

**MEMORANDUM OF CRIMINAL APPEAL UNDER SECTION
374(3)(a) OF CR.P.C**

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

CRIMINAL APPEAL NO. OF 2023

AGAINST C.C.NO.7678/2014

(on the file of Learned Metropolitan Magistrate, Fast Track Court -I,
Egmore @ Allikulam, Chennai-3)

Mr.B.B.Jadeja

Proprietor of Tirupati Enterprises

GF-10, Vijay Complex,

Near Vasna Bus Stand, Vasna,

Ahmedabad-380 007, Gujarat

----- Appellant/Accused

Versus

Caravel Logistics Pvt. Ltd.

Represented by Mrs.Dhanya,

Senior Manager – Legal,

Pantheon Plaza,

No.484, 3rd Floor, Pantheon Road,

Egmore, Chennai-600 008

---- Respondent /Complainant

MEMORANDUM OF GROUNDS OF CRIMINAL APPEAL
UNDER SECTION 374 (3) (A) OF CRIMINAL PROCEDURE
CODE, AGAINST ORDER OF CONVICTION DATE 20.06.2023

PASSED BY THE HON'BLE COURT OF METROPOLITAN
MAGISTRATE, FAST TRACK COURT-I, EGMORE AT
ALLIKULAM, CHENNAI-03, IN THE CALENDAR CASE
NO.7678/2014.

The Appellant / Accused most respectfully submits as under that:

1. That the present appeal is preferred by the appellant / accused above name against final judgment of conviction dated 20.06.2023 passed by Hon'ble Court of Metropolitan Magistrate, Fast Track Court-I, Egmore At Allikulam, Chennai-3, (hereinafter referred to as **Ld./Hon'ble Trial Court**) in the above mentioned Calendar Case no.7678/2014 thereby Learned Magistrate held the appellant is found guilty under section 138 of N.I.Act and sentenced him to one year of simple imprisonment under section 255 (2) of Cr.P.C. And No fine under section 138 of N.I.Act and no compensation under section 357 (3) is ordered. (Hereinafter referred to as "**impugned judgment**") The original / certified copy of judgment and sentence dated 20.06.2023 is annexed herewith.

2. That the brief facts leading to filing of the instant appeal are The Appellant/accused is Balbhadrasinh B. Jadeja, proprietor of Tirupati enterprises, (M/A. 42 years), address at GF-10, Ground Floor, Vijay Complex, Near Vasna Bus Stand, Vasna, Ahmedabad-380 007, Gujarat.

The address for services of all Notices and processes on the Appellant/Accused is that of his counsel M/s.N.RAJESH KANNAN, N.HEMALATHA AND BRIJESH WADHAVANA ADVOCATES, having his office at No.117-118, Second Floor, Angappa Naicker Street, (Opp. Madras High Court) Parrys, Chennai – 600 001.

Respondent / Complainant Caravel Logistics Pvt.Ltd, Director/ General Manager/ Managing Director/Senior Manager Legal/ Authorized Officer, address at Pantheon Plaza, No.484, 3rd Floor, Pantheon Road, Egmore, Chennai- 600 008.

The address for services of all Notices and processes on the Respondent / Complainant is as stated above.

3. That the Respondent/Complainant filed a complaint ,number as C.C. No.7678 of 2014, dated 09.06.2014, under section 138 r/w.142 of Negotiable Instrument Act against the Appellant for dishonor of cheque for the amount of Rs. 15,50,697/- and the said Calendar case came to be disposed by the Hon'ble Metropolitan Magistrate, Fast Track Court-I, Egmore @ Allikulam, Chennai-3, through judgment dated 20.06.2023.

4. After taking cognizance under section 204 of Cr.P.C. summons was served to the Appellant. The Appellant appeared before Ld. Trial Court and formal charge framed against the Appellant/accused under section 251 of CrP.C. to which Appellant pleaded not guilty.

Thereafter, the case was transferred to Hon'ble Metropolitan Magistrate Court, C.C. no.137/2015, Ahmedabad (Gujarat), where Mr. Sandip Gandhi was authorized to conduct the case for and on behalf of complainant and to that effect, order was passed on 28-01-2015 by Hon'ble Metropolitan Magistrate Court, Ahmedabad.

Then after, the said case was transferred on 28.04.2016 from Hon'ble Court of Metropolitan Magistrate Court, Ahmedabad to Hon'ble Metropolitan Magistrate, Fast track Court-I, Egmore @ Allikulam, Chennai-03.

5. That as per respondent/complainant, it is alleged in the said complaint by the respondent that "the complainant company is providing various logistics services. During the period from February 2013 to December 2013, the 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 said service availed the complainant has raised and issued various invoices. **In order to discharge part** of the above dues/liability, the above named accused/appellant has issued a cheque being No.750226, dated 14.03.2014 for an amount of Rs.15,50,697/- which was drawn on ICICI bank, to the complainant/respondent 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. Notice was issued to the accused by the counsel of the complainant. Reply to the said notice and sami notice was issued by the counsel of the accused dated. 20.05.2014.

6. That during the trial the respondent's company's Authorised Officer, Mrs. Suganya, Senior Manager, Legal, as the AR of the complainant was examined only herself as PW1 and PW1 produced below mentioned documents:

Sr.no	Exhibit	Particulars	Date
1.	Ex.P1	Board Resolution	24.03.2016
2.	Ex.P2	Invoice NO.SFECL/00066/12-13	18.02.2013
3.	Ex.P3	InvoiceNo.AMDIFF/SFECL/001 145/13-14	28.06.2013
4.	Ex.P4	Invoice No.AMDIFF/SFEFCL/002294/13 -14	18.09.2013
5.	Ex.P5	Invoice No.AMDIFF/SFEFCL/002295/13 -14	18.09.2013
6.	Ex.P6	Ledge accooount f the complainant from 01.04.2013 too 31.03.2014	
7.	Ex.P7	ICICI bank Cheque bearing No.750226,amount Rs.15,50,697/- Dated	14.03.2014
8.	Ex.P8	Return Memo dated	22.03.2014
9.	Ex.P9	Legal Notice	21.04.2014

10.	Ex.P10	Postal Receipt	
11.	Ex.P11	Acknowledgement card	
12.	Ex.P12	Reply and sami Notice dated 20.05.2014 sent by counsel of the accused in Gujarati language	
13.	Ex.P13	Letter sent by the complainant to accused's counsel for translation version	26.05.2014
14.	Ex.P14	Translated copy of Reply and sami notice sent by accused counsel to the complainant	20.05.2014
15.	Ex.P15 (marked through DW1 in cross Exam.)	Notice	14.04.2013
16.	Ex.P16 (marked through DW1 in cross Exam.)	Copy of Email	

7. Thereafter, Mrs. Suganya, AR of the complainant was cross examined by the Counsel of the appellant and the said witness of the complainant admitted in her cross examination that "...she does not have personal knowledge of the transaction Complainant i.e. P.Sugnaya ,who deposed for and on behalf of the complainant, does not know the facts as well as she(complainant) does not have personal knowledge of the transaction. she joined the complainant firm in around 2015 or 2016 and she does not know about the transaction

personally and she knows and deposed on the basis of documents and not aware directly.... in the complaint ,P1, no details of power, authority and personal knowledge has been of Dhanya given....**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 ,P1, complaint that the Dhanya has no power to file this complaint,** if it is asked whether the Invoices marked as Exhibit 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...**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 despatched the said bills to the accused firm. **We have not lodged any documentary evidence before this Court regarding such despach.** 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 despatched. 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 Exhibit P-6, until December 24th.* I am unable to state, now, how much turnover/transactions had been done by the Accused firm during the year 2012... 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 Exhibit-14, the truck bearing no.GJ3EA9433 had been sent to Mundra port on 10-8-2012 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 despatched only this truck, the answer would be, I am unable to say about that now. Only perusing our 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 i.e. on 14-2-2013 from Mundra Port, the answer is as 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 5 th defendant. If asked whether we have confirmed that the second mentioned truck too i.e. 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....the accused has paid Rs. 8,00,697/- until December 24th...".**

After finishing cross examination of the AR (P.Suganya) of the complainant/ respondent, no other witnesses were examined on the side of the respondent/complainant.

8. That after completion of the evidences of the respondent/complainant, statement of accused under section 313 of Cr.P.C. was also recorded wherein appellant stated that since he had given this cheque as a security purpose for the transaction only signed blank cheque. I have filed Civil Suit no.18/14 before Hon'ble Senior Civil Judge at Gandhidham.

9. That in order to prove his innocence the appellant examined himself as DW1 and stated in his chief examination that "...I had handed over my goods to the complainant firm at Mundra Port during the month of August 2012 for forwarding. It was for the purpose of sending my goods from India to Nigeria. **The value of my goods in Indian Rupee value was Rs.1,30,80,000/-.** For this the complainant firm had stated that it would cost from 6 to 7 lakhs as transportation cost. **For that**

purpose I had handed over to the complainant a signed ICICI bank blank cheque but without filling other particulars. The complainant firm had kept my goods at Mundra Port for 5 months. Until 2013 it was holding the same, there, without informing me. They informed me late that while dispatching the product it got damaged after falling down. I replied that I am in no way responsible for that and that it was complainant who was responsible. I further informed that they had kept my goods there for 5 months and hence a loss upto Rs.1,30,80,000/- had been caused to me. I filed a civil suit at Gujarat against the complainant on 25.03.2014.SCP no.18/2014. After that the complainant firm had used my cheque and after filling up the amount, have filled this complaint. Only for the purpose of despatching the said goods I had handed over the cheque as security. Complainant has filed this complaint after two months after my suit. When I had asked for the return of the cheque, the complainant had asked me to collect it from Mundra office. However the complainant's office at Mundra had been closed. When the complainant had issued the notice to me I had through my reply informed about the above mentioned facts. With tears in his eyes, the witness states that he has suffered huge loss due to accident. I had handed over the cheque in the year 2012. My goods had not reached its destination. However the complainant (They have) filled up the cheque for double the amount and deposited. I pray that the certificate issued by the Regional Transport office of Gujarat Government dated 01.10.2012, regarding Hon Joseph Harana Kigbu Abuja Nigeria". It has been Exhibit D-1. The document

which is shown is the Commercial Invoice. Marked as Exhibit D-3. Invoices and proforma invoice are being filed. Those documents have been marked-D4. Email is the email sent by cargo logistics to me. That is being marked as Exhibit D5. Email and photographs marked as Exhibit D6. Email and photographs which show that cargo fully damaged marked as exhibit D7. The report and ledger account had been received through my auditor and the report mentioned about the amount I have to pay to Caravel logistics is only Rs.4,99,972/- and the said documents have been marked as Exhibit D8. I had filed Civil Suit at no.18/14 against caravel logistics and various firms. The said documents (Suit in Gujarati version and English version) marked as Exhibit D9 and D10 respectively. I have suffered damage due to the reason that the vehicle worth Rs.1,30,00,000/- in Indian rupees, had not been properly tied with ropes and due to fact that the ropes got cut subsequently. As such it is the complainant only who are liable to pay compensation to me. The complainant firm have now closed their office at Gujarat. The complainants, breaching the trust, have misused the unfilled but signed cheque issued by me. Hence I pray that I be discharged from this complaint. Additional chief examination after petition had been allowed We had advised that truck drilling machine, which we had wanted to dispatch through the complainant firm, be sent through Carvel logistics (Note : lengthy sentence-meaning not understandable). However the complainant firm had dispatched through Meridian Shipping which had not tied the cargo properly. D-11 is the letter sent to me by Meridian Shipping company. D-12 Formal notice sent by us for claiming compensation for the

damage caused by caravel. (Note: Lengthy sentence-meaning not understandable).The documents being shown to me are the certified copies of the written statement individually filed by defendants 1,2, and 5 for the suit filed against the complainant firm and against meridian shipping Company. The same has been marked as Exhibit D13 (nos.4). D-14 is the document issued by Pondy Correspondence Pvt Ltd. The document being shown to me is the copy of the invoice given by one Sandeep Gandhi on behalf of Caravel Logistics on 14.02.2013. The same has been marked as Exhibit-D15. Cross of accused by Complainant counsel:

I had direct transactions with Carvel Logistic. Other then my signature on the cheque nothing else has been written by me. Only the cheque had been issued by me. The same had been obtained in the year 2012 to Sandeep who was having his office at Gujarat for the purpose of security. ...Sandeep had deposited the cheque without getting my consent.... Moreover 3 months after I had filed the civil suit, they have filed this complaint.... It stated that if the cheque is returned dishonoured, it would be reflected in my bank statement, it is true. If it is stated that the subject mentioned cheque is 14-03-2014, it is true. **That date itself have been filled up them two years.** If it is stated that only after coming to know about the dishonor of the cheque, the suit had been on 25-03-2014, my answer is suit had already been ready and only has Sandeep had requested not to file, that the said suit had not been filed. It is true that I had given the machinery to Carvel Logistic for export shipment during the year 2012. For 6 months the machinery had not been

dispatched. If it is stated that I had mentioned in my civil suit that the machinery had been handed over to caravel Logistics, it is true. **If is stated that my material had been damaged only had not been tied properly and further as the metal ropes got rusted.** Through the document being shown to me if it is stated that **I had by my E-mail had agreed to pay Rs. 12 lakhs to the complainant firm, it is untrue. However that Email had been sent by me only. It is with regards to some other transaction. That is been marked as P-16.** If is stated that my balance payable to the complainant firm is Rs.4,99,972/- as is seen from the Exhibit D8, it is true. If it is stated that in the document filed by me and marked as Exhibit D8, it has been stated by the Chartered Accountant that the document has been issued only for the purpose of accident claim, it is true. Apart from that, the balance payable by me towards caravel logistics has also been state. If it is stated that I have stated, in it, freight and insurance amount had been paid... it is true. ... the complainant firm only should have insured them... However the damages had been caused as the ropes had not been tied properly...It is true that the exhibit D-15 is the invoice given by the complainant firm to me. It is true that it is Xerox copy. If it is stated that in it, no signatures of the persons connected to the complainant firm is found, It is true. However it is how we had received it from the complainant firm.... if it is stated that the subject mentioned cheque had been issued by me to the complainant firm towards balance payable arising out of continuing business transaction with them, it is untrue. It is true that in the reply sent by me to complainant, **I have only mentioned that the cheque**

was as unfilled cheque (signed blank cheque)....”. Nothing brought out against the appellant from his cross examination. DW1 produced following documents :

Sr.no.	Exhibit	Particulars	Date
1	Ex. D1	Regional Transport Office certificate	05.09.2012
2	Ex.D2	Commercial invoice no.PRF/50	10.08.2012
3	Ex.D3	Bill of lading	
4	Ex.D4 (Colly)	Invoices given by Meridian Shipping Agency Pvt.Ltd.(Mark-1, 2 and Mark-3), Performa invoice given by complainant (Mark-4) Invoice given by Pearl Shiptrans Pvt.Ltd. (Mark-5) Debit note given by Pearl Shiptrans Pvt.Ltd. (Mark-6) Invoice given by Transworld (Mark-7)	14.02.2013 13.02.2013 13.02.2013 09.02.2013
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	08.04.2013

	(Colly)	details and ledger account from 01.04.2013 to 31.03.2018 issued by chartered accountants SSSS & Co.	
9	Ex.D9	Sp.C.S.o.18/2014 filed by accused before Hon'ble Principal Senior Civil Judge at Gandhidham (Gujarati Version)	25.03.2014
10	Ex.D10	Sp.C.S.o.18/2014 filed by accused before Hon'ble Principal Senior Civil Judge at Gandhidham (English translation)	
11	Ex.D11	Letter from Meridian Shipping Company to Accused in which company claimed that accident of the appellant cargo damaged due to poor lashing and material for lashing seemed to be poor	19.03.2013
12	Ex.D12	Notice of claim by accused for USD 2,25,000 for loss and damage	25.03.2013
13	Ex.D13	Written statement to above referred suit by respondent and other defendants	
14	Ex.D14	Pandi correspondents Pvt Ltd reply against the claim raised by the Appellant	27.06.2013

15	Ex.D15	Invoice no.SFECL/00066 which was issued by the Respondent from Ahmedabad office	14.02.2013
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10. That nothing has come out against the appellant from his cross examination done by the counsel of the respondent. On the contrary, documents D1 to D15 have proved his defenses beyond reasonable doubt as well as preponderance of probability and the complainant/respondent failed to prove his case beyond reasonable doubt and nothing have been brought doubt or contrary to the documents D1 to D15 by the respondent. The respondent has not explained anything on the doubt of two invoices sent (one from Ahmedabad and one from Chennai) for the same transaction i.e. P2 and D15, and P4 and D8. P2 – invoice no. SFECL/000666, DATED 18-02-2013 which has Chennai Address whereas D15 sent by the respondent' office from Ahmedabad same invoice no. SFECL/00066, DATED 14.02.2013. Both invoices are of respondent one from Chennai office and one from Ahmedabad office for one and same transaction i.e. Mundra to Apapa, Nigeria and original invoice (P2) has never been sent to the appellant but instead of P2, D8 was sent to appellant by the respondent for the transaction Mundra to Apapa, Nigeri. P2 is the Original invoice which is in the Hon'ble Trial Court file which proves that respondent has never sent P2 to the appellant but instead of P2, the respondent sent to D8 to the appellant for the same transaction i.e. mundra To apappa. This fact proves that there are two invoices having same Invoice No. SFECL/00066 for one

transaction i.e. Mundra to Apapa, Nigeri. Invoice P2 show Chennai office of respondent) and invoice D15 shows Ahmedabad office of respondent. The respondent has created two invoices for one transaction i.e.(1) invoice no. SFECL/00066, DATED 1802.2013, Mundra to Apapa, Nigeria (P2) AND (2) invoice no. SFECL/00066, dated 14.02.2013, mundra to Apapa, Nigeria. Invoice numbers are same but amount, date, address of respondent are different. The same way, invoice P4 show Chennai office address whereas invoice D8 show Ahmedabad office address and these both invoices are for one transaction for Port Sudan from Mundra and Invoice P4 is original in nature which is in Court Trial Court file which proves that the respondent has never sent this Invoice, P4, to the appellant and instead of that, the respondent has sent the invoice ,D8, to the appellant. In facts there were total six invoices in Hon'ble Court's file ie. P2,P3, P4, P5 and D8 , D15. Further, the respondent has never denied about D8 and D15 nor explained as why D8 and D15 were issued. Further, as to why D8 and D15 were not shown in ledge account, P6, and why and how all original invoices P2 to P5 were produced by the respondent before Hon'ble Trial court which proves that original invoices P2 to P5 were never sent to the appellant by the respondent. P2 and D15 has different address of respondent, different amount, different date and different particulars and the same way also, P5 and D8 has different address of respondent, different amount, date and particulars. No explanation (in regards to P2 and D15, P5 and D8) to those contradictions, inconsistencies, embellishments have been given by respondent.

11. That there was ledger account produced and proved by the appellant as D8 whereas contents of ledge account as P6 was never proved as per evidence act and P6 was unproved.

12. That Bill of lading (D3) was prepared by the Meridian Shipping Agency Pvt. Ltd in which respondent is shown Carvel Logistics as Forwarding agent by whom the Meridian Shipping Agency was engaged.

13. That export invoice,(D4), invoice No.37786, dated 09-02-2013 by Trans world, CFS unit of Meridian Shipping Agency Pvt. Ltd. the said invoice was issued to Pearl Shiptrans Pvt.Ltd. It is clearly mentioned in the said invoice that the said Trans world has done work of standard lashing with wire sling for over dimention. In the said invoice it is mentioned that the said truck was stuffed on 04-10-2013, movement date 08-02-2013.(5 months after stuffing kept lying)The Trans world was engaged by the Pearl Shiptrans Pvt. Ltd. without the knowledge of the appellant.

14. That Meridian Shipping Agency Pvt. Ltd, (D4), issued invoice, dated 14-02-2013, ref no. 53967, debit note no.38445, on account of : Caravel Logistic, container no. LMCU0712801. Vessel : As Carinthia, Final point destination : Apapa

15. That proforma invoice,(D4), sent by the respondent to appellant in which the charges for lashing & chawking were shown Rs. 19500/-.

CFS Charges Rs.1,70,711/-, Ramp Operation charges Rs.5000/-, Custom clearance charges Rs.12000/-, B/L. charges Rs.1750/-, O/Freight Charges Rs.7,88,533/-. Terminal Handling Charges Rs.14500/-. Total shown in the said proforma invoice is Rs.10,17,961/-. This means that the charges for lashing and chawking were taken by the respondent from the appellant.

16. That (D4) invoice no. PSPL/ADI/CL/514/12-13, date : 13-2-2013, issued by Pearl Shiptrans Pvt.Ltd to Caravel Logistics Pvt. Ltd. 409, Dev arcade, Naranpura, Ahmedabad, container no. LMCU-0712801,. And debit note was also issued by the said Pearl Shiptrans Pvt. Ltd to Caravel Logistics Pvt. Ltd, date 13-02-2013. This chain of cycle for export the unit of the appellant was like this : The appellant engaged respondent for services to export his unit to Apapa, Nigeria. The respondent ,without knowledge and consent of appellant, hired and engaged Meridian Shipping Agency (Vessel Company), the Pearl Shiptrans Pvt. Ltd and this Pearl further hired and engaged the Transworld, CFS unit of Meridian Shipping Agency. The appellant has never been informed this facts by the respondent. All these Meridian Shipping Agency Pvt Ltd., Transworld, CFS unit of Meridian Shipping Agency, Pearl Shiptrans Pvt Ltd. and respondent are either the sister concern or in collusion.

17. That the respondent sent email (D5), dated 03/19/2013, LMCU0712801, stating that this is really shocking and surprising that on board unit can be **damaged by weather conditions. Please note**

that shipper has not take insurance for this unit and will debit all charges to our account if it is due to handling mistake. Awaiting your sooner response, meanwhile please find attached Invoice/P.list and advice the insurance coverage this bill of landing from Ignasio Messina Line.

18. That in response to above email sent by respondent, one Transworld, CFS unit replied through email (D5) on 2-4-2013 stating that : The container was allotted to us on O.K. condition by the line Nominated surveyors, All the norms laid by the line are adhered property and container was moved in safe and sound condition to the terminal. 1. The subject container was moved to Terminal on 08.12.2013.(2) loaded on board feeder vessel in safe condition.(3) safely off-loaded at transshipment port. (4) safely loaded onboard mother vessel.

19. That Certificate of outstanding balance of respondent was given by appointed Chartered accountants i.e. SNSS & CO. ,produced as D8, along with ledge account, invoice no. SFECL0111, DATED 8.4.2013, Rs.8,99,972/- for Portsudan a and appellant's ICICI bank statement were produced ,all as D8, which show that series of cheque no. 750225,750227, were mostly cleared in 2013.

20. That appellant had filed Special Civil Suit no.18/2014, dated 25-03-2014 against the respondent and others for loss done by the respondent and others for Rs.1,30,80,000/-. In the said suit, the appellant have claimed that defendants nos.1 to 6 jointly and severally

liable to pay the loss of shipment of appellant to be paid by the respondent to the appellant and all other defendants in the said suit. The pendency of suit was very well admitted by the respondent in her cross examination. The said suit is before Hon'ble Court of Gandhidham Principal Senior Civil Judge is being pending now for further adjudication. D-9 is the suit copy in Gujarati and D-10 is the translation of said Suit in English.

21. That Meridian Shipping Agency Pvt. Ltd informed through email dated 19.03.2013 that the subject vessel encountered enroute from Misurate to Castellon on 14.03.2013. Having understood from the Surveyour who attended in Castellon that the **lashing material seemed to be poor** which was produced as D11.

22. That immediately, the appellant sent formal notice, dated 25.03.2013, claiming USD 2,25,000 for loss and damage sustained to the shipment of appellant which was produced as D12.

23. That the written statement filed before Hon'ble Principal Senior Civil judge in the suit no. Sps. No.18/14 by the defendants (no.1,2 and 3, 5.) therein. Herein Respondent is the defendant no.5 in the said suit and respondent filed written statement in the said suit which was produced as D13. Respondent in the said suit never stated the any single rupees due to recover from the appellant. Further, in the said written statement, respondent has acted as mediator between the plaintiff (appellant) and 2 and 3 defendant. Respondent further stated in that written statement that it is pertinent to note that the defendant

no.1 issued invoice on the plaintiff(appellant) wherein this defendant (respondent) is shown as agent of the plaintiff. The material cause of action has arisen at Mundra hence this court has no jurisdiction to try and hear the suit. No single words about the due amount of Rs.15,50,697/- was mentioned in written statement and no single words about cheque was also not mentioned in written statement. Written statement filed in the said suit by the defendant **Nos.1,2,3 who on oath stated the due to poor lashing and material used for lashing was poor and due to that accident took place.** All copies of written statement were produced at D13 before Ld. Trial Court.

24. That the respondent suppressed the crucial material facts from this Hon'ble Trial Court that the respondent hired and engaged the above referred Pearl Shiptrans Pvt. Ltd, Transworld, CFS unit of meridian Shipping Agency Pvt.Ltd., Meridian Shipping agency Pvt. Ltd (vessel company). No single word has been mentioned to that regards in the complaint and proof affidavit by the respondent.

25. That the respondent further suppressed material facts that sp.cs. no.18/14 was pending was not shown in the complaint and proof affidavit too.

26. That Sp.Civil Suit No.18/14 was filed on 25-3-2014, and the said complaint was filed on 9-6-2014.

27. That Pandi Correspondents pvt ltd replied on dated 27.06.2013 stated that the above mentioned drilling machine/vehicle was not

properly lashed inside the flatrack container and was not also properly mounted. The said letter was produced at D14.

28. That after, the respondent submitted written argument, dated 26.04.2023 (page no. 1 to 89 including copy of documents). and appellant also submitted written argument (Page No.1 to 230 including copy of documents).

29. That appellant raised evidential, factual and legal points for his defenses as mentioned before Hon'ble Trial Court through written argument and oral argument which have not been considered by Ld. Trial Court and no findings and reasons have been given in the impugned judgment by Ld.Trial Court.

30. That the appellant is preferring the present appeal following among other grounds :

:: GROUND ::

A. That the impugned orders and judgment of the Ld.Trial Court is against the facts and evidence of the case and law and therefore, the impugned judgment is liable to be set aside.

B. That the impugned judgment on conviction and sentence passed by Hon'ble Trial court is unsustainable and against the provisions of law and

judgment of Hon'ble Apex Court and High court and therefore, the impugned judgment is liable to be set aside.

C. That the impugned order and judgment of the Ld. Trial Court is against the provisions of several laws and therefore, the impugned is liable to be set aside.

D. That the impugned order and judgment of the Ld. Trial Court is against the principles of natural justice and therefore, the same is liable to be set aside.

E. That Hon'ble Trial court failed to consider defenses raised by the appellant and no finding and reasons have been given on the defenses raised in the impugned judgment and therefore, impugned judgment is liable to be set aside.

F. That Hon'ble Trial court has not passed reasoned order and judgment and no findings, on pleas and defenses raised by the appellant, have been given by the Hon'ble Trial court and therefore, impugned judgment is liable to be set aside.

G. That Hon'ble Trial Court has given perverse finding and therefore, impugned judgment is liable to be set aside.

H. That Hon'ble Trial court has gone beyond pleadings and exceeded limits of its jurisdiction while passing impugned order and judgment and there was no pleading and averment though the Hon'ble court passed the

order and judgment beyond pleading, evidence and averment and therefore, impugned judgment is liable to be set aside.

I. That Hon'ble Trial court has failed to apply judicial mind on the points law, facts, defenses and evidences. The Hon'ble Trial court has not evaluated the evidences properly and without evaluation of the evidences with facts, the Hon'ble Trial court passed impugned judgment and therefore, impugned judgment is liable to be set aside.

J. That Hon'ble Trial court has passed impugned judgment finding based on evidence not on record.

K. That Hon'ble Trial court has failed to consider and apply legal principle of benefit of doubt in favour of the appellant and therefore, impugned judgment is liable to be set aside.

L. That Hon'ble Trial court has failed to consider contradictions, exaggerations, embellishments, inconsistency in complaint, proof affidavit, evidences, cross examination of AR of the respondent, P2, P3, P4, P5, P6, P7, D8, D15, and therefore, impugned judgment is liable to be set aside.

M. That Hon'ble Trial court has failed to consider major contradictions, inconsistencies, exaggeration.

N, That Hon'ble Trial court has applied erroneous approach on the evidence led by appellant and therefore, impugned judgment is liable to be set aside.

O. That Hon'ble Trial court has read documents filed by the respondent in evidence without their execution being proved and therefore, impugned judgment is liable to be set aside.

P. That Hon'ble Trial court has failed to consider that the respondent had failed to prove legal debt as alleged. It is the prosecution who has initial burden to prove enforceable legal debt and liability. Further, respondent also failed legal and enforceable debt and moreover, the respondent also failed to prove reverse burden principle. These law points have not been considered by the Hon'ble Trial Court and therefore, impugned judgment is liable to be set aside.

Q. That Hon'ble Trial court read the documents in P16 which is not in original and no "65(b) certificated under as the evidences act" was produced by the respondent though the said document was illegally exhibited and read in by Id. Trial court which is against the provisions of law of evidence and therefore, impugned judgment is liable to be set aside. There are many judgments on the said point of Hon'ble Apex Court as well as High Court but the Ld. Trial court has not considered the said legal point at all.

R. That Hon'ble Trial court has failed to evaluate evidences produced by respondent and appellant therein. There were many evidences on records which clearly create doubt on the version of respondent and which supports the version of appellant defenses.

S. That Hon'ble Trial court has passed the judgment on surmise and conjunctions. Impugned Judgment itself proves that the reasoning given in the judgment are also contradictory to other findings and version of the respondent. The Hon'ble Trial Court was in confusing was not sure about the legal debt and therefore, impugned judgment is liable to be set aside.

T, That Hon'ble Trial court has exceeded its jurisdiction on points raised before him. The Hon'ble Trial court has illegally entered into the points and facts which are pending to be adjudicated by the Ld. Senior Civil judge, at Gandhidham in the civil suit no.18/14. Ld. Trial court has crossed its power and illegally entered into the other respected court jurisdiction. Therefore, the Ld. Trial court has cross its limit and jurisdiction and therefore, impugned judgment is liable to be set aside.

U That Hon'ble Trial Court has misconceived and misunderstood the points raised by the appellants and thereby, in confusion, the Ld.Trial court passed impugned judgment and therefore, impugned judgment is liable to be set aside.

V. That the respondent has not supported her case on the ground of what is total outstanding debt and liability and how it is total outstanding debt. As per complaint, the complainant stated part debt where as ledger account,P6, stated total due Rs.15,50,697/-. The respondent in its complaint in para -2,alleged that **"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, ... ". The case of the respondent is that of part dues and liability ie. Rs.15,50,697/-. But, P6, ledger account of the respondent shows total dues \ liability is Rs.15,50,697/-. The complainant / respondent version was itself contradictory. Respondent was not sure as that Rs.15,50,697/- was part debt or total outstanding and to that regard, the Ld. Trial court was confused and in confusion, ld. Trial court passed the impugned judgment. Ld. Trial court held that **"..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."** That Hon'ble trial court has gone beyond pleadings and case of the complainant/respondent. it was never case of the complainant /respondent that other outstanding amount might be interest. There was no pleadings and case of the respondent though the Hon'ble Trial court has gone beyond pleadings. The Hon'ble trial court was not sure about due in passing judgment and in confusion, the Ld.Trial court might have passed impugned judgment. The Apex court time and again held that if there are two views then the benefit should be given to the Accused. This law points has never been considered at all. Further, the respondent has not proved what is legal due and this legal point has never been considered by the Trial Court.

W. That it was very specific case and defenses of the appellant that the cheque in question was given to the Sandip at Ahmedabad for the security purpose of the transaction in the year 2012. It was the law point's submission by the appellant that at the time of issuance of the cheque, there was no due. This law point and submission was not considered by the Hon'ble Trial court at all. To substantiate the said submission, the appellant relied upon the judgment of Apex Court in case of CR. Appeal No. 830 of 2014 which was also not considered by the Ld. Trial Court while passing the impugned judgment.

X. That it was very specific case and defenses of the appellant that the cheque in question was given blank signed and other particulars in cheque were never filled up by the appellant and the cheque in question was misused after two years of execution in 2012 which had been issued as security purpose of the transaction i.e. Mundra to Apapa, Nigeria. This legal defense has not been considered by the Ld. Trial court. Further, **It was admitted by the respondent that ink and handwriting were different to signature.** The said admitted facts have not been considered by the Ld. Trial Court. The P7, cheque was never looked and considered by the Ld. Trial Court. Handwriting and ink used in the cheque in question was clearly different and the defense was never considered by the Ld. Trial Court. Further, appellant clearly stated in his reply and same notice that the said cheque in question was issued signed blank in the year 2012 to the respondent at Ahmedabad for the security purpose of the transaction. Even the same was stated on oath in chief examination and the same was replied in cross examination. These admitted facts have not

been considered by Ld. Trial Court at all. It was submission that when cheque was issued, at that time there was no debt. Then this cheque is not valid for subsequent debt. The Apex court held the same and the ld. Trial court has not considered the judgment relied upon by the appellant. No finding and reasons have been given on the said points by the Hon'ble Trial Court.

Y. That it was very specific and clear fact, as per the respondent, was that Ledge account, P6, show total due Rs.15,50,697/- for above referred four invoices. The Hon'ble Trial Court failed to consider the admissions made by the respondent/complainant in her cross examination that We despatched the said bills to the accused firm. We have not lodged any documentary evidence before this Court regarding such despach. 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 despatched. 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 Exhibit P-6, until December 24th.* The Hon'ble Trial court has not applied his judicial mind that how much total due and how much total paid by the appellant to respondent. As per the case of the respondent is that part due / liability is of four invoices i.e. P2 to P5 are under:

P2 invoice Amount Rs.8,00,483/- dated 18-2-2013

P3 invoice Amount Rs.8,64,529/- dated 28-6-2016

P4 invoice Amount Rs.2,07,657/- dated 18-9-2019

P5 invoice Amount Rs. 78,028/- dated 18-9-2013

As per invoices total Rs.19,50,697/-

As per admission

made In her cross Rs. 8,00,697/-

exam.of the

\complainant that

accused has paid

Then total Due may be of Rs.11,50,000/-

as per the version of the respondent is that respondent received Rs.8,00,697/- from the appellant until December, 24, 2013, the rest due amount out of above referred invoices is Rs.11,50,000/- then why this cheque in question is of Rs. 15,50,697/-. As per the admission of the respondent there was not due of Rs. 15,50,697/. This lawful point has not been considered by the Hon'ble Trial Court. Hence, The Hon'ble Trial Court has not applied his judicial mind on above stated facts and admission. Therefore, impugned judgment is liable to be set aside. The primary contention of the appellant was that the offence under section 138 was not committed since the amount that was payable to the Respondent on the date cheque was presented for encashment, was less than the amount that was represented in the cheque in question. The Ld. Trial Court held that there was

Rs.12,00,000/- outstanding debt to the respondent as per P16. If there was true then also why Rs.15,50,697/- represented in cheque was not been considered by the Ld.Trial Court. Further, points was not considered was that respondent had possession of P16 prior to issuance of notice, prior to filing present complaint, prior to proof affidavit, though there was no single word mentioned about P16 in the notice,P9, complaint, proof affidavit and the said P16 was never produce along with the complaint, proof affidavit and even prior to start the defence evidences and this created doubt was not considered by the Ld.Trial court This doubtful production without the permission of the ld.Trial court at the time of cross examination of appellant was never considered by the Hon'ble Trial court and further, the P16 was not in original and it is Xerox / print copy, then 65(b) certificate was not produced by the respondent and this facts was not considered by the Ld.Trial Court and said document was not proved as per provision evidence act and this fact was also not considered by the Ld.Trial Court and the respondent did not give any explanation as to why it was lately produced and no permission was taken to produce the said document by the respondent. The Hon'ble Trial court had not given time to rebut or deny the same to the appellant. Appellant specifically denied the said Rs.12 lakh outstanding. This fact has not been considered by the Hon'ble Trial court. It was submitted that cheque in question was issued by the appellant towards security of transaction the year 2012, and at the time of there was not a legally enforceable debt subsisting on the date when the cheque was drawn. To Support the said submission, the appellant relied upon the Hon'ble Supreme Court

judgment in case of Indus Airways Pvt. Ltd Vs. Magnum Aviation Pvt.Ltd. The said submission was not been considered by the Ld.Trial Court and said judgment of Apex Court was also not considered. Further, the notice legal notice vide exhibit P9, dated 21.04.2014. Further, at the time of encashment of the cheque, the respondent did not owe a sum of Rs.15,50,697/- as represented in the cheque at the time of encashment of the cheque that was issued as security. The Id. Trial Court has not considered the law point that representation in the cheque was for a sum higher than the amount that was due on the date that it was presented for encashment, the appellant(drawer) of the cheque cannot be convicted for the offence u/s. 138 of N.I.Act. To support the said submission, reliance was placed on the judgment in case Joseph Sartho Vs. Gopinath. (2008) 3 KLJ 784 by Hon'ble Kerala High Court and Hon'ble Supreme Court in Cr.Appeal No.1497/2022. No finding and reason was given on the said law point and submission by the Ld. Trial Court. The Ld.Trial Court has not taken into consideration of the above stated authorities.

Z. The Hon'ble Trial Court failed to consider the admissions made by the respondent/complainant in her cross examination that I am unable to state, now, how much turnover/transactions had been done by the Accused firm during the year 2012... 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.

This admission by the AR of the complainant /respondent proved that the respondent has tried to misguide the Ld. Trial Court. In facts, the appellant hired only Caravel for his shipment export to Apapa, Nigeria and Port Sudan. The respondent without the information, consent and knowledge engaged Transworld, pearl Shiptrans Pvt Ltd through them the shipment of the appellant was exported and due to poor lashing to shipment, the shipment was fallen down and damaged totally during sea transit. It was the responsibility of Respondent to get shipment of appellant to be reached at Apapa, Nigeria and for that respondent was hired for his service and the respondent engaged his associates namely Meridian Shipping Agency Pvt Ltd, Transworld, CFS unit of Meridian Shipping agency, Pearl Shiptrans. But at the end, the respondent failed to provide the service for which it was hired and engaged and further, due to negligent acts on the part of the respondent and his associate, the shipment of the appellant was totally damaged and loss suffered of Rs.1,30,80,000/- to the Appellant. Ld. Trial Court has not considered invoices produces at D-4, D8 and D15. And no finding and reason given on this documentary evidences and defenses of appellant by the Hon'ble Trial Court. It was admitted facts that the shipment of the appellant worth Rs. 1,30,80,000/- was totally damaged. But the Hon'ble Trial court has failed to understand the same and without understanding the same, the Ld.Trial court held that "... no claims against the complainant was lodged..". In facts, the appellant issued notice to the respondent on 20.05.2014, P15,. This facts has never been looked into and considered by the Ld. Trial Court. Further, the Ld.Trial Court held that

“.. 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...”. This points were pending for adjudication and consideration before Hon’ble Principal Civil Judge at Gandhidham in the civil suit number Sp.C.S.no.18/14 and the Ld. Trial court was very much aware that the said civil suit no.18/14 was pending before Hon’ble Civil Court at Gandhidham though the Ld. Trial court has gone into the points which were to decide by the Ld .Civil Judge at Gandhidham. Hence, Ld. Trial court exceeded his limits and ventured into the limits of Civil Judge and hence, the Ld. Trial court has gone beyond his jurisdiction and limits. Further, it was the respondent who had to get insurance for the said voyage and for that all issued of insurance and damage, the appellant has filed Sp.Civil Suit no.18/14 before Hon’ble Principal Senior Civil Judge at Gandhidham which is pending. This fact was very much aware by the Ld. Trial Court though the Ld.trial court has entered into the facts which were to be adjudicated by the Civil Court at Gandhidham and thereby holding “... The accused exported drilling unit to Nigeria, west Africa and invoices date 10.08.2012 issued by the accused to his Nigeria Buyer Ex.D2. In the said invoice raised by the accused, it is falsely declared that the material/cargo is insured. So said aspect confirms that he alone responsible for the insurance of the material. Generally, it is the responsibility of every exporter, while exporting their material vis sea/air must take insurance for their goods. However, there is no insurance taken by the accused for their export.. That means accused is casted responsibility in that regard. Further, on

perusal of para no.18 of the plaint (Ex.D9 and D10) filed by the accused in the suit, himself admitted that As per the Bill of lading, it is shipping lines'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.". The Hon'ble Trial court has misconstrued and misconceived facts and defenses raised. In fact, the defenses of the appellant were that the appellant hired and engaged the complainant/respondent for his unit to be exported from Mundra to Apapa Nigeria and all procedure and process to be served and done by this respondent only. To provide the service for export appellant unit to Nigeria, the respondent hired and engaged Meridian Shipping Agency Pvt.Ltd, Pearl Shiptrans Pvt Ltd and Transworld, CFS unit of Meridian Shipping Agency Pvt.Ltd (without the consent and information of the appellant) for all works to provide service of export. The said shipment (i.e. Mundra to Apapa, Nigeri,) after lashing done by the respondent and its associates kept lying for nearly 5 months at Mundra Port negligently by the respondent and its associate. The appellant never hired and engaged the said Meridian Shipping Agency Pvt.Ltd., Pearl Shiptrans Pvt.Ltd, Tranworld, CFS unit of Meridian Shipping Agency Pvt.Ltd. All These facts has not been considered by the ld.Trial court at all and these all facts have been suppressed by the respondent. Further, Due to poor lashing and chawking to the shipment of appellant, the shipment of the appellant was got accident and thereby the shipment of appellant was totally damaged and loss during sea transit. The shipment was totally

damaged is admitted fact. The shipment of appellant for Apapa, Nigeria, was damaged due to poor lashing and chawking and this lashing was done by the Transworld which was engaged by the Pearl Shiptrans Pvt Ltd which was also hired and engaged by this respondent. Thereby by this respondent was liable as the respondent had hired and engaged these all i.e. Meridian Shipping Agency Pvt Ltd., Pearl Shiptrans Pvt Ltd., Transworld, CFS unit of Meridian Shipping Agency Pvt. Ltd. This true fact has not been understood in proper perspective by the Ld. Trial Court and with misconceived understanding of facts and law, the Ld. Trial Court passed impugned judgment without any finding and reasons on the defenses raised. Above stated facts and submission have never been considered by the Ld. Trial court. The respondent did not provide the service for which he was hired and engaged. On the contrary, the respondent negligently acted and his negligent act, the shipment of the appellant was totally damaged and thereby the appellant suffered loss of Rs.1,30,80,000/-. This fact and submission has not been considered rightly and properly by the Ld. Trial Court. Hence, the impugned judgment is liable to be set aside. More over That the respondent sent a cheque return notice, P10, which was replied and Sami Notice (P15, dated 20.05.2014) issued by the appellant stating that " My client have keep this truck on 10.08.2012 at Mundra Port, Commercial Invoice No. PRF 50, dated 10.08.012 and Superintendent of Custom have mark dated 17.09.2012 on it. Even though you have send the truck on 14.02.2013. Thus you keep the truck till five months on Mundra Port and due to your such type of negligence due to your delay, truck meet with

accident. Such type of accident your company is liable. If truck was sent in time, accident was not sent in time, accident was not took place and my client have not suffer loss of Rs.1,30,80,000/- and for such type of your rash and negligence my client have suffered loss. For that there is also your liabilities and for that my client have filled Sp. Civil Suit No. 18/2014 before Hon'ble Civil judge at Gandhidham. Thus you have kept truck of my client till 5 months at Mundra Port and you have cheated my client and made breach of trustPara (12) my client gave you blank cheque and you have misused it, due to your negligence my client suffering loss and you are liable to pay loss to my client and notice which you have send is wrong and illegal. You are not entitled to demand any dues from my client... Para (13)fact of your notice are false and it is not accepted by my client. My client has not gave any cheque for your any legal dues but my client gave blank cheque and you have misused it.Para (19) By giving this notice you are call upon to pay my client. Rs.84,65,000/-. Thus you are call upon to pay my client above stated amount of Rs.84,65,000/- for loss, demurrage and physical and mental torture within 15 days from receipt of this notice.".These facts were (P15) never looked into and considered by the Ld. Trial Court and no findings and reason assigned upon them and without findings and reasons, Hon'ble Trial court passed the impugned judgment. More over, That appellant had filed civil suit no. 18/14 was filed prior to this complaint before Hon'ble Civil Judge at Gandhidham. That it is stated in the said suit (in para no.20.)that Plaintiff have completed all procedure for the truck and after completion truck was sent to shipping company of defendant and

all charges were paid to the defendant and truck was OK and that's why bill of lading was issued in this circumstances you have to send my truck to Apapa, Lagos, Nigeria from Mundra and liabilities of insurance of truck and all expenses and charges were borne by defendants no.4, 5 and 6 and liability for lashing of truck on the defendants. If defendant no.1,2,3 told that lashing of truck was improper and material used to tie the shipment were of poor quality, for that defendant no.4, 5 and 6 were liable... So in the interest of justice it is necessary to pass order in favour of plaintiff and the defendants to pay Rs.1,30,80,000/- jointly and severally to the plaintiff...". These were the admitted facts on the records though Hon'ble Trial court has not considered the points and facts but held contrary to evidence on records that no claims against the complainant(who was defendant no.5 in the said suit) was lodge. The Hon'ble Trial court has failed to evaluate the evidences properly and judicially. False and incorrect finding and reason contrarily to evidences was given by the Hon'ble Trial Court. Hence, the impugned judgment is liable to be set aside. More over, That the Hon'ble Trial Court held in the judgment that "accused admits that he issued post dated cheque to the complainant that implies it could be used for the genuine outstanding".

In facts, it was not the case and version of the respondent/complainant in the complaint that the cheque in question was of post dated cheque. The Hon'ble trial court again has gone beyond its jurisdiction and pleadings without any parties' case. Hence,

the Ld. Trial court has exceeded scope of pleadings and without any evidence, averment by the respondent, the Ld.Trial court factually falsely held about issuance of Post date cheque It was the defense from initial that cheque in question was given in the year 2012 as a security purpose of the transaction with signed blank only at Ahmedabad and not for any debt. This defense has not been taken care of and considered properly and judicially while passing the impugned judgment by the Ld. Trial Court.

AA.- That it was appellant's case and defenses from beginning that the respondent misused the cheque in question and without the consent and information, the respondent filled up the particulars ie. Date, amount in figure and word and payee's name in the cheque in question and moreover, the said cheque was never given for any debt but it was given for the security purpose of the transaction in the year 2012 at Ahmedabad. It was fact on record that there was no any due amount towards respondent in the year 2012. When the cheque issued there was no due and the same was never denied by the respondent and no explanation was given by the respondent on the point of the misuse of cheque. This fact has never been considered by the Ld. Trial Court and P15 reply and same notice was also not considered judiciously by the ld.Trial Court.

AB- That it was admitted fact that the loss of shipment of appellant of Rs.1,30,80,000/-. The shipment was to export to Apapa, lagos, Nigeria from Mundra and for that export, the appellant was hired and

engaged to respondent for lashing, chawking, insurance, THC, CFS and all other work for export and the said services was to be done and provided by the respondent and for those services, the appellant had to pay. But the said shipment (For Apapa, NIgeri from Mundra) of the appellant was totally damaged due to poor lashing and material used for lashing was poor. Hence, it was fact that the respondent has not given proper services for which the respondent was hired and engaged by the appellant, and therefore, no service, no payment principle apply. Till date, the debris of the shipment of the appellant has not been returned to the appellant. The damage to appellant shipment was taken place by negligent and careless act of the respondent and for that the civil suit was filed which is pending at Civil Court, Gandhidham though the Hon'ble trial court held that "... accused had not filed any proof that he got lossof the alleged damages. So without any proof it cannot be believed that accused sustained loss to the alleged above stated amount.". In fact, there was copy of the special civil suit no.18/14 was on court record vide exhibit D9 and D10. It was also mentioned in the reply dated 20.05.2014, P15,. Even otherwise, it was on oath mentioned in the chief examination by the appellant and the same was admitted by the respondent also. These true facts have not been considered properly and judicially and for that, no evidences which were on court record have been gone through judicially by the Ld. Trial Court.

AC- That the Hon'ble Trial court has not considered the defenses raised that (P2 to P5) original invoices were produced by the

respondent which has proved that those invoices were never delivered to the appellant and this defense has not been considered by the Id. Trial Court at all. The Hon'ble trial court held that in "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 regards. So, the accused for the sake of contesting this case cannot have right to agitate all the discrepancies found in the invoices from the complainant company. ". It is now established through the judgment and finding given by the Id.trial Court that there were discrepancies in the invoices filed by the respondent. Then which were those discrepancies and why those discrepancies were not clearly mentioned by the Id.Trial Court in the judgment which proves that no findings and reason given on the discrepancies held by the Id. Trial Court. The impugned judgment is liable to be set aside.

AD- Further, the copy of the Invoices (P2 to P5) were never supplied to the appellant by the respondent prior filing of this complaint but malaidey the respondent issued(D8 and D15) invoices to the appellant by respondent from its Ahmedabad office which were not submitted by the respondent but original invoices ,P2 to P5, produced along with proof affidavit which had not been produced along with complaint and

those invoices (D8, D15) have not been produced by the respondent concealing true facts by the respondent filed in this complaint and some other original invoices i.e. (P2 to P5) have been produced by the respondent in the Hon'ble Trial Court. The D15 was issued from respondent's Ahmedabad's office by sandip Gandhi in which date 14-2-2013 was shown whereas P2 has Chennai office address which was never served upon the appellant and both invoices (P2 and D15) have same and one invoice number. This proves that respondent has forged P2 to file this complaint to pressurize the appellant to settle in civil suit. This defense of the appellant was never considered by the Hon'ble Trial Court and no finding and reasons given on the said defenses by the Ld. Trial Court. The same way also, the respondent issued invoice D8 which was issued from respondent Ahmedabad's office and invoice ,P5, had Chennai office address. Amount date and address of the respondent was different in both invoices of respondent. Therefore, the appellant raised defenses that these P2 to P5 were forged, fabricated after thought and fraudulent which were created after thought by the respondent to come out from the liability in the civil suit no.18/14 and to pressurize the appellant to settle the said suit in. The respondent has never denied about correctness of D8 and D15 and no explanation was given by the respondent about D8 and D15. The Hon'ble Trial court has not gone through the said D8 and D15 and Hon'ble Trial court has not applied judicial mind on that aspect and defense and no finding and reason given on that aspect were given by the Ld. Trial Court. Further, on the basis of P2 to P5 invoices, the P6 i.e .ledger account were also false , forged and fabricated. These

defenses were never adjudicated by the Hon'ble Trial court. Further, respondent had not come with clean hand and suppressed the material facts in the court of law which defense has not been considered by the Ld. Trial Court at all.

In fact, Hon'ble Apex Court as well as Hon'ble High court time and again held that it is the prosecution who brings the case has to prove his case beyond all reasonable doubt. It is trite rule of law that the complainant/prosecution has to prove his case beyond all reasonable doubt and accused to prove defence is preponderance of probabilities and adjudication in criminal cases is based on the principle that the accused is presumed to be innocent and the guilt of the accused should be proved the hilt and the proof should be beyond all reasonable doubt. These rule of law have been not taken care of and considered while passing judgment by the Ld. Trial Court. Since, the accused / appellant has successfully rebutted the presumptions raised against him and there are material contradictions in complaint, statement and evidences which required the acquittal to the appellant and the said law point has also not been considered by the Ld. Trial Court. Further, the respondent suppressed the crucial material facts that all transaction between the appellant/accused and the respondent/complainant were taken place at Ahmedabad. The respondent had office at Ahmedabad. Respondent's Ahmedabad office manager Mr. Sandip Gandhi who did all the transaction of export with the accused/appellant at Ahmedabad. Therefore, in every invoices, P2 to P5, issued from Ahmedabad shown and by Sandip Gandhi, Manager was also shown. Even, D8 and D15 were also issued by this

Sandip Gandhi, manager of the Complainant company from Ahmedabad. The cheque in question (only signed blank cheque) was also issued to this Sandip Gandhi at Ahmedabad office from Ahmedabad by the Accused/appellant in the year 2012 as security purpose of the transaction. These true facts have been suppressed malafidely by the respondent in complaint, proof affidavit. The respondent has not approached the Hon'ble Trial Court with clean hands and has tried to misguide the Hon'ble Trial court. Hence, Id.Trial court had no jurisdiction to adjudicate the said complaint as no transaction took place in the jurisdiction of the Ld.Trial court. Further, the respondent had suppressed material facts and hence, also the said complaint was liable to be dismissed was the submission which was not considered and no findings given by the Ld.Trial Court.

AE- The Hon'ble Trial Court failed to consider the admissions made by the respondent/complainant 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... This proves that the AR does not know anything personally about transactions took place between appellant and the respondent. This admitted facts and law points have never been considered by Hon'ble Trial Court even raised by the appellant and no finding and reasoning given by the Hon'ble Trial Court.

AF- That The Hon'ble Trial Court failed to consider the admissions made by the respondent/ complainant in her cross examination that no details are given in the ,P1, complaint that the Dhanya has no power to file this complaint. This admitted facts and law points have never been considered by Hon'ble Trial Court even raised by the appellant and no finding and reasoning given by the Hon'ble Trial Court.

AG- The Hon'ble Trial Court failed to consider the admissions made by the respondent/complainant in her cross examination that if it is asked whether the Invoices marked as Exhibit 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 i.e. from Mundra to Apapa. The P3 and P5 are for one transaction i.e. Mundra to Port Sudan. The respondent sent the invoices D8 and D15 to the appellant for the same transaction. Hence, it was submitted that the respondent had falsely created invoice P2 to P5. And thereby P6 was also falsely prepared. P1 to P6 were forged. The respondent has malafidely created these invoices after thought. This admitted facts and law points have never been considered by Hon'ble Trial Court even raised by the appellant and no finding and reasoning given by the Hon'ble Trial Court.

AH- The Hon'ble Trial Court failed to consider the admissions made by the respondent/complainant in her cross examination that If it is suggested that, as requested by us, in Exhibit-14, the truck bearing

no.GJ3EA9433 had been sent to Mundra port on 10-8-2012 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 despatched only this truck, the answer would be, I am unable to say about that now. Only perusing our 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 i.e. on 14-2-2013 from Mundra Port, the answer is as payment had not been made, it was not loaded in the ship. The complainant has admitted that the complainant has not sent the shipment of accused/appellant for 5 months and shipment of appellant was kept lying 5 months negligently by the respondent / complainant without informing the same to the appellant. The Hon'ble Court has not considered the facts raised by the appellant that due to negligent act of respondent, shipment was kept lying for 5 months and therefore, the shipment got rust and hence, accident was taken place with the shipment of the appellant. No proper services were given by the respondent and hence, respondent was not entitled to ask for any amount as loss incurred to appellant due to his negligently service. No Service, no payment. The Hon'ble Trial Court has not considered this facts and points and no finding and reason given by Hon'ble Trial court.

AI- 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 i.e. 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. 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. the accused has paid Rs. 8,00,697/- until December 24th".The Hon'ble Court has not considered admitted points and defense of misused the cheque. Further, Hon'ble has not considered the admitted facts that 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. It was the one of the defense was that the cheque was issued signed blank in the year 2012 as a security and no

particulars were filled up in the cheque by the appellant and without the consent and information, the cheque in question was filled up by the respondent. It is proved by the appellant that cheque in question was filled up without the consent and information of the appellant by the respondent and hence, fraud and forgery was taken place by the respondent was not considered by the Hon'ble Trial Court.

AJ- The Hon'ble Trial Court failed to consider the admissions made by the respondent/complainant in her cross examination that said AR of the complainant admitted that complainant has received Rs.8,00,697/- from the accused until December, 24, 2013. As per version the respondent is four invoices amount were due and four invoices total amount was 19,50,697/- out of that Rs.8,00,697/- was paid by the appellant to the respondent and therefore, rest due was of Rs.11,50,697/-. But, ledger account produced by the respondent, P6, does not show true entry and true closing balance. Hence, the P6 is also falsely and fraudulently created by the respondent. This fact have not been judicially and judiciously considered by the Ld. Trial Court and no finding and reasoning been given by the Hon'ble Trial Court.

AK- The Hon'ble Trial Court has held that accused contention is that cheque was issued in blank towards security in the year 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. Though the respondent has not brought anything against those suspicious aspects and defenses and no single words of

explanation against the said defenses and documents have been produced and tendered by the respondent ever. This fact has not been considered properly by the Ld. Trial Court. Though these defenses and documents were on records have and no doubt ever raised against the defenses and documents by the respondent and these facts have not been considered by the Hon'ble Trial Court.

AL- That there was no question giving Rs.12,00,000/- as outstanding. The appellant very specifically replied in cross examination that "... through the document being shown to me if it is stated that I had by my e-mail had agreed to pay Rs.12 lakhs to the complainant, it is untrue.... **It was with regards to some other transaction**" Ld. Trial court has looked half para of the email this fact has not been considered at all by the Ld. Trial Court. It was submitted that P16 is for new consignment to Port Sudan and for which was not concerned with this invoices or due mentioned in the complaint. There was no question to pay Rs.12,00,0000/- as there was no due of that. the said email was for new consignment and Hon'ble Trial court has not perused whole mail but partly considered. The Ld.Trial court has not considered the denial of Rs.12 lakh of the question asked by the complainant as above. Further, the Ld.Trial court also failed to consider that the replied given that the said mail was for some other transaction. The complainant cannot take any advantage for the lacuna in defence.

AM- That Hon'ble Trial court has not considered email (D5), dated 03/19/2013, LMCU0712801, stating that this is really shocking and surprising that on board unit can be **damaged by weather conditions**. **Please note that shipper has not take insurance for this unit and will debit all charges to our account if it is due to handling mistake.** That the complainant sent a message to its Transworld, CFS unit of meridian Shipping Agency Pvt. Ltd. Further, it was replied by Transworld stating that the unit was ok condition given by the appellant. These emails D5, D6 were not looked into and considered by the Hon'ble Trial Court. Moreover, the Hon'ble Trial court failed to consider the suppression of material facts done by respondent before Hon'ble Trial court. The Hon'ble Trial court failed to consider the material on record. It is rightly pointed out by the Ld. Trial court that there were very much suspicious aspect and many documentaries defense raised, the respondent/complainant was duty bound to let in evidence or explanation to those documents to prove his case by way of reverse burden or any other ways but the respondent failed to show and to prove reverse burden on her.

AN- That Hon'ble Trial court has not looked into and considered the Certificate of outstanding balance of respondent was given by appointed Chartered accountants i.e. SNSS & CO., produced as D8, along with ledge account, invoice no. SFECL0111, DATED 8.4.2013, Rs.8,99,972/- for Portsudan a and appellant's ICICI bank statement were produced, all as D8, which show that series of cheque no. 750225, 750227, were mostly cleared in 2013. The Ld. Trial court has

not applied his judicial mind on this exhibited documents and no findings and reason given by the Hon'ble Trial Court.

AO- That Hon'ble Trial court has not considered whole mail but considered only half of mail. There was denied by the appellant regarding the contents of the mail. Further, the said mail was regarding of Port Sudan is as under:

“ Subject : REg. Current Shipment Bill of Lading – Port Sudan.

Dear sir,

Reference to our discussion, we will clear Rs.12,00,000/- before 5th August, 2013 on maximum higher side with final commitment, We will give you 1 export drilling rig by this Month end and rest of the outstanding will be cleared at the time of releasing bill of lading of new consignment.”. This mail was not for due but it was new consignment to Port Sudan which was misunderstood by the Ld. Trial court. It was not for any liability but was for new shipment to Port Sudan. The Ld. Trial court misconceived the facts.

AP- That it was made submission that initially, complaint, dated 9-6-2014, was filed by Mrs. Dhanya, AR of respondent. Then after, S.Santhanalakshmi was replaced, resolution dated 13-10-2013 but no substitution application was moved and granted by the Hon'ble trial court. Further, the this complaint was transferred to Metropolitan Magistrate court no.30, Ahmedabad and where, new case no.137/2015 was given at Ahmedabad where new resolution was submitted by the

complainant/respondent stating Sandip Gandhi was authorized through resolution ,dated 5-12-2014, and on the basis of the said resolution, Mr. Sandip Gandhi was permitted to be complainant AR instead of S. Santhanalakshmi and order was passed by Hon'ble Metropolitan Magistrate Court no.30, Ahmedabad, dated 28-1-2015. Then after, the said case was transferred to Metropolitan Magistrate, Fast Track -I, Court, Egmore @ Allikulam, Chennai-03 which was numbered C.C.No.7678/ 2014. Then after, the respondent passed resolution dated 24-03-2016, authorizing P.Suganya instead of Mrs. S.Santhanalakshmi. In which Sandip Gandhi was written and said sandip Gandhi was deleted and rewritten Mrs.S.Santhanalakshmi without the permission of the Hon'ble Trial court by the respondent. Hence, the respondent has manipulated the court' records and without the permission of the Hon'ble Court, the respondent has deleted, rewritten name in the documents which was in court file. Hence, the offence under section 466 of IPC was committed by the respondent. The said resolution/document was in Hon'ble Trial court file which was produced by the respondent and the said document was not marked but the appellant prayed to mark/exhibit tentatively as per the Hon'ble Supreme Court judgment in Bipin Shantilal Panchal. But Hon'ble Trial court has not given exhibit to the said document overlooking the Supreme Court judgment. The Hon'ble Trial court has not considered the said documents saying it was not marked by the respondent. The Ld.trial court held that " 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 for the accused cannot place a lengthy argument stating the complainant has made tempering of the court record and liable to be punished u/s.466 of IPC.”.

In fact, The appellant has made request to the Hon’ble Trial court to tentatively exhibit the said document but The Ld. Trial court has not done and no reason and finding to that was given as to why the said document was not given mark and exhibit. Further, the said document was produced by the respondent itself was never denied and objected to exhibit the said document. Moreover, it was the Hon’ble Court’s duty was to exhibit or mark the original document produced and the Ld.Trial court failed to consider the Apex Court judgment in Bipin Shantilal panchal case. Further, it is the fact that the said document, resolution, was on record which stated that P.Suganya was authorized instead of S. Sannthaalakshmi and on the same date i.e.24-03-2016, resolution, Mrs. P.Sugaya was authorized instead of Sandip Gandhi was passed which was also in record as P1. It was submitted that no substitution application permitting Mrs.Suganya instead of Sandip Gandhi was ever presented before Hon’ble Trial court and no order was taken by the respondent to that effect. On the contrary, substitution application, dated 28-04-2016, was moved by the respondent to substitute Mrs.P.Sugaya replacing S.Santhalakshmi which was allowed by order by the Ld.Trial court.

It was submission by the appellant before Hon’ble Trial court that to accord the said order, therefore, the respondent deleted the name of

Sandip Gandhi and rewritten S.Santhanalakshmi in the resolution without the Hon'ble Trial court's permission. Further, it was submission made by the appellant that there was no authority replacing S.Santhanalakshmi as she was not in a company of respondent as it had been admitted by the respondent that she resigned the company. Therefore, there was no question to move substitution application authorizing P.Suganya in place of S. Santhanalakshmi. And there was never any substitution application moved to authorize P.Suganya in place of Sandip Gandhi. This submission was misunderstood and misconstrued the facts and evidence on record by the Hon'ble Trial court. Having misconceived and misconstrued the facts and evidences, the Ld. Trial Court passed the impugned judgment. Hence, it was fact that the respondent deleted the name of sandip Gandhi in the document without the Hon'ble Court permission. Further, it was fact that no substitution application was ever move not allowed authorizing P.Suganya in place of Sandip Gandhi. The ld. Trial court has not considered P1, resolution, in which Sandip Gandhi was mentioned where as in substitution application, S. Santhanalakshmi was mentioned. The Ld. Trial court has not looked into P1 and substitution application. These true and correct facts have never been considered in right perspective by the Hon'ble Trial court. The finding and reason given on the said facts are not correct and true considering the fact and evidences on record and therefore, on the said submission made by the appellant, the Hon'ble Trial court gave false, incorrect and unlawful findings and reason.

AQ- That under the law, P.Suganya was not competent to be AR of complainant company and to give chief examination as AR of the Complainant or as a complainant. The said P.Suganya, AR of the complainant/respondent does not know anything about the transaction took place between the appellant and the respondent in 2012-13 as the said AR was not in the complainant company. The said AR jointed the complainant company around 2015-16. It was admitted by the said AR. P.Suganya, that she does not know personal knowledge regarding the transaction took place in 2012 and 2013 between the respondent and the appellant.

Hence, the appellant made submission before Hon'ble Trial Court that deposing witness on behalf of the complainant company does not know personal knowledge of the transaction, the said witness cannot be examined not case upon her statement no conviction be made. And to support the said submission, the appellant relied upon the judgment of (1) A. C. Narayana Vs. State of Maharashtra by Hon'ble Supreme Court and (2) Hon'ble Bombay High Court 2017(1) DCR 625. The Hon'ble Trial court has not given any findings and reason on the said submission.

AR- That Hon'ble Trial Court held that “.. On careful perusal of the substituted petition there is a typographical mistake in mentioning the name of the S.Santhanalakshmi instead of Mr. Sandip Gandhi.” There was not a single word not document nor application along with affidavit by the respondent stating and admitting typographical

mistake. It was never the case as well as submission by the respondent of typographical mistake. The Ld. Trial court has again without any documentary evidence and without any admission by the respondent gone beyond the pleadings and admission. The Ld. Trial court brought the word "typographical mistake" itself without the pleadings by any parties. Hence, the Ld. Trial court has miserably failed to substantiate to do justice. The Ld. Trial court has gone beyond the scope of pleadings and admission. The Ld. Trial court has exceeded its limits and jurisdiction.

AS- That the Hon'ble Trial Court held in the impugned judgment that "... Tough the accused admitted their outstanding amount and issued the above said cheque, he failed to honour the same". It was never accepted and admitted outstanding amount as referred by the Hon'ble Court by the appellant and further, it was admitted that the cheque in question was issued for no legal due. The Hon'ble Trial court has not considered the defenses of the appellant judicially, judiciously and properly.

AT- That it was submitted that the respondent pleaded part debt / liability in the complaint where as ledger account, P6, shows total due. Hence, the respondent was not sure about the total due or part due. It was submitted that the complainant pleaded a different consideration from mentioned in instrument then statutory presumption would not arise. To support the same, the appellant relied upon the judgment

passed by Hon'ble Madras High Court, 2012(2) DCR 159. This defence has not been considered by Ld. Trial court.

AU- That the respondent has totally failed to establish the existing debt / liability considering invoices P2 to P5, D8 and D15, and P6 and complaint. The respondent has squarely failed to prove her case against the appellant beyond all reasonable doubt. Further, it is the bounded duty of the respondent to prove her case with sufficient evidence and the respondent has failed to discharge her (complainant) initial burden. These submissions were never considered by the Hon'ble Trial court and no finding and reason given by the Ld. Trial court. Pleading about debt is different from proof of debt and section 139 of N.I.Act, only exempts the respondent from proving the debt and not pleading and the respondent has failed to prove her pleadings considering P2 to P5, P6, D8 and D15, P6 and complaint. To support this submission, the appellant relied upon the judgment passed by the Hon'ble Madras High Court. 2020 (3) DCR 409. The Hon'ble Trial court has not considered the admission of Rs.8,00,697/- by the respondent. The Hon'ble Trial court has not considered as to why two same invoices number (P2 and D15 for Apapa Nigeria) issued by the respondent. The Hon'ble Court trial court failed to consider law point of legal debt / liability raised by the appellant. The respondent has failed to prove legal and enforceable debt and liability. This points has not been considered by the Ld. Trial court.

AV- That the appellant has successfully rebutted the presumption raised him and there are contractions in statement of respondent and presumption u/s.139 of the N.I.Act has been rebutted on preponderance of probability and the respondent has failed to show legally enforceable debt against the appellant. The respondent has miserably failed to prove her assertions with sufficient evidence. Further, since the respondent has failed to indicate specific date of issuance of cheque in notice/complaint or in affidavit and there is difference in ink in filing up the cheque and therein clearly created doubt in two different version of the respondent. The benefit was to give the appellant. To support the same, the appellant relied upon the judgment of Hon'ble Madras High court, 2018 (3) DCR 303. These submissions were never considered by the Hon'ble Trial court and no finding and reason given by the Ld. Trial court. Further, the appellant had rebutted the presumption u/s.118 & 139 of N.I. Act not only by examining him but also through the cross examination of the complainant who was only complainant witness and also giving documentary evidences. In order to rebut the legal presumption in question, the appellant need not require direct evidence to disprove the existence of consideration. Further, the Ld. Trial court failed to consider that the no explanation was ,by the respondent, given on the documents produced by the appellant in defense.

AX- That appellant has successfully rebutted the presumption raised against him. The conviction of appellant was apparently based on wrong appreciation of evidence on record and thereby, the impugned

judgment is liable to be set aside and the appellant is required to be acquitted.

AY- That it was submitted that the cheque in question was not issued towards discharge of any debt or liability. The cheque in question was given in the year 2012 as security purpose of the transaction. To support the said submitted, the appellant relied upon the judgment of Hon'ble Punjab Haryana High Court and Hon'ble Supreme Court in Cr.Appeal no.830/2014. These submissions were never considered by the Hon'ble Trial court and no finding and reason given by the Ld. Trial court.

AZ- That this Hon'ble court is requested to exhibit the document, i.e. resolution dated 24-03-2016 which was on trial court record as unmarked, to do justice and order the registrar of Ld. Trial Court to lodge complaint against the respondent u/s.466 of IPC.

BA- The impugned judgment is illegal and improper and the same has been passed in ignorance of the settled legal position. Therefore, impugned judgment is liable to be set aside.

BB- That Hon'ble Trial Court has not considered the law points that the offence under section 138 of N.I.Act is primarily a civil wrong and burden of proof on the accused under section 139 of N.I.Act is preponderance of probability whereas the prosecution/ complainant has to prove the guilt of the accused beyond all reasonable doubts. The

Ld. Trial has failed to consider legal principle that the appellant is required to show his defense on the scale of preponderance of probabilities. Further, the Ld. Trial court has not considered the judgment cited by the appellant and how the same were not applicable or different to present case was not stated in the impugned judgments. Hence, the Ld. Trial court has not considered the points, defenses, evidences, authorities cited properly. Therefore, the impugned judgment is liable to be set aside. But Hon'ble Trial Court erroneously concluded that "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 complainant and disbelieves the defences of the accused"...Moreover, the Hon'ble Trial court put points to be determined three points which were never separately answered by the Ld. Trial court.

BC- That Hon'ble Trial court failed to appreciate the facts and evidences in its proper perspective and as such, the impugned judgment is liable to be set aside.

BD- That appellant has succeeded in rebutting the presumptions u/s.118 and 139 of N.I. Act, has not been considered properly and as such, impugned order and judgment is liable to be set aside.

BE- That the respondent has failed to establish that there was any legally enforceable debt between the respondent and the appellant and this aspect has not been considered by the Hon'ble Trial court.

BF- That Hon'ble Trial court has not considered the point of reverse burden principle. The Ld. Trial court has failed to consider principles (1) standard of preponderance of probability, probable defence, benefit of doubt (2) reverse burden (3) beyond all reasonable doubt, (4) legal enforceable and existing debt. Since the Hon'ble trial court has failed to appreciate the position of settled law, therefore, the impugned judgment and order is erroneous, unsustainable and is liable to be quashed and set aside. There is illegality and irregularity. Further, Lt. Trial court has taken wrong view on wrong perception. Moreover, impugned judgment on conviction is not on proper appreciation of evidence adduced by parties to lis. Moreover, Ld. Trial court misconstrued the provision as mandatory in nature, whereas the legal position is just contrary as has been considered by Ld. Trial court. Hence, Impugned order and judgment is totally illegal, being passed in mechanical manner without application of mind.

BG- That Hon'ble Court may be pleased to permit the Appellant to file additional grounds of Appeal, if necessary at later stage of this Appeal. The appellant reserves right to add, delete, amend any other grounds with the kind permission of this Hon'ble Court at the time of oral arguments.

BH- The appellant relied upon the judgment of Hon'ble Apex Court and Hon'ble High Court, cited in written argument filled by the appellant before Ld. Trial Court. The appellant rely upon the judgment sited before Ld.Trial court in this appeal.

BI- That Hon'ble Trial court has failed to consider the mandatory provision of law of 142 of N.I.Act. Further, AR of the complainant company admitted the she does have personal knowledge of transaction. This fact has not been considered in view of the Judgment of Apex court in casesin 2022 cri.L.J 1745, AIR 2014 SC 630, 2022 and Hon'ble Kerala High Court M/s. Purnima Distributors Vs. M.P.Thimmapp.

BG- That it is submitted that from the above facts, circumstances and grounds, the complaint was not maintainable and the LD. Trial court ought to have dismissed the complaint instead of convicting the Appellant. Further, in the peculiar facts, circumstances and grounds, this Hon'ble Court is requested to warrant interference in the judgment of conviction and thereby, this appeal be pleased to allow by setting aside the impugned judgment and order and further, be pleased to acquit the appellant in the interest of justice.

PRAYER

31. In view of the aforesaid facts, circumstance and grounds, it is most respectfully prayed that;

- (A) This Honourable Court kindly be pleased to admit and allow this appeal;
- (B) This Honourable Court kindly be pleased to call for the record of Hon'ble Trial Court (C.C.no.7678/2014, Hon'ble Metropolitan Magistrate Court, Fast Track Court –I, Egmore@ Allikulam, Chennai-3);
- (C) This Honourable Court kindly be pleased to quash and set aside the impugned judgment and order of conviction and sentence, dated 20.06.2023, passed by Hon'ble Metropolitan Magistrate Court, Fast Track Court –I, Egmore@ Allikulam, Chennai-3, in the Calander case no.7678/2014. Further, this Hon'ble Court kindly be pleased to acquit the appellant from the offence alleged in the impugned c.c.No.7678/2014.
- (D) This Honourable Court kindly be pleased to give exhibit the document which is on the Ld Trial court record, resolution dated 24.03.2016 produced by the respondent, in which correction, deletion, rewritten name of S. Santhanalakshmi without the Hon'ble Trial Court permission done by the respondent and further, be pleased to read and consider the said documents as evidence and take into consideration.
- (E) This Honourable Court kindly be pleased to stay the impugned judgment and its implementation, passed on dated 20.06.2023 by Hon'ble Metropolitan Magistrate Court, Fast Track Court –I, Egmore@ Allikulam,

Chennai-3, in the Calendar case no.7678/2014, till final disposal of this Appeal.

- (F) This Honourable Court be pleased to suspend the sentence of one year simple imprisonment awarded on dated 20.06.2023 by Hon'ble Metropolitan Magistrate Court, Fast Track Court -I, Egmore@ Allikulam, Chennai-3, in the Calander case no.7678/2014.
- (G) This Honourable Court be pleased to grant bail to appellant and further, be pleased to continue the bail granted to appellant by Ld. Trial Court on 20.06.2023 in Crl.MP.No.23991 /2023, till final disposal of this Appeal on such terms and conditions as this Honourable Court may deem fit and proper in the interest of justice.
- (H) To pass any other relief/s as this Hon'ble Court may deem fit and proper d in favour of the Appellant, in the interest of justice.

32. This Hon'ble Appellant Court has power and jurisdiction to adjudicate this Appeal.

Dated at Chennai on this 17 day of July, 2023.

Counsel for appellant/accused

16/31/2023

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

Criminal Appeal 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

**MEMORANDUM OF CRIMINAL
APPEAL AGAINST THE JUDGMENT
PASSED ON 20.06.2023 IN C.C.No.
7678/2014 BY HON'BLE METRO
POLITON MAGISTRATE, FAST
TRACK COURT, EGMORE AT
ALLIKULAM, CHENNAI 600 003.**

N. RAJESH KANNAN
N. HEMALATHA.

Counsel for
Appellant/Accused