

**IN THE COURT OF THE METROPOLITAN MAGISTRATE,
FAST TRACK COURT-I, EGMORE @ ALLIKULAM, CHENNAI – 03**

PRESENT: Tr. A.CHELLAPANDIAN, B. Com., L.L.M,

Metropolitan Magistrate

Today 20th day of June 2023

CC. No. 7678/2014

CNR NO.TNCH0F – 001100 - 2014

JUDGEMENT Under Section 355 of Cr. P.C



1.	Serial No. of the Case	CC. No. 7678/2014
2.	Date of the Occurrence of the Offence	From the date of Demand
3.	Name and Address of the Complainant	Caravel Logistics Pvt Ltd., Represented by Mrs. Dhanya, Senior Manager – Legal, "Pantheon Plaza" No. 484, Third Floor, Pantheon Road, Egmore, Chennai-600 008. Tr. S Santhanalakshmi replaced Mrs. Dhanya Mr. Sandip Gandhi replaced Tr. S Santhanalakshmi Finally Mrs. P. Suganya replaced Mr. Sandhip Gandhi as per Substitution petition filed (28.04.2016) and allowed on 17.06.2016 At present Authorized Representative is Mrs. P. Suganya.
4.	Name and Address of the Accused	Mr. B.B. Jadeja, Proprietor of Tirupati Enterprises, GF-10, Ground Floor, Vijay Complex, Near Vansa Bus Stand, Vansa, Ahmedabad - 380 007, Gujarat

5.	Details of Charge	Accused is stated to be committed offence punishable Under Section 138 of Negotiable Instrument Act, 1881.
6.	Pleading of Accused	False Case, pleaded not guilty
7.	<u>Result of Judgment :</u>	In the result the accused is found guilty Under Section 138 of N.I. Act. Accused sentenced to One year of simple imprisonment and the same is imposed U/S. 255(2) of Cr. P.C. Considering the factual circumstances of the case, No fine u/s. 138 of NI Act and compensation u/s. 357(3) is ordered.
8.	Date of Judgment	20.06.2023
9.	Reasons for the decision in Brief	Complainant prima facie established her/his case against the accused in compliance of the requirement U/s. 138 of N.I. Act through ocular and documentary evidences and the accused was not discharged his/her liability of burden of proof probalizing his/her case and shifted the same to the complainant against the presumptive requirements as contemplated U/s. 139 and 118 of N.I. Act.

This case was originally presented before 13th Metropolitan Magistrate Egmore, Chennai on 09.06.2014, case was taken on file 11.06.2014, As per Roc. 1406/D/2006/03 dated 09.03.2012 and Roc. No. 3532/2012/D dated 04.06.2012, thereafter case was transferred to this Court on 11.07.2014, thereafter case transferred to Ahmedabad court and once again transferred this Court and received on 28.04.2016 and is pending before this Court and came up before me for final hearing on 05.06.2023 in the presence of Advocate M/s. **Genicon & Associates** for the Complainant and Advocate M/s. **J. Jothi** for Accused, after the perusal of the documents and having stood over till this day for consideration, this Court delivered the following :

JUDGEMENT

Complainant has filed the complaint U/s. 138 of NI Act stating that the act of the accused attracts offence U/s. 138 of the NI. Act. and pleaded to take this

complaint to file, issue summons to the accused and prosecute them and impose maximum punishment of imprisonment and deal with them in accordance with law and also order maximum compensation to the complainant under section 357 of Cr. P.C.

Brief Averments of Complaint:

Complainant company is providing various logistics services. During the period from February 2013 to December 2013, the above named accused has availed freight forwarding service from the complainant company for exporting drilling rig unit and accessories from India to Lagos, Nigeria and Port Sudan. On account of the above aid service availed the complainant has raised and issued various invoices. In order to discharge part of his above dues/liability, the above named accused has issued a cheque bearing no. 750226 dated 14.03.2014 for an amount of Rs. 15,50,697, which was drawn on ICICI Bank, Vansa Branch, Ahmedabad -380 007 to the complainant company. The above said cheque was signed by the accused as the proprietor of his concern. The accused had requested the complainant company to present the above said cheque for collection on or after the due date. On confirmation from the accused, the complainant had deposited the above said cheque for clearance through their banker Axis Bank, Anna Salai Branch, Chennai. However the complainant company was surprised that the above said cheque issued by the accused was returned unpaid to the complainant company's account with an endorsement as "Funds Insufficient" vide banker's return memo dated 22.03.2014.

Thereafter the complainant contacted the accused over phone and informed about the said dishonoured cheque. However the accused had failed to make the payment. Complainant had issued the legal notice dated 21.04.2014 to the above accused calling upon him to pay Rs. 15,50,697/- towards the principal amount of the above said cheque along with 18 % interest within a period of 15 days from the date of receipt of the notice. The accused has received the above said legal notice on

25.04.2014. After the receipt of the legal notice, the accused had not paid any amount to the complainant. However the accused through his counsel has sent a reply dated 20.05.2014 in an unofficial language (ie. in their regional language – Gujarati) which the complainant finds difficult to understand thus they sent a letter / mail dated 26.05.2014 to the accused's counsel requesting them to translate the above said reply dated 20.05.2014 in an official language. However the accused neither replied nor made any payment. The above named accused is well aware that the aforesaid cheque has been issued to the complainant only for the above said dues, which is legally enforceable debt. Being the proprietor, the accused is solely responsible for making payment to the complainant company.

Complainant file the above complaint under section 138 r/w 142 of the NI Act, 1881 within the limitation period against the accused and the accused has failed to make payment to the complainant company within 15 days time limit prescribed under the NI Act, 1881. Hence this Complaint.

This case was presented on 09.06.2014. After taking cognizance issued summons to the accused under section 204 of Cr. P.C. summons was served to the accused. He appeared before this Court on summons through his Counsel. Copy of the complaint furnished to the accused. Thereafter, formal charge framed against the accused invoking under section 251 of Cr. P.C and substance of the same was explained to him for which he pleaded not guilty and claimed for trial. Hence case was posted for trial.

On the side of the Complainant, complainant was examined as PW1 Ex P1 to Ex.P14 were marked through chief examination on 22.01.2018. No other witnesses were examined on the side of the complainant.

Thereafter, incriminating evidences available against the accused was explained as contemplated under section 313(1) (b) of Cr. P.C. Accused denied the evidence of the PW1

as false and stated that he has witnesses to examine on his side. But no other witnesses were examined on his side. Accused (Mr. B.B. Jadeja) was examined as DW1, Ex.P15 and Ex. P16 were marked through cross examination on 13.03.2023, Ex. D1 to Ex. D10 were marked through Chief examination on 22.09.2022 and Ex. D11 to Ex. D15 were marked through further examination on 15.02.2023. Accordingly, Accused side evidence was closed.

Heard the both side.

Operative Portion of Judgment:

Points to be determined in this case are as follows:

1. Whether the complainant has prima facie established the case?
2. Whether the accused has discharged his duty breaking the legal presumptions found in the section 118 and 139 of NI Act against the complainant ?
3. If so, it is to be decided whether the accused has committed offence U/s. 138 of NI Act.

Argument of the Learned counsel for the Complainant are as follows:

Learned counsel for the complainant has submit that the accused evenafter the prescribed period has not repaid the cheque amount and committed offence U/s. 138 of NI Act. In order to prove the complainant case he was examined as PW1, Ex P1 to Ex.P14 were marked. Accused did not deny the signature found in the cheque and has given reply to the Ex. P9 statutory notice issued by the complainant with false allegations. Accused merely defending the case without any basis. Hence, legal presumption dealt under section 139 of NI Act is in favour of the complainant. Burden of proof shifted to the accused by establishing the case of the complainant. Accused is liable to discharge the same with strict proof and evidence. Therefore,

accused has committed offence U/s. 138 of NI Act and liable to pay the double the cheque amount as compensation.

Argument of the learned counsel for the Accused are as follows:

- 1) Accused from and out of the favourable admissions of the PW1 extracted truth and brought out material contradictions and believably probablized his case. Complainant has misused the cheque in question and further, the complainant has not shown true debt and not proved any legal debt and liability as mentioned in the complaint. Therefore, the legal responsibility to show and prove the legal debt has not been established by the complainant and the complainant has failed to show and prove legal debt. The complainant has played fraud, forgery with court record and delete and correct resolution which is on court file without the permission of this Court and thereby, complainant committed the offence u/s. 466 of IPC.
- 2) The originally present complaint was filed by Mrs. N. Dhanya then after, S. Santhanalakshmi was replaced to N. Dhanya. Then after, the matter was transferred to Hon'ble Addl. Metropolitan Magistrate Court No. 30, Ahmedabad and Sandip Gandhi was replaced to S. Santhanalakshmi. As per new amendment in law, the said matter again transferred from Ahmedabad to this Court at Chennai. Here, there is one resolution in which Sandip Gandhi's name was deleted and on the deletion when this resolution was on this court record, S. Santhanalakshmi was written without the permission of the Court. The said correction and deletion was made by the complainant in order to sequence the name as per resolution. The said act of the complainant to delete and correct the name in the resolution without the Court's permission from the said resolution which has been in the court file, record and no permission was sought from this court to amend, delete and correct the said

resolution which was with this Court file, record and without the permission of this Court, the complainant has malafidely deleted the name of Sandip Gandhi and then written the name of S. Santhanalakshmi in order to sequest the complainant as per other resolution. These illegal acts of deletion and correction in the court file, record without the court permission is an offence under section 466 of IPC. The complainant has committed the offence under section 466 of IPC. Moreover, it is the principles of law that no one is allowed to delete, amend, correct the court file, record without the permission of the court and if any one has done this illegal act then very strict and stringent criminal action must be taken against wrong doer as per section 466 of IPC. Here, the complainant has committed this illegal act and therefore, this Court is requested to initiate legal action against the complainant who is wrong doer.

3) Further, it is submitted that there are two resolutions, dated 24.03.2014 on the court file, record and the one authorized to S. Santhanalakshmi and the other authorized to P. Suganya and both are on court record and are in existence. Hence, the complainant has failed to show and prove that which one is true and who (either S. Santhanalakshmi or P. Suganya) has power to conduct the case.

4) Further, this Court is requested to order the Registrar of this Court to initiate criminal action against the complainant under section 466 of IPC. Initially present complaint was filed at Chennai by Mrs. Dhanya and subsequently, it was transferred to Hon'ble Addl. Metropolitan Magistrate Court, Ahmedabad (Gujarat) where Mr. Sandip Gandhi was authorized to conduct the case being the authorized officer of the complainant company and to that effect order by the Court and the said Sandip Gandhi was allowed to representation for conducting the complaint. The order passed by the Hon'ble Addl. Metropolitan Magistrate Court at Admedabad is no record of this Court.

5) Then after, the matter was again transferred as per new amendment in the NI Act to Fast Tract Court at Allikulam, Chennai. New resolution passed by the complainant company authorizing S. Santhanalakshmi to conduct the case. But since then, the said S. Santhanalakshmi has not made any application before Court to allow her to be **Authorized Representative** of the Complainant. Thereafter, this Suganya has manipulated and deleted the name of Sandip Gandhi from the resolution which was on this Court record without the permission of this court. No application was moved to replace P. Suganya in place of Sandip Gandhi by the complainant and no application was also moved to replace S. Santhanalakshmi in place of Sandip Gandhi. The court record shows that S. Santhanalakshmi is on record as Authorized Representative for the complainant then no application by complainant was ever made requesting the court to allow the said application as S. Santhanalakshmi was altered in place of Sandip Gandhi and without the court permission, the said S. Santhanalakshmi was replaced and then after the said P. Suganya was replaced to the said S. Santhanalakshmi. These all acts of the complainant are illegal. Even otherwise also, no application for permission to replace S. Santhanalakshmi to Sandip Gandhi was sought for.

6) The complainant or Authorized Representative for the complainant namely P. Suganya has no power, authority to conduct the present case as Authorized Representative of the complainant because there are two resolutions on the court record. One resolution says the S. Santhanalakshmi has power to conduct the present complaint and the other resolution says that the P. Suganya has power and authority to conduct the present complaint. Hence, this P. Suganya, Authorized Representative of the complainant, has no power and legal authority to conduct the present complaint.

7) Complainant has herself admitted that she does not have personal knowledge of the transaction Complainant ie., P. Suganya, who deposed for and on behalf of the complainant, does not know the facts as well as she does not have personal knowledge of the transaction. Further, it is submitted that the person named Mr. Sandip Gandhi, who was well aware with the all transaction and who transacted with the accused was never examined and complainant namely P. Suganya, personally does not know the facts and transaction. In these facts, the complaint is not maintainable and liable to be dismissed. It is also submitted that this P. Suganya stated in her cross-examination that she joined the complainant firm in around 2015-2016 and she does not know about the transaction personally and she knows and deposed on the basis of documents and not aware directly.

8) Therefore, as per law dictated by the **Hon'ble Supreme Court in the case of A.C. Narayana Vs. State of Maharashtra**. Further, the present complainant P. Suganya admitted in her cross-examination in the complaint, Ex. P1, no details of power, authority and personal knowledge has been given to Dhanya. Further, the specific question to the complainant was asked in her cross-examination that "I am working in the complainant's firm for the past 3 ½ years (since 2016) and I am aware of the commercial transactions between the complainant and the accused based upon the documents not aware directly, no details are given in the Ex. P1, complaint that the Dhanya has no power to file this complaint. If it is asked whether the invoices marked as Ex. P2 to P5 are related to a single transaction or several transaction, the answer is with regard to several transactions". Here the said complainant falsely deposed that the said P2 to P5 are for several transaction. But, truly P2 and P4 are for one transaction ie., from Mundra to Apapa. The P3 and P5 are for one transaction ie., Mundra to Port Sudan.

9) It is admitted in her cross-examination that we manage works between them and the accused firm only. It was the bill of liners who undertake the work of transporting and delivering the goods. We dispatched the said bills to the accused firm. We have not lodged any documentary evidence before this court regarding such dispatch. If any notice has been sent to the accused regarding the pendency of payments towards the said 4 bills, my answer would be, the firm would have been dispatched. I am not aware of the same. Usually we grant 30 days time for payment. Till December 2012, the accused had been good customer. If it is asked how much money has been paid by the accused during the year 2013, the accused has paid Rs. 8,00,697/- as per Ex. P6 until December 24th I am unable to state, now, how much turnover, transactions had been one by the accused firm during the year 2012 further, admitted in cross-examination that **I have mentioned in the complaint that I have exported the drilling machine along with the vehicle is true. We are just freight forwarders acting as intermediary between the person who are dispatching and the person who are shipping.....** The bill of lading document would be available only with the shipping liner. If it is suggested that, as requested by us, in Ex. P14, the truck bearing no. GJ3EA9433 had been sent to Mundra port on 10.08.2012 through the accused firm for which a commercial invoice bearing no. PRE50 had been issued by Mundra Port... my answer is that **I would not be able to say anything about that.** If asked **whether we had dispatched only this truck**, the answer would be, **I am unable to say about that now.** Only perusing out documents could I say anything about it. If asked whether we have dispatched the truck from India to Nigeria, the answer is **we have taken steps for dispatch of the same.....** If asked whether the truck GJ3EA9433 which was to be shipped to Apapa lagos, Nigeria had been sent only after five months ie. on 14.02.2013 from Mundra Port, the answer is **a payment had not been made, it was not loaded in the ship.** If asked whether we had asked for the payment the answer is yes. No document pertaining to the same has been produced before this court. If

asked whether you are aware that, on the way, due to an accident the said vehicle has been damaged, the answer is **yes**. If it is suggested that with regard to this, the accused has filed a specific relief civil suit no. 18/2014 against your firm, the answer is **yes**. However that suit had been filed only after this cheque case had been filed. In the said suit, we have been arraigned as the 5th defendant. If asked whether we have confirmed that the second mentioned truck too ie., GJ16V5862 had reached its destination, the answer is **No**. If it is suggested that as the accused firm had filed suit before the Civil Court seeking compensation of Rs. 1,30,80,000/- to escape from that liability, you had filed this false complaint against the accused firm based upon the security cheque handed over by them earlier, the answer is **No**. If it is suggested that there is a variation in the ink used for the signature and in contrast to the ink used for filling other particulars in the cheque, the answer is **yes**.

10) Looking to the cross-examination of the complainant established the facts that the said authorized representative has not personal knowledge of the transaction as the said Authorized Representative has joined the firm in or around 2015-16. Further, it is established that the shipment of the accused was damaged for Apapa from Mundra was damaged. It is established that Ex. P2 to Ex. P5 invoices and P6 are not prepared by her and the complainant but prepared by account section using computer only and further, established that there is no signature on the Ex. P6 of the complainant.

The complainant has raised 4 invoices ie. Ex. P2 to Ex. P5 as under

Ex.P2	Invoice Amount Rs. 8,00,483/-	dated 18.02.2013
Ex.P3	Invoice Amount Rs. 8,64,529/-	dated 28.06.2013
Ex.P4	Invoice Amount Rs. 2,07,657/-	dated 18.09.2013
Ex.P5	Invoice Amount Rs. 78,028/-	dated 18.09.2013

As per invoices total **Rs. 15,50,697/-**

As per admission made
In her cross-exam of
the complainant that
accused has paid

Rs. 8,00,697/-

Then total Due shall
be of

Rs. 7,50,000/-

11) As per the admission in cross-examination by the complainant that Rs. 8,00,697/- was paid by the accused until December 24th, 2013. Then only rest due of the complainant is of Rs. 7,50,000/- and not Rs. 15,50,697/-. As per willingly admission and looking documents made by the complainant that the accused has paid Rs.8,00,697/-. And thereafter, there is no due Rs. 15,50,697/- as stated in the complaint. And hence, the cheque in question presented by the complainant misusing the cheque by fulfilling the amount of Rs. 15,50,697/- was dishonoured as there was no such debt due of Rs. 15,50,697/- to the complainant. It is true that accused has paid Rs. 8,00,697/- to the complainant and total invoices value is of Rs. 15,50,697/- and out of which, the accused has paid Rs. 8,00,697/- to the complainant as admitted by the complainant in her cross-examination and therefore, there was only due of Rs. 7,50,000/-. Hence the notice sent for Rs. 15,50,697 was bad in law as there was no the same due at the time of issuing the cheque, and notice.

12) Further, it is submitted that on the basis of the said false notice, the present complaint was filed claiming Rs. 15,50,697 was also bad and not true and correct as there was not due of Rs. 15,50,697 and therefore, the present complaint is not maintainable as there was no due of Rs. 15,50,697. Present complainant has misused the cheque in question by fulfilling the date, amount in figure, numbers and words, payee's name by the complainant without the consent and information from the accused and the cheque was filled up by the complainant without the instruction,

information and knowledge. The accused had issued cheque in question with only signature (blank signed cheque) in 2012 as a security purpose of the said transaction at Ahmedabad to Mr. Sandip Gandhi who was the manager of the complainant company at Ahmedabad. All transactions between the complainant at Ahmedabad and the accused had taken place at Ahmedabad only and the said blank cheque in question was handed to Sandip Gandhi, the manager of the complainant company (The complainant had office at Ahmedabad) at Ahmedabad as a security purpose prior to transaction. The complainant had an office at Ahmedabad... "Caravel Logistics Pvt. Ltd, 409, 4th Floor, Dev Arcade, Nr. Naranpura Rly crossing, Naranpura, Ahmedabad (Gujarat) in which Mr. Sandip Gandhi was the manager of the said company at Ahmedabad and the said Sandip Gandhi from Ahmedabad for the complainant company and the accused had done many exports from Ahmedabad since 2010 and many exports through the said Sandip Gandhi, the manager of the complainant for the accused had done.

13) The accused wanted to send his drilling unit mounted on one truck with accessories to Apapa-Lagos, Nigeria in 2012 so the said Sandip Gandhi for and on behalf of the complainant from Ahmedabad office, as a forwarding agent, informed the accused that they would send the said shipment (drilling unit mounted on truck with accessories) from Mundra to Apapa, Nigeria and all services (freight charges, CBR, ISPS, IAPRS, storage and wharfare charges, terminal handling charges, seal charges, plug in charges, transportation charges, concor charges, Lift on and lift off charges, Switch BL Rels, BL charges, ocean freight, cogest charges, ADC NOC charges, C & F Charges, Port & Custom charges, CFS charges, Lo Lo charges, Cargo handling charges, Export composite charges, export ground rent loaded containers, standard lashing with wire sling for over dimension, document charges, st on local AG charges, Ec on Ag charges, congestion charges, ISPE charges, EC on buss 3 perc

on ST, ST on Buss SUP serv. 12 perc. custom clearance charges, lashing and chawking charges, insurance charges, CFS charges, Port incidental charges, noting & documentation charges) for the said shipment shall be provided by the said Sandip Gandhi for and behalf of the complainant company and the said complainant issued proforma invoice which is at Ex. D4. The said Sandip Gandhi, the manager of the complainant company from Ahmedabad for and on behalf of the complainant company gave trust to the accused that the complainant would surely serve the accused as per accused expectation and the complainant shall surely send the said shipment (Drilling unit mounted on truck and accessories) from Mundra Port to Apapa Lagos, Nigeria within 15 days from date of delivery to custom house, Mundra and for that they will charge fees for the said services as mentioned above and said Sandip Gandhi, the manager of the complainant company from Ahmedabad, further gave trust that they shall be liable if the said shipment would not reach to final destination.

14) The said Sandip Gandhi, the manager of the complainant company at Ahmedabad, agreed to provide all required and necessary services for exporting the said unit, shipment till the last and final destination. Keeping trust on the complainant, the accused hired the complainant for services required for exporting the said unit and shipment. Then after, the accused handed his shipment over to custom house, at Mundra as per instruction given by the complainant manager, Sandip Gandhi, and prior to the said transaction, the accused issued the blank signed cheque in question as a security for the said transaction to the said Sandip Gandhi at Ahmedabad and the said cheque in question was not for any legal debt but it was for security purpose.

15) When cheque in question was issued in 2012 to the said Sandip Gandhi, manager of the complainant company at Ahmedabad, there was no single legal due or

debt towards the complainant. All the transactions took place between the accused and the said Sandip Gandhi, the manager of the complainant company, at Ahmedabad only. The complainant had office at Ahmedabad, the accused has office at Ahmedabad and the cheque in question as a security purpose of the transaction was issued at Ahmedabad to Sandip Gandhi, at Ahmedabad. The complainant has misused the cheque in question by fulfilling date, payee's name, amount in figure and words without the consent and information of the accused. The cheque in question, Ex. P7 was never issued for any debt to be paid to the complainant by the accused but the said cheque was issued as a security purpose with only signature and all other body writings and particulars in the cheque in question was filled up by the complainant without the consent of the accused. The accused has never dealt with any one at Chennai from complainant company except the said Sandip Gandhi at Ahmedabad, the office of complainant at Ahmedabad.

16) In these facts, it is submitted that all transactions took place at Ahmedabad by and between the accused and the complainant, the cheque in question (blank signed cheque) was handed over to the said Sandip Gandhi at Ahmedabad as a security purpose for the said transaction. But the complainant has malafidely misused the said cheque in question with a view to compromise or to pressurize to compromise in the civil suit for compensation, Sp.C.S. No. 18/2014 filed by the accused before Hon'ble Principal Senior Civil Court at Gandhidham (Gujarat). In these facts, with due respect, this court does not have jurisdiction to adjudicate the present complaint as no single transaction, dealing, correspondence at Chennai was taken place. Hence, this complaint is liable to be dismissed and the accused is required to be acquitted as this court does not have jurisdiction and these all true facts have not been disclosed in the complaint by the complainant and thereby, the complainant has suppressed the crucial material facts before this court and thereby, it is established that the complainant has

not come with clean hands and the complainant has misused the process of the court and law by not pleading true and correct facts. It is trite rule of law that no one is allowed to misuse the process of law by pleading untrue facts and by suppressing the true facts and if it is established the party has tried to misguide the Court and pleaded untrue fact, the court must not grant any relief to the wrong doer, fraudulent litigant. In the present case, the complainant has not pleaded true facts and hence, tried to misguide this court by pleading untrue facts.

17) Perusal of the cheque in question Ex. P7, ex facie and prima facie show that the hand writing and particulars in the cheque in the column of payee, date, amount in figure, numbers and words and signature are of different pen. Further, the ink pen used to sign and ball pen used to write the name of payee, date, amount in figure and number, words and both signature and other body writings in the cheque are of different is easily accessible on the face of it. Hence, prima facie, it is proved that the pen used in cheque in question are of different. Except the signature in the cheque in question, the rest body writing and particulars in the cheque in question ie., date, payee's name, amount in figure and words, numbers are not of the accused. The cheque in question (with only signed, blank signed cheque) was given as a security purpose for the said transaction ie. Mundra to Apapa, Nigeria in advance in around 2012 which was not issued for any legal debt to the complainant.

18) Further, the accused did not ever transact with the complainant at Chennai and the accused knew only Sandip Gandhi who was manager at Ahmedabad office of complainant and this cheque in question was handed over to the said Sandip Gandhi, the manager of the complainant company at Ahmedabad office. The complainant ill intentionally misused the said cheque in question by filled up the body writing in cheque ie., date, payee's name, amount in figure, numbers and words by the

complainant and thereafter, the complainant has filed this complaint without any legal enforceable debt or liability as mentioned in the complaint from the accused. Further there is no debt due to the complainant as mentioned in the complaint and the complainant falsely and fraudulently created, fabricated, concocted, created in invoices (Ex.P2, Ex.P3, Ex.P4 and Ex.P5) and statement of account (Ex.P6). Accused made his shipment (Drilling unit mounted on truck and accessories) reached at Mundra Port on 17.09.2012 as instruction given by the complainant. To show this, Ex. D2 is commercial invoice, PRF/50, dated 10.08.2012, which was received on 17.09.2012 by the Supdt. of Custom, Custom House, Mundra and stamp was affixed by the said Custom House. This proved that accused's shipment (Drilling unit mounted on truck and accessories) for Apapa, Nigeria was reached and custody of the said shipment (Drilling unit mounted on truck and accessories) was taken by the Supdt. of Custom, Mundra and since then and then after, the complainant's duty start for lashing, Chawking, stuffing, documentation, insurance, life of the shipment and other services and put the same on to board of vessel etc.,

19) Complainant has hired and engaged the Pearl Shiptrans Pvt Ltd., Ex. D4 for above said services and the said Pearl Shiptrans Pvt Ltd. Further, said Pearl Shiptrans Pvt Ltd. hired and engaged Transworld, unit of meridian shipping agency pvt ltd., for lashing, Chawking, stuffing, etc. Ex. D4. The complainant has never informed the accused that the complainant hired and engaged said Pearl Shiptrans Pvt Ltd. and Transworld for the export the shipment of the accused and without the knowledge and consent, the complainant has hired and engaged the said Pearl Shiptrans Pvt Ltd. and Transworld and taken the services and tried to export the said unit. All these true facts have been suppressed by the complainant malafidely. The said Pearl Shiptrans Pvt Ltd. and said Transworld have raised invoices which are at Ex. D4 and the said Pearl Shiptrans Pvt Ltd. has debited charges the complainant name and the said

Transworld has debited the charges to Pearl Shiptrans Pvt Ltd.

20) The complainant has never provided any services required by the accused to the accused but to earn the profit, the complainant hired and engaged the said Pearl Shiptrans Pvt Ltd. and the said Pearl, further hired and engaged the said Transworld. The complainant has hired itself for export the shipment of the accused from Mundra to Apapa (1) Shipping company namely Meridian Shipping Agency Pvt Ltd (2) Pearl Shiptrans Pvt Ltd. and this Pearl Shiptrans Pvt Ltd. has hired Transworld. The accused has never been informed these facts even no consent was taken from the accused by the complainant for hiring and engaging the said Pearl Shiptrans Pvt Ltd. and Transworld.

21) Without the consent and knowledge of the accused, the complainant hired the Pearl and Transworld and took their services for lashing, Chawking and referred services and due to poor lashing (lashing, stuffing done by the Transworld which was hired by the Pearl and the said Pearl was hired by the complainant) and the shipment of the accused for Apapa, Nigeria from Mundra was totally damaged. The shipment of the accused from Mundra to Apapa was totally damaged due to poor lashing and material used for lashing was poor and hence, the shipment of the accused from Mundra to Apapa, Nigeria on route, the said shipment was damaged and this lashing work on shipment of accused was done by the complainant and its hired agencies ie., Pearl Shiptrans Pvt Ltd., and Transworld. And hence, the shipment of the accused was totally damaged and the accused suffered loss of Rs. 1,30,80,000/-. Complainant with malafide intention to earn profit, the shipment of the accused kept lying at Mundra, from 17.09.2012 to 08.03.2013 after stuffed, lashing the shipment. Approximately 5 months, the complainant has done nothing and the said shipment of the accused kept lying negligently and therefore, the shipment was accident due to

poor lashing and material used for lashing was poor quality and therefore, the shipment from Mundra to Apapa, Nigeria was damaged was informed by Meridian Shipping Agency Pvt. Ltd to the accused on 19.03.2013 that the shipment of the accused was damaged on 14.03.2013 on route from Misurara to Castelion ie., the ship (drilling unit mounted on truck and accessories) was totally damaged due to lashing material poor.

22) The letter issued by the meridian shipping agency pvt ltd., is on record at Ex. D11. The accused's shipment was totally damaged and the accused has suffered huge loss of Rs. 1,30,80,000/-. Hence, the accused issued notices to Meridian Shipping Agency Ltd for US Dollar of 2,25,500 on 25.03.2013. The said notice is on record at Ex. D12. Therefore, the Pandi Correspondents Pvt Ltd., for shipping company sent letter stating that the said shipment was damaged due to poor lashing and not properly lashed inside the flatrack container and was not also properly mounted. Then after, the accused filed Civil Suit for compensation before the Hon'ble Principal Senior Civil Judge, Sp. C.S. No. 18/2014 at Gandhidham against the complainant (who is defendant no. 5 in the said suit) and others on 25.03.2014. The certified copy of the said suit is at Ex. 9 (Gujarati version) and Ex.10 (English Translation). Against the said suit the all the defendants filed reply to the suit and the defendant Nos. 2 (Ignazia Messina & C.S.P.A) and No. 3 (Ignazia Messina & C.S.P.A Port) stated and replied that one of the reason to damage the shipment of the accused is ... **due to poor lashing and material used to lashing was poor....** The certified copy of the reply is at Ex. D14. The reply filed by the Caravel Logistics Pvt Ltd in reply para no. 4: This Court has no territorial Jurisdiction over the subject matter as the whole transaction took place at Port of Mundra which is not within the local limits of this Court.... This reply filed by the defendant no.5 on 15.10.2014 by Mr. Colin George, authorized signatory.

23) The present complaint was filed on 09.06.2014 and the above referred suit was filed on 25.03.2014 ie., 3 months, prior to filing of this complaint. Further, the complainant (Orig. Defendant no.5 Caravel Logistics Pvt., Ltd.,) filed reply on 15.04.2014. This means that the complainant was very well aware and had knowledge about the suit filed by the accused was pending when this present complaint was filed however, the complainant has suppressed this crucial material facts regarding the suit pending in this complaint and therefore, the complainant has played fraud with the court by suppressing material facts. Hence, it is proved that the complainant has not come with clean hand and tried to misguide this court by suppressing material facts in the complaint.

24) Moreover, other defendants replied that due to poor lashing and poor lashing materials, damage to the shipment of the accused had taken place. Moreover, it is further submitted that the complainant has malafidely not disclosed in the present complaint that the shipment referred in invoices Ex. P2 and Ex. P4 was not reached at final destination ie., Apapa for which the complainant was hired to export the accused shipment. The complainant has not provided service for which complainant had been hired. Further, it is also not stated in the complaint that the shipment was totally damaged during sea transit due to poor lashing and material used for lashing poor done by the complainant and its hired agencies. It is also not stated in the complaint that the accused hired the complainant for services for export his unit, shipment from Mundra to Apapa, Nigeria and the said shipment has not reached at final destination ie., Apapa for which the accused took the services from the complainant and due to complainant and its hired agencies, the shipment of the accused (invoices Ex. P2 and Ex. P4 for Apapa from Mundra) was totally damaged.

25) The complainant malafidely has not produced invoices along with the

complaint by the complainant. It is also not disclosed and explained as to why two invoices for one transaction ie., for Apapa to Mundra were created and the same way, (export for Sudan) as to why two invoices P3 and P5 for one transaction were created. Further, it is submitted that the complainant has not disclosed the facts the all transactions with the accused took place at Ahmedabad and the complainant had an office at Ahmedabad and the complainant has not disclosed these facts that the cheque in question was handed over to Sandip Gandhi at Ahmedabad office in or around 2012 which was only signed blank cheque and further, it is submitted that the complainant has not further disclosed that the complainant himself hired and engaged the Pearl Shiptrans Pvt Ltd., and the said Pearl hired and engaged Transworld for services to export the shipment of accused and all works and procedure for export of the shipment of the accused were handed over to Pearl Shiptrans Pvt Ltd., and the said Pearl Shiptrans Pvt Ltd., handed over the works for export to Transworld without the consent of the accused and it is also not disclosed that the shipment of the accused, from Mundra to Apapa for which invoices Ex. P2 and Ex. P4 were raised by the complainant was not reached to final destination and on the way the shipment of accused for Apapa was totally damaged due to poor lashing and the lashing work was done by the complainant and its hired entities ie., Pearl Shiptrans Pvt Ltd., and Transworld. All these facts are suppressed by the complainant ill-intentionally.

26) The above stated facts proves that the complainant has failed to provide the service for which the accused had engaged him and on the contrary, due to negligent act on the part of the complainant, the shipment of the accused for Apapa from Mundra was totally damaged and **hence, no service, no payment, rules apply in this case** and hence, the present complainant has not any debt due to be recovered from the accused as alleged in the complaint and the invoices raised Ex. P2 and Ex. P4, Ex. P3 and Ex.P5 are false, fabricated, bogus, after thought created and fraudulent

and further, it is submitted that above stated facts have not been disclosed also in the proof affidavit of P. Suganya, the complainant in 2018.

27) The shipment (drilling unit mounted on truck with accessories) of accused was totally damaged on voyage due to poor lashing. The shipping company repudiated the claim of the accused stating that "... The above mentioned drilling machine, unit was no properly lashed inside the flatrack container and was not also properly mounted with the result that it was damaged during navigation and due to insufficiency of packing and lashing material seemed to be poor. Hence it is admitted position that the accused shipment (drilling unit mounted on truck with accessories) was totally damaged due to lashing material poor and poor lashing for which the bill had been raised by the complainant as Ex. P2 and Ex. P4. The original invoice Ex. P2, dated 18.02.2013 and original invoice, Ex.P4 dated 18.09.2013 are produced before this Court. This proves that these invoices have never been sent to the accused and there is no signature on the said invoice by the accused. Further, transaction to export the shipment from Mundra to Apapa, Nigeria took place in 2012, shipment was handed over by the accused to Custom House on 17.09.2012 at Mundra as per instruction by the complainant. The complainant sent shipment on voyage on or around 11.03.2013. This means the complainant has malafidely and negligently kept shipment lying for 6 months (from 17.09.2012 to 11.03.2013) at Mundra. The act of the complainant highly negligent and due to poor lashing by the complainant to the shipment (drilling unit mounted on truck with accessories) of the accused was totally damaged on sea route and hence, the accused has suffered loss of Rs. 1,30,80,000/- and till date, the accused has never received his shipment back. Hence, the accused is not liable and responsible to pay any single rupees to the complainant due to negligent act and poor lashing done by the complainant, the shipment of accused (invoice No. Ex.P2 and Ex. P4) was totally damaged. The complainant has not given services to the accused. The

complainant is not entitled to claim any amount for the said transaction from the accused as accused has suffered huge loss and ship shipment also totally damaged.

28) Said two invoices are fraudulent, concocted, frivolous, fabricated after thought created by the complainant. The shipment (drilling unit mounted on truck with accessories) of the accused was handed over to Custom House on 17.09.2012, then why the said invoices Ex. P2 and Ex. P4 are created on 18.02.2013 and 18.09.2013 after long time ie., after 12 months. No explanation given by the complainant that why this two bills for single transaction raised and further, no explanation was given why Ex.P4 raised after 12 months of transaction and Ex.P2 after 6 months. These two invoices Ex. P2 and Ex. P4 are false, bogus, fabricated, concocted and after thought created by the complainant, Sandip Gandhi, manager of the complainant, issued one invoice dated 14.02.2013 for the said Apapa, Nigeria from Mundra, Ex. D15. Hence, Ex. P2 and Ex.P4 are forged, fabricated, concocted, Bogua. Further, it is submitted that there can never be two invoices for single transaction and there can never invoices be raised after transaction took place. Here in this case, the export transaction took place in around 17.09.2012 and invoices are raised 18.02.2013, 18.09.2013. Even otherwise also the original invoices are produced before this court means no original invoices have been sent or delivered to the accused. Hence, the present case brought before this court is highly improbable, untrue and the complainant has not explained any facts, reason and ground to or about the improbable and untrue version of the complainant. The complainant has not explained why the Ex. D15 invoice was issued and why different invoices (Ex.P2 and Ex.P4) were present in this court.

29) Further it is submitted Ex.P3 and Ex.P5 were presented which are false, concocted, fabricated. For the same transaction the complainant, Sandip Gandhi,

from Ahmedabad, issued invoice for Port Sudan from Mundra, dated 08.04.2013, Ex. D8. Ex.P3 and P5 are the forged, false, bogus, fraudulent, fabricated, concocted and after thought as compared to Ex. D8. Hence, perusing the Ex.P2 to Ex.P5 are false, fabricated, bogus, frivolous and further, the version of the complainant is highly improbable and the complainant has not proved his case beyond reasonable doubts and hence, the present complaint is liable to be dismissed and the accused is required to be acquitted.

30) Sandip Gandhi, the manager of the complainant company, sent the copy of the invoice which is produced at Ex. D8 and Ex.D15 which are issued by the complainant in which invoice no. SFECL00066, dated 14.02.2013, POD: Mundra to Apapa, Vessel : As Carinthia, issued from Caravel Logistics Pvt Ltd., 409, 4th Floor, Dev Arcade, Nr Naranpura Rly Crossing, Naranpura, Ahmedabad. These invoices are issued from Ahmedabad by the complainant itself and it means the complainant has created two invoices for one invoice ie., SFECL/00066/12-13, Ex.P2 and Ex.D15 and Ex.D8. The complainant has forged invoices which were present as Ex. P2 to Ex.P5. All these facts are on record of this court file, though complainant has not explained these that why two invoices (Ex.P2 and Ex.D15, and Ex.P3 and Ex. D8) which are different in amount raised, issued and produced in this court. Hence the complainant has failed to explain about the said facts of above stated suspicious circumstances.

31) It is further submitted that the amount, date, particulars were mentioned in the said Ex.P2 to Ex.P5 and Ex.D8 and Ex.D15 are also differed though the said invoices Ex.P2 to Ex. P5 and Ex. D8 and Ex. D15 were issued by the complainant. Ex. P6 does not have any signature by who it was prepared and further, the said Ex. P6 is not original or is true copy nor the complainant has not personally knowledge about the

same. It is neither prepared by the complainant nor chartered accountant and no one, who is aware and informed and who prepared the said Ex. P6, was examined for the said Ex. P6, statement of account by the complainant. Even otherwise, the said Ex. P6 is from 01.04.2013 to 31.03.2014 was printed on 09.01.2014. This is understood looking to the said Ex.P6 and the said statement of account to 31.03.2014 then how it was printed on 09.01.2014. It is two months prior to 31.03.2013. The complainant has not explained about this doubtful statement of account Ex. P6. Hence it is proved the documents of the complainant itself that above referred all invoices and statement of account are false. Hence, on the basis of these false, fabricated, bogus, concocted invoices and statement of account the present complaint is filed by misusing the cheque in question and with a view to harass the accused, the present complaint with malafide intention was filed by the complainant without any debt as mentioned in the complaint. Ex. P2 is compared with Ex.P3, Ex.P4, Ex.P5 then it becomes clear that the complainant has in Ex.P2 not shown Ahmedabad office address and Ex.P3, Ex.P4, Ex.P5 have address of Ahmedabad office address of the complainant where as Ex.D8 and Ex. D15 have shown Ahmedabad office address of the complainant. In this fact, it is mostly suspicious that the Ex.P2, Ex. P3 invoices are after thought, fraudulently created by the complainant. Complainant produced original invoices ie. Ex.P2, Ex.P3, Ex.P4 and Ex.P5 before this court which established that no original invoices or copy of the same have been sent to the accused by the complainant and what invoices were sent to accused are totally different compared with Ex. D8 and Ex.D15. The complainant has created two invoices for one transaction and both invoices are for different amount and different particulars. Ex.P2 and Ex.D15, Ex.P3 and Ex.D8 are for the same and one transaction though the amount, particulars are different which both invoices were created by the complainant out of the said two, one sent to the accused Ex. D15, and the other is produced before this court as Ex. D2. Hence it is established that the complainant has not come with clean hand. The

complainant after thought this complaint filed in order to pressurize the accused to withdraw the suit qua the complainant had been filed by the accused against the complainant and others at Gandhidham Court.

32) The accused emailed to Sandip Gandhi on 04.07.2013, as under:

"From : B.B. Jadeja

To: Sandip

Sub: reg. Current shipment bill of landing – port Sudan

Dear Sir, I tell you that now I am not in a position to give you a payment. Please check at Sudan they are asking for 70000 US Dollar for last shipment as a custom duty. Along with that out shipment which was accident is still at Italy its payment is on hold please don't deposit that cheque until I will not tell you it will be bounce will neither in your favour nor in my". This true email has not been disclosed by the complainant. It proves that the accused clearly stated that don't deposit the cheque in question even though the complainant misused the cheque in question which was given as a security ie., post dated cheque in advance for the transaction.

33) The complainant has averred in the complaint and proof affidavit that... In order to discharge part of his above dues, liability, the above named accused issued a cheque... If the Ex.P6 statement of account is perused then it proves that there is no part liability as stated in the complaint. The claimed consideration is different from mentioned in instrument, presumption would not arise. Pleadings about debt is different from proof of debt and u/s. 139 of NI Act, only exempts the complainant from proving the debt and not pleadings. Since the complainant has failed to prove his pleadings is not entitled to any relief.

34) It is the case of the complainant that this complaint is for part dues but the complainant produced statement of account vide Ex. P6 in which total due balance

shown is Rs. 15,50,697-. Hence, the case and version of the complainant for part dues is totally false. The complainant itself is not sure that what amount is due. The complainant has filed this complaint for part dues and the statement of account, Ex.P6 shows that the total due Rs. 15,50,697/- and the present complaint is filed for total due Rs. 15,50,697/- out of which the complainant has admitted that the accused has paid Rs. 8,00,697/- and therefore, rest total due is Rs. 7,50,000/-. Further, there is no due as stated in the complaint by the complainant. The complainant has not given service of raised invoices Ex.P2 to Ex.P5 to the accused though said invoices amount were debited in the statement of account in Ex.P6 by the complainant. Hence, the statement of account was falsely and malafidely created. Ex.P2 to Ex.P5 are also falsely and malafidely created and fraudulently after thought by the complainant. Then after, the complainant has misused the cheque.

35) The complainant issued statutory notice u/s. 138 of NI Act to the accused stated the cheque was signed by the accused was given to. It is right to say the accused had issued signed blank cheque to the complainant as a security transaction in 2012. The reply to the said notice was given to the complainant by the accused advocate on 20.05.2014, vide Ex. P12, claiming that due to the negligent acts of the complainant, shipment was damaged, further, it was informed that the special civil suit no. 18/2014 was filed, loss of truck of Rs. 44,65,000/- of my client and Rs. 40,00,000/- for mental and physical torture in total Rs. 84,65,000/- was liable and responsible to be paid by the complainant to the accused. Further, it is stated in the said reply in para 13 that **"my client have not gave any cheque for your any legal dues but my client gave blank signed cheque and you misused it"**. The said reply was at record vide Ex. P9 translated copy of Gujarati reply and Ex.P12 is in Gujarati reply notice.

36) Ex. P16 is not for new consignment for Port Sudan and is for new consignment

and for not concerned. There was no question to pay Rs. 12,00,000/- as there was no due of that. The accused sent that mail for new consignment for Sudan. The complainant cannot take any advantage from the lacuna in defence. Complainant has not taken the insurance for the shipment Apapa from Mundra as the complainant had informed that they would get shipment insured. Further the complainant without the consent of the accused hired and engaged the service of Pearl Shiptrans Pvt Ltd., and Transworld and without the consent of the accused, the complainant got the services from the said Pearl Shiptrans Pvt Ltd., and Transworld and thereby, the complainant played fraud with the accused and further, the complainant has malafidely kept 5 months shipment of the accused at Mundra, Custom House without informing the same and to get cheaper shipment, the complainant malafidely to get huge profit not send the shipment of the accused to Apapa from Mundra. Thereby, the malafide and negligent acts, the shipment of the accused (To Apapa from Mundra) was damaged due to poor lashing of the shipment of the accused by the complainant and its hired and engaged entities ie., Pearl Shiptrans Pvt Ltd., and Transworld. And thereby, accused suffered total loss of his shipment (drilling unit mounted on truck with accessories) and loss of Rs. 1,30,80,000/-.

37) The complainant had the office at Ahmedabad and all transaction with the accused took place at Ahmedabad and for the security purpose, the accused issued signed blank cheque to the Sandip Gandhi, the manager of the complainant company at Ahmedabad. The complainant itself admitted that the part liability, the present complaint was filed for part liability as mentioned in the complaint but, truly, there is no due or outstanding as mentioned in the complaint, Ex.P1 and Ex.P6 statement of account.


38) Learned counsel for the accused in support of his arguments relied the following

judgments

- 1) 2017 (1) DCR 625 by Hon'ble Bombay High Court
- 2) 2017 (2) DCR 159 by Hon'ble Madras High Court
- 3) 2017 (2) DCR 216 by Hon'ble Bombay High Court
- 4) 2017 (1) DCR 17 by Hon'ble Madras High Court
- 5) 2017 (2) DCR 197 by Hon'ble Madras High Court
- 6) 2017 (2) DCR 317 by Hon'ble Madras High Court
- 7) 2017 (1) DCR 519 by Hon'ble Bombay High Court
- 8) Hon'ble Delhi District Court Krishan Kumar Vs. Yad Ram
- 9) Hon'ble Supreme Court of India A.C. Narayanan Vs. State of Maharashtra
- 10) Hon'ble Punjab-Haryana High Court Prem Singh Rohila Vs State of Haryana
- 11) Hon'ble Madras High Court M/s. Balaji Seafoods Exports vs. Mac Industries Ltd.
- 12) Hon'ble Gujarat High Court D.M. Finance Vs State of Gujarat (2020) 4 GLR 325
- 13) Hon'ble Supreme Court of India Rajaram, S/o. Sriramula Vs. Maruthachalam
- 14) 2020 (3) DCR 234 by Hon'ble Delhi High Court
- 15) 2019 (2) DCR 635 by Hon'ble Bombay High Court
- 16) 2020 (3) DCR 461 by Hon'ble Bombay High Court
- 17) 2018 (3) DCR 285 by Hon'ble Madras High Court
- 18) 2018 (3) DCR 303 by Hon'ble Madras High Court
- 19) 2018 (3) DCR 289 by Hon'ble Madras High Court
- 20) 2021 (1) DCR 303 by Hon'ble Kerala High Court
- 21) 2020 (3) DCR 339 by Hon'ble Madras High Court
- 22) 2020 (3) DCR 409 by Hon'ble Madras High Court
- 23) 2021 (3) DCR 777 by Hon'ble Tripura High Court
- 24) 2021 (2) DCR 157 by Hon'ble Pun. - Har. High Court
- 25) 2021 (2) DCR 537 by Hon'ble Kerala High Court
- 26) 2019(2) DCR 84 by Hon'ble Bombay High Court
- 27) 2022 (1) DCR 63 by Hon'ble Kerala High Court

- 28) 2018 (3) DCR 762 by Hon'ble Bombay High Court
- 29) 2022 (1) DCR 122 by Hon'ble Kerala High Court
- 30) 2022 (1) DCR 146 by Hon'ble Gujarat High Court
- 31) 2017 (2) DCR 509 by Hon'ble Kerala High Court
- 32) Hon'ble Andhra Pradesh High Court, Ceim Appeal No. 797/1994
- 33) Hon'ble Gujarat High Court, Indumati Bansilal Shah Vs. Anant Girdharlal Shah
- 34) Hon'ble Gujarat High Court, Bharatbhai K. Patel Vs. C.L. Verma
- 35) Hon'ble Gujarat High Court, Arvind Maneklal Tailor Vs. State of Gujarat
- 36) Hon'ble Supreme Court of India, Bipin Shantilal Panchal Vs. State of Gujarat
- 37) Hon'ble Supreme Court of India, Crl. Appeal No. 830/2014

Considering the both side arguments, deposition of the PW1, DW1 who has adduced evidence in this case and judgments relied by both side this court finds as follows:

There is no dispute that the complainant is a Private Limited Company incorporated under the Provisions of Companies Act 1956. Complainant is doing various services relating to the import and export of goods including freight forwarding agent services. Accused is an Exporter and has availed  straight forward from the complainant during the period from February 2013 to December 2013 for his machinery exports. On the various said service availed by the accused, the complainant has raised various invoices and there was an outstanding amount of Rs. 15,50,697/- as per Ex. P6. In order to discharge the dues and liability accused issued Ex. P7 cheque to the tune of Rs. 15,50,697/-. After the presentment of the Ex. P7 it was dishonoured for the reason of "**Funds Insufficient**" under Ex. P8. Accused has no dispute with regard to the receipt of the Ex. P9 legal notice. As such accused has belatedly given reply notice under Ex. P12. Accused is not denied the signature found in the Ex. P7 cheque. His contention is that cheque was issued in blank towards

security in the 2012. To defend the same accused has raised so many suspicious aspects in his cross-examination as such by way of producing very many defence exhibits.

Accused during his cross-examination stated that

காசோலையில் உள்ள கையெழுத்தை தவிர எதுவும் என்னால் எழுதப்பட்டது அல்ல. காசோலை மட்டும் என்னால் வழங்கப்பட்டது. காசோலை போதிய பணம் இல்லை என்று திருப்பப்பட்டுள்ளது என்றால் சரிதான்.

Accused's business transaction with the complainant is admitted that he had availed freight forwarding agents services from the complainant and outstanding dues mentioned in the complaint is relating to the said services. Said aspect has been clandestinely admitted by the accused in his cross-examination as hereunder:

புகார் வழக்கில் தெரிவித்துள்ள நிலுவைத் தொகை எங்களது நிறுவனத்திற்கு செய்யப்பட்ட சேவைக்காக வேண்டி என்றால் சரிதான்.

It is the general principle of Law under the Negotiable Instrument Act that once the accused admitted the business transactions between the complainant and accused and signature of the cheque, the presumption under section 118 of the NI Act, 1881 come into play. As per section 118 of the NI Act, 1881 "**Until the contrary is proved**, the following presumption shall be made:-

a) of consideration --- that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration".

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

(c) as to time of acceptance: that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity.

(d) as to time of transfer:-----

(e) as to order of endorsements:-----

(f) as to stamp:-----

(g) that holder is a holder in due course:-----

In addition to the above section 139 of the NI Act, 1881 has given the following presumption:-

"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".

In the present case in hand complainant has marked **16 exhibits**. On careful perusal of the banking instruments it is prima facie established that there is a legally enforceable debt is due.

The accused himself admitted his liability of Rs. 12,00,000/- up to July 2013 and sent an email dated 20.07.2013 to the complainant which is marked as Ex. P16. In the said email the accused has mentioned as follows:

"Reference to our discussion, we will clear Rs. 12,00,000/- before 5th August 2013 on maximum higher side with final commitment.

Further mentioned that please be assured and don't worry for the payment as we are expecting big orders also from Nigeria and South Africa".

Above statement would confirm that after July 2013, accused has also availed services from the complainant up to December 2013 (as per Ex. P6) which has clearly established. In order to rebut the above presumption, the accused has to prove his case as per rule of evidence before this Court. During the defence side evidence the accused has given evidence before this Court on 21.12.2021 and further evidence on 15.02.2023. All his evidences before this court very well collapsed by way of cross-examination made by the learned counsel for the complainant. It is pertinent to note that the accused never disputed the services rendered by the complainant. However the accused is relying on one of his export material damaged during sea

transit due to bad weather during the month March 2013 and refused to pay the cheque amount pertaining to the services rendered by the complainant. On careful analysis of ~~the~~ all the documents complainant company had rendered by a services to the accused. So the complainant is no way responsible for the accused goods damaged in sea transport due to bad weather or lashing with poor materials. Accused admits that he issued post dated cheque to the complainant that implies it could be used for the genuine outstanding. The accused has issued the above cheque for discharging their outstanding dues pertaining to the period February 2013 to December 2013 towards service availed from the complainant. The accused himself sent Ex. P16 email dated 20.07.2013 to the complainant and agreed to pay Rs. 12,00,000/- to the complainant. This amount would be up to July 2013 and thereafter the accused would have been availed some services till December 2013. All together the accused has to pay Rs. 15,50,697/- to the complainant for freight forwarding services availed by the accused deducting the Rs. 8,00,679/-. It could be seen to the Ex. P6. Complainant in his complaint stated that part of the amount only arrived in the Ex. P7 cheque. This court feels that other outstanding amount might be interest amount. According to the accused, his materials got damaged during the month of March 2013 and no claims against the complainant was lodged. The accused lodged claims only with vessel owners and their agents vide his notice Ex.P15 dated 14.04.2013. Even after the goods damaged in the month of March 2013, the accused himself has sent the mail dated 20.07.2013 to the complainant and agreed to pay Rs. 12,00,000/- outstanding dues till July 2013. Even after admitting his liability, he has not honoured the Ex. P7 therefore the statutory presumption under section 118 and 139 of NI Act, 1881 comes into play in favour of the complainant.

If the accused insured the materials intended to transport through Sea he would not have got damage to the tune of Rs. 1,30,80,000/-. Further accused had not

filed any proof that he got loss to the alleged damages. So without any proof it cannot be believed that accused sustained loss to the alleged above stated amount. Complainant being a service provider he cannot be no way responsible for the accused goods damaged during the sea transit due to bad weather or any other alleged poor lashing. The accused exported drilling unit to Nigeria, West Africa and invoices dated 10.08.2012 issued by the accused to his Nigeria Buyer under Ex.D2. In the said invoice raised by the accused, it is falsely declared that the materials/cargo is insured. So said aspect confirms that he alone responsible for the insurance of the materials. Generally, it is the responsibility of every exporter, while exporting their materials via sea/air must take insurance for their goods.

In that aspect accused during the cross-examination has confirmed that

எக்ஸ்போர்ட் செய்யக்கூடிய மிஷினரிக்கு உண்டான இன்வாய்ஸ் என்றால் சரிதான். அதில் Freight and Insurance தொகைகள் செலுத்தப்பட்டுள்ளது என்று தெரிவித்துள்ளேன் என்றால் சரிதான்.

However, there is no insurance taken by the accused for their export. While accepting the machinery by the vessel / ship owner, Bill of lading has been issued and marked as Ex. D3, it is clearly mentioned that **"Cargo Unpacked. Loaded on Flat Container at Merchant Risk"**. That means accused is casted responsibility in that regard. Further, during the cross-examination of the accused dated 06.04.2023 the accused has confirmed that Ex. D3

எங்களது நிறுவனத்தால் ஏற்றுமதி செய்யக்கூடிய பொருளுக்கு ஏற்படக்கூடிய இழப்புக்கு நாங்களே பொறுப்பேற்க வேண்டும் என்று குறிப்பிடப்பட்டுள்ளது என்றால் அவ்வாறு தான் உள்ளது.

As per the vessel/ship owners information, due to bad weather, the accused machinery has been damaged and insisted the accused to produce insurance copy. Since the accused falsely declared the materials are insured, he could not produce the insurance documents and could not get any claim. The vessel/ ship owner also has

refused to pay any compensation to the accused vide reply notice dated 27.06.2013 under Ex.D14. There is no dispute that the accused filed civil suit No. 18 of 2014 before Addl/ Civil Senior Judge, Gandhidham against the vessel/ship owner and Addl Civil Senior Judge, Gandhidham against the vessel/ship owner and their agents including the complainant ranked as Defendant No. 5. In the said civil suit, there is no allegation against the defendant No. 5 for the goods damaged and it is mentioned that defendant no. 5 is only broker. Further the accused had not pleaded the matters defended in this case. Learned counsel for the Accused raised so many issues and doubtful aspects regarding the invoices filed in this case on the side of the complainant. In case he has any serious objections over the invoices and his ignorance regarding the entertainment of other entities entertained by the complainant company for sea transit would have raised objection in the earliest occasion. But accused had not raised any serious objection through his mail or any other communication to the complainant in this regard. So, the accused for the sake of contesting this case cannot have right to agitate all the discrepancies found in the invoices filed on the side of the complainant. This court feels that in the earlier communications accused had not stated anything that he had not received any invoices from the complainant company. His silent in the earlier occasion would be considered as implied admission of the invoices as well as the ledger account filed on the side of the complainant. On perusal of the Para No. 18 of the plaint (Ex. D9 and Ex. D10) filed by the accused in the suit, himself admitted that "As per the Bill of Lading, it is shipping line's (Defendant no.2 in that civil suit) responsibility to discharge the goods at destination in the same conditions. So at present by way this case accused cannot raise responsibility shifting to the complainant.

Further alleged in the civil suit in para no. 18, defendant no. 2 and 3 (Vessel/ship owner) had to include insurance cost in their service charges. Whether the allegation is correct or wrong the accused's own version, vessel/ship owner has to

include insurance cost in their service charges. According to the accused's own version ie. plaint filed by the accused in the above said civil suit the complainant is no way responsible for the goods damaged during the sea transit. It is the agreeable argument on the side ^{of} complainant that the complainant is a freight forwarders, they have availed various service providers like containers, ship/vessel, transport etc on behalf of the accused. With regard to their various coordination, the complainant has raised invoices to the accused during the period February 2013 to December 2013 for their service charges. The accused has also admitted their liability and agreed to pay Rs. 12,00,000/- up to July 2013 and sent the Ex. P16 email dated 20.07.2013. Initially this complaint was filed by the Dhanya who was the Authorized Representative of the complainant company thereafter she was replaced by the Tr. Santhanalakshmi and thereafter she was replaced by Mr. Sandip Gandhi. Once again Mr. Sandip Gandhi was replaced by Mrs. P. Suganya as per the order passed by this court in Substitution petition filed (28.04.2016) and allowed on 17.06.2016. At present Authorized Representative is Mrs. P. Suganya. On careful perusal of the substituted petition there is a typographical mistake in mentioning the name of the Tr. Santhanalakshmi instead of Mr. Sandip Gandhi. However, Ex. P1 Board Resolution clearly shows that Mr. Sandip Gandhi was replaced by Mrs. Suganya. Ex.P1 permitted by this court in proper manner. Learned counsel for the accused attacked the Ex. P1 finding fault in the typographical mistake of mentioning Tr. Santhanalakshmi instead Mr. Sandip Gandhi, his argument has no legs to stand since he had not challenged the order passed by this Court.

Further, apart from Ex. P1 one more resolution is existence in the case bundle in which there is deletion and insertion of name. Admittedly said document has not been marked on the side of the complainant. This court cannot give weightage to the unmarked document and to analyze whether deletion and insertion of name was made prior to filing of the said document in to this case or subsequent to the filing of

the same into this court. Based on the unmarked document learned counsel fort he accused cannot place a lengthy argument ^{stating} ~~and~~ the complainant has made tampering of the court record and liable to be punish ^{ed} under section 466 of IPC. The Judgments relied by the learned counsel for the accused somehow touching the matters involved in this case, the factual circumstances involved in this case are totally different footing and therefore those judgments are not fitting to the factual matrix of the present case in hand. Though the accused admitted their outstanding amount and issued the above said cheque, he failed to honour the same.

Further, even assuming that the **cheques issued in blank towards security** it can very well be utilized for the existing debt or other debt. In this aspect judgment reported in

1) 2019 (1) MWN (Crl) 164 SC Bir Singh Vs. Mukesh Kumar Singh In which Hon'ble Supreme Court has held that

It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer, if the cheque is otherwise valid, the penal provisions of section 138 of NI Act would be attracted. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidated the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence. Further, even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under section 139 of the NI Act in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

Therefore, Viewing in any angle the case of the complainant is established through ocular and documentary evidences quite in accordance with the Negotiable Instrument Act against the accused. Accused totally failed to probabilize his defences. Therefore this Court accepts the case of the complainant and disbelieves the defences

of the accused. Accordingly points are answered.

In the result the accused is found guilty Under Section 138 of N.I. Act. Accused sentenced to One year of simple imprisonment and the same is imposed U/S. 255(2) of Cr. P.C. Considering the factual circumstances of the case, No fine u/s. 138 of NI Act and compensation u/s. 357(3) is ordered.

//Dictated to stenographer and typed directly in computer and Pronounced by me, in the open Court this 20th day of June 2023//

A. Chellapandian
20/6/23

Metropolitan Magistrate
Fast Track Court -I,
Egmore @ Allikulam, Chennai-03.

Appendix

1.Complainant Side Witnesses

Mrs. P. Suganya - PW1

Complainant Side Documents

1	Ex.P1	Board Resolution Dated 24.03.2016
2	Ex.P2	Invoice No. SFECL/00066/12-13 Dated 18.02.2013
	Ex.P3	Invoice No. AMDIFF/SFEFCL/001145/13-14 Dated 28.06.2013
4	Ex.P4	Invoice No. AMDIFF/SFEFCL/002294/13-14 Dated 18.09.2013
5	Ex.P5	Invoice No. AMDIFF/SFEFCL/002295/13-14 Dated 18.09.2013

6	Ex.P6	Ledger Account of the Complainant from 01.04.2013 to 31.03.2014
7	Ex.P7	ICICI Bank Cheque bearing No. 750226, Dated 14.03.2014, Amount Rs. 15,50,697/-
8	Ex.P8	Return Memo Dated 22.03.2014
9	Ex.P9	Legal Notice Dated 21.04.2014
10	Ex.P10	Postal Receipt
11	Ex.P11	Acknowledgement Card
12	Ex.P12	Reply Notice dated 20.05.2014 sent by the counsel of the accused in unofficial language
13	Ex.P13	Letter sent by the complainant to the accused's counsel insisting to send them a translated version Dated 26.05.2014
14	Ex.P14	Reply Notice dated 20.05.2014 sent by the counsel of the accused in English Language
15	Ex.P15 (Marked through DW1)	Notice Dated 14.04.2013
16	Ex.P16 (Marked through DW1)	Email sent to the complainant by the accused

Accused Side Witness

1. Mr. B.B. Jadeja - DW1

Accused side Documents

1	Ex.D1	Regional Transport Office Certificate Dated 05.09.2012
2	Ex.D2	Commercial Invoice No. PRF/50 Dated 10.08.2012
	Ex.D3	Bill of Lading_
4	Ex.D4	Invoices Dated 09.02.2013, 14.02.2013,

		14.02.2013, 14.02.2013, 13.02.2013, and Proforma Invoice
5	Ex.D5	Email Dated 02.04.2013
6	Ex.D6	Email Dated 19.03.2013
7	Ex. D7	Email Dated 01.04.2013
8	Ex. D8	Certificate of Outstanding balance details and Ledger Account from 01.04.2013 to 31.03.2018.
9	Ex. D9	Sp.C.S. No. 18/2014 filed by the accused before Hon'ble Principal Senior Civil Court at Gandhidham (Gujarat version)
10	Ex. D10	Sp.C.S. No. 18/2014 filed by the accused before Hon'ble Principal Senior Civil Court at Gandhidham (English version)
11	Ex. D11	Letter from Meridian Shipping Company to Tirupati Enterprises
12	Ex. D12	Formal Notice of Claim Dated 25.03.2013
13	Ex. D13	Written statements filed by the defendants in OS. No. 18/2014
14	Ex. D14	Reply Notice Dated
15	Ex.D15	Invoice No. SFECL00066 Dated 14.02.2013



A. Chellapandian
20/6/13

Metropolitan Magistrate,
Fast Track Court -I,
Egmore @ Allikulam, Chennai-3.

**IN THE COURT OF HON'BLE PRINCIPAL
SESSIONS JUDGE,
CHENNAI**

Criminal Appeal / CrI.M.P.No. of 2023

AGAINST C.C.No. 7678 of 2014

(on the file of the Hon'ble Metropolitan
Magistrates Fast Track Court-I, Egmore @
Allikulam, Chennai 600 003)

Mr.B.B.Jadeja
Proprietor of Tirupati Enterprises,
GF-10, Vijay complex,
Near Vasna Bus Stand,
Ahmedabad-380 007, Gujarat.
.....Petitioner/Appellant/Accused

Versus
Caravel Logistics Pvt. Ltd.,
Represented by Mrs.Dhanya,
Senior Manager – Legal,
Pantheon Plaza,
No. 484, 3rd Floor, Pantheon Road,
Egmore, Chennai 600008.
.....Respondent/complainant

COPY OF ORIGINAL JUDGMENT
DATED 20.06.2023 in
CC.No.7678/2014.

N. RAJESH KANNAN
N. HEMALATHA

Counsel for
Appellant/Accused