought to his address. In the present case the accused did not even

attempt to discharge the burden to rebut the aforesaid presumption.

16. A question came up for consideration before this Court, whether the body of the cheque was required to be in the hand writing of the maker of

it. In Gorantla Venkateswara Rao''s case 2006 CriLJ 1 (supra), a learned single Judge of this Court after a detailed survey of various decisions of

this Court has held that the legal position on this aspect is very clear that the body of the cheque need not necessarily be written by the accused

and it can be in the handwriting of anybody else or typed on a type machine, so long as the accused does not dispute the genuineness of the

signature on the cheque. What is material is signature of drawer or maker and not the body writing, hence, the dispute relating to body writing has

no significance. It is not mandatory and no law prescribes that the body of the cheque should also be written by the signatory to the cheque. A

cheque could be filled up by anybody if it is signed by the account holder of the cheque.

17. In OPTS Marketing (P) Ltd. and others Vs. State of A.P. and another, , a full bench of this Court while considering the question of quashing

the proceedings u/s 482 of Cr.P.C. relating to the offences under Sections 420. IPC and Section 138 of N.I. Act held as follows:

Even after introduction of Section 138 of the Negotiable Instruments Act, prosecution u/s 420, IPC is maintainable in case of dishonour of cheques

or post dated cheques issued towards payment of price of the goods purchased or hand loan taken, or in discharge of an antecedent debt or

towards payment of goods supplied earlier, if the charge-sheet contains an allegation that the accused had dishonest intention not to pay even at the

time of issuance of the cheque, and the act of issuing the cheque, which was dishonoured, caused damage to his mind, body or reputation. Private

complaint or FIR alleging offence u/s 420, IPC for dishonour of cheques or post-dated cheques cannot be quashed u/s 482 of Cr.P.C. if the

averments in the complaint show that the accused had, with a dishonest intention and to cause damage to his mind, body or reputation, issued the

cheque which was not honoured.

18. The definition of cheating as defined u/s 415. IPC reads as follows:

415. Cheating : Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any

person or to consent that any person shall retain any property, or intentionally induces the person so deceived, and which act or omission causes or

is likely to cause damage or harm to that person in body, mind, reputation or property, is said to ""cheat"".

The ingredients of the above section will be attracted if there was mens rea for the accused to induce the complainant to part with the money

making him to believe that it would be adjusted towards the debt.

19. P.W. 1 is the complainant. P.W. 2 is the witness, who claims to be present on 5-4-2003 on which date the petitioner/accused borrowed Rs.

2.50,000/- from the complainant as hand loan and issued Ex. P1 post-dated cheque dated 5-9-2004. The complainant besides examining himself

as P.W. 1, examined P.W. 2 to speak of the transaction on 5-4-2003. With the evidence of P.W. 2. the complainant proved basic facts of

borrowing and issuing of Ex. P1 cheque by the petitioner-accused. Once the basic facts stand proved by the complainant, he discharges the initial

burden. Then, it is for the petitioner/accused to rebut the presumptions that are drawn in favour of the complainant under Sections 118 and 139 of

the N.I. Act. The petitioner/accused did not choose to examine himself to rebut the presumptions. Of course, it is well settled that the accused

need not enter into the box to rebut the presumptions. He can make out his case from the material brought on record by the complainant. Though

P.W. 1 and P.W. 2 were cross-examined by the petitioner/accused, nothing material was elicited to rebut the presumptions under Sections 118

and 139 of the N.I. Act. There is no consistency in the plea advanced by the petitioner/accused. It was suggested to P.W. I that he obtained blank

cheques as security for the investment in the films and T.V. Serials produced and directed by him (petitioner/accused). The said suggestion was

denied by P.W. 1. It is not even elicited from P.W. 1 as to the quantum of amount proposed to be invested by him in films/T.V. serials produced

and directed by the petitioner-accused and what was the reason for not launching the production/direction of the films/T.V. serials.

20. The trial Court and the appellate Court are on appreciation of evidence brought on record reached a concurrent finding that the

petitioner/accused failed to produce any material to dispel the presumptions under Sections 118 and 139 of the N.I. Act. When the concurrent

finding was given by the trial Court as well as the appellate Court based on strong and reasonable evidence, no interference against the said finding

is warranted in revision.

21. Learned senior counsel appearing for the petitioner-accused would contend that there was no proper notice in accordance with the provisions

of law embodied in the N.I. Act. According to him, the complainant having known the fact of the petitioner shifting his residence to Chennai sent

notice as provided u/s 138(b) of N.I. Act to Hyderabad address of the petitioner. The same point was urged before the trial Court as well as the

lower appellate Court. The trial Court having noticed of non-denial of the petitioner with regard to the address mentioned on Ex. P.4-

acknowledgment proceeded to record a finding that the statutory notice has been sent to the correct address of the petitioner. For better

appreciation 1 may refer the relevant portion of the order of the trial court on this aspect, which reads as under:

Learned Advocate for the accused argued that no notice was served on the accused and that Ex.P.4 acknowledgment does not bear the signature

of the accused. It is contended by the complainant that the statutory notice was issued to correct address of the accused and it is deemed to be

served on the accused.

Complainant as P.W. 1 during his cross-examination stated that he does not know whether signature on Ex. P.4 acknowledgment is that of the

accused. He denied a suggestion that Ex. P.4 postal acknowledgment is not connected with Ex. P.3 notice. The accused did not deny the address

that furnished on Ex. P.4 postal acknowledgment. The same address was furnished in the complaint and summons were issued to the accused on

the same address. In the circumstances of the case and for the above reasons, I hold that the statutory notice was sent to the correct address of the

accused and therefore I hold that the notice is deemed to be served. The contention of the learned Advocate for the accused that no notice was

served on the accused, cannot be accepted. Hence, I answered the point against the accused.

The appellate Court rejected the contention of the petitioner with regard to non-service of statutory notice. Para 33 of the judgment of the

appellate Court reads as under:

33. As can be seen from Exs. P3 and P4, the statutory notice was addressed to the residence of the accused in Plot No. 9, Road No. 82, Film

Nagar, Jubilee Hills, Hyderabad. The selfsame address is furnished on the complaint. The accused is not disputing about the receipt of summons as

per the address furnished on the complaint and about his making appearance before the trial Court to face trial. It is pertinent to note that the

accused did not dispute about the correctness of his residential address as furnished on the complaint. Ex. P.3 statutory notice and Ex. P4

registered post with acknowledgment. The accused is also not disputing the fact that the complainant sent the original of Ex. P3 by way of

registered post.

The material brought on record clearly establishes that the complainant sent the notice to the correct address of the petitioner. Thus, notice sent to

the petitioner is in accordance with the provisions of Section 138(b) of N.I. Act.

22. The complainant/P.W. 1 is able to establish that the petitioner/accused borrowed Rs. 2,50,000/- on 5-4-2003 and issued Ex. P1 post-dated

cheque. On presentation of the cheque, it came to be dishonoured and thereupon the complainant/P.W.1 issued Ex. P3 notice calling upon him to

make good the amount covered under the cheque in question. The petitioner/accused received the notice, but failed to give reply. The

complainant/P.W. 1 presented the complaint. All the essential ingredients of Section 138 of the N.I. Act have been made out by the complainant.

Therefore, there is no flaw in the finding recorded by the trial Court as well as the appellant Court with regard to conviction of the

petitioner/accused for the offence u/s 138 of the N.I. Act.

23. Coming to the offence u/s 420, IPC, P.W. 3 is the Manager of the Bank wherein the petitioner/accused maintained the account. He

categorically stated that the petitioner/accused closed the account on 24-1-2003 i.e. much prior to the issuance of Ex. P1 cheque. The very fact of

the petitioner/accused issuing the cheque after closing the account indicates of his intention to deceive the complainant/P.W. 1 from the inception.

Therefore, the trial Court as well as the appellate Court appreciated the evidence brought on record in right perspective and found the

petitioner/accused guilty for the offence u/s 420, IPC.

24. The respondent contended that the sentence of imprisonment imposed for the offence under Sections 420. IPC and 138 of N.I. Act cannot be

ordered to run concurrently as they are two distinct offences. He placed reliance on the decision of Bombay High Court in Rajendra B. Choudhari

Vs. State of Maharashtra and Another, . The cited decision refers to the powers of the Court u/s 482 of Cr.P.C. with regard to direction to run

subsequent sentence concurrently with previous sentence. It has been held in the cited decision that Section 482 of Cr.P.C. cannot be invoked in

view of the specific provision u/s 427 of Cr. PC. para 5 of the judgment needs to be noted and it is thus:

(5) Lastly, it is contended that the Magistrate ought to have directed that the sentences imposed in these trials should run concurrently with the

previous sentence, in view of Section 427 of the Code. According to learned Counsel, it is permissible for this Court to give such a direction to

meet the ends of justice. Section 427 of the Code confers discretionary power on the Court to direct the sentence of imprisonment on a

subsequent conviction to run concurrently with the previous sentence, if the accused is already undergoing a sentence of imprisonment. This power

has to be exercised at the time of awarding subsequent sentence by the trial Court and can be exercised by the High Court while dealing with

appeal or revision. Incidentally, the question arises whether in absence of appeal or revision, the direction sought for can be given by the High

Court by invoking inherent powers available u/s 482, Criminal Procedure Code. The High Court cannot exercise its inherent power u/s 482 of the

Code to direct the subsequent sentence to run concurrently with the previous sentence. The inherent power of the High Court can be exercised

only to give effect to the orders passed under the Code or to prevent miscarriage of justice. It is not obligatory for the trial Court to direct in all

cases that the subsequent sentence shall run concurrently with the previous sentence. The order passed by the trial Court without having recourse

to Section 427 is perfectly legal and enforceable. Thus, refusal of the Magistrate to direct the subsequent sentence to run concurrently with the

previous sentence cannot lead to causing miscarriage of justice. Therefore, in such a situation, there can be no justification for exercising inherent

power of the Court as there is no necessity to exercise the jurisdiction to give effect to any order passed under the Code or to prevent miscarriage

of justice. In this view of the matter it is not open to this Court to exercise its inherent power to direct the subsequent sentence to run concurrently

with the previous sentence. At this stage, we deem it necessary to observe that though it is not obligatory on the learned Magistrate to direct

subsequent sentence to run concurrently with the previous sentence, it is the duty of the prosecutor to bring to the notice of the Court that the

accused is already undergoing earlier sentence so that, the final order can be passed by the Magistrate after consideration of relevant factors.

While dealing with the aspect of the exercise of inherent powers by High Court, similar view is taken by Full Bench of Delhi High Court in the

matter of Gapal Dass Vs. The State, . In para No. 7 of the report it is observed that:

The inherent powers of the High Court inhere in it because of its being at the Apex of the judicial set up in a State. The inherent powers of the High

Court, preserved by Section 482 of the Code, are to be exercised in making orders as may be necessary to give effect to any order under the

Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Section 482 envisages that nothing in this Code

shall be deemed to limit or affect the inherent powers of the High Court exercised by it with the object of achieving the abovesaid three results. It is

for this reason that Section 482 does not prescribe the contours of the inherent powers of the High Court which are wide enough to be exercised

in suitable cases to afford relief to an aggrieved party. While exercising inherent powers it has to be borne in mind that this power cannot be

exercised in regard to matters specifically covered by the other provisions of the Code. (See R.P. Kapur Vs. The State of Punjab, . This principle

of law had been reiterated succinctly by the Supreme Court recently in Palaniappa Gounder Vs. State of Tamil Nadu and Others, . Therein

examining the scope of Section 482 it was observed that a provision which saves the inherent powers of a Court cannot override any express

provision in the statute which saves that power. Putting it in another form the Court observed that if there is an express provision in a statute

governing a particular subject there is no scope for invoking or exercising the inherent powers of the Court because the Court ought to apply the

provisions of the statute which are made advisedly to govern the particular subject-matter.

The issue involved in the cited decision was whether the High Court in exercise of inherent powers u/s 482, Cr.P.C. can direct the sentences

imposed on the accused in different cases can order to run concurrently. Such situation does not arise in the case on hand. Therefore, the cited

decision is wholly inapplicable to the facts of the case on hand. u/s 427 of Cr.P.C. the trial Court, appellate Court and the revisional Court have

power to order subsequent sentence of imprisonment to run concurrently with the earlier sentence of imprisonment.

25. The trial Court convicted the petitioner/accused for the offence under Sections 138 of the N.I. Act and 420, IPC and sentenced him to suffer

rigorous imprisonment for two years and pay a fine of Rs. 3,000/- in default to suffer simple imprisonment for three months for each of the offence.

The cheque involved in both the offences is one and the same. Since the complainant had already filed suit basing on the cheque, which has given

raise to filing complaints under Sections 138 of the N.I. Act and 420. IPC. sentence of rigorous imprisonment of one year while maintaining the

fine imposed by the trial Court as well as the appellate Court would meet the ends of justice.

26. Accordingly; both the revision cases are partly allowed reducing the sentence of imprisonment imposed on the petitioner-accused for the

offences under Sections 138 of the N.I. Act and 420, IPC from two years to one year while maintaining the fine of Rs. 3,000/- in default to suffer

simple imprisonment for three months for each of the offence. Both the substantive sentences imposed for the offences under Sections 138 of the

N.I. Act and 420, IPC shall run concurrently. The bail bonds furnished by the petitioner-accused shall stand cancelled. The petitioner-accused

shall surrender before the trial Court for serving the sentence of imprisonment.