S/O.Late Lakshmaiah vs S/O.J.S. Nagaraju on 23 June, 2021

0 Crl.A.No.595/2016, 596/2016
C/w. Crl.R.P.358/2016 & 359/16

1 Crl.A.No.595/2016, 596/2016
C/w. Crl.R.P.358/2016 & 359/16

IN THE COURT OF THE LII ADDL. CITY CIVIL &
SESSIONS JUDGE, BANGALORE (CCH-53)

Dated this the 23rd day of June, 2021

PRESENT
Sri.B.G.Pramoda, B.A.L., LL.B.,
LII Addl. City Civil & Sessions Judge,
Bangalore.

Crl.A.No.595/2016, Crl.A.596/2016 c/w.
Crl.R.P.358/2016 and Crl.R.P.359/2016
In Crl.A.No.595/2016

Accused/ Appellant : L.Mohan Kumar, Aged about 43 years, S/o.Late Lakshmaiah, Residing at No.559, 2nd Floor, 4th Main, opp:Bhavani Temple, Bhavani Layout, K.G.Nagar, Bangalore 560 019.

(by Sri.S.Narayana Murthy, Advocate)

-V/S-

Complainant/ Respondent: N.Raghu, Aged about 35 years, S/o.J.S. Nagaraju, Residing at No. 1380/7-2, 6th Cross, Ashoknagara, Bangalore 560 050.
(By Sri.RC, Advocate)

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In Crl.A.No.596/2016

Accused/ Appellant : L.Mohan Kumar, Aged about 43 years, S/o.Late Lakshmaiah, Residing at No.559, 2nd Floor, 4th Main, opp:Bhavani Temple, Bhavani Layout, K.G.Nagar, Bangalore 560 019.

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2 Crl.A.No.595/2016, 596/2016
C/w. Crl.R.P.358/2016 & 359/16

Complainant/ Respondent: N.Raghu, Aged about 35 years, S/o.J.S. Nagaraju, Residing at No. 1380/7-2, 6 th

Cross, Ashoknagara, Bangalore 560 050.
(By Sri.RC, Advocate)

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In Crl.R.P.No.358/2016

Complainant/ Petitioner: N.Raghu, Aged about 35 years, S/o. J.S. Nagaraju, No.1380/7-2, 6th Cross, Ashoknagara, Bangalore 560 050.

Now at No.74, 2nd Main, 3rd Cross, Vidyaranyanagara, Magadi Road, Bangalore 560 023.

(By Sri.Ramesh Chandra, Advocate)

-V/S-

Accused/ Respondent : L.Mohan Kumar, Aged about 43 years, S/o.late Lakshmaiah, No.559, 2nd Floor, 4th Main, Opp.Bhavani Temple, Bhavani Layout, K.G.Nagar, Bangalore 560 019.

(By Sri.SN, Advocate)

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In Crl.R.P.No.359/2016

Complainant/ Petitioner: N.Raghu, Aged about 35 years, S/o. J.S. Nagaraju, No.1380/7-2, 6th Cross, Ashoknagara, Bangalore 560 050.

Now at No.74, 2nd Main, 3rd Cross, Vidyaranyanagara, Magadi Road, Bangalore 560 023.

(By Sri.Ramesh Chandra, Advocate)

-V/S-

Accused/ Respondent : L.Mohan Kumar, Aged about 43 years, S/o.late Lakshmaiah, No.559, 2nd Floor, 4th Main, Opp.Bhavani Temple, Bhavani Layout, K.G.Nagar, Bangalore 560 019.

(By Sri.SN, Advocate)

COMMON JUDGMENT

Criminal appeal Nos.595/2016 & 596/2016 are filed by the same Appellant u/s.374(3) of Cr.P.C., praying to set aside the judgment dated 20.4.2016 passed by the learned 7th Addl. Judge and 32nd ACMM, (Court of Small Causes, SCCH-3) Bangalore, in C.C.Nos.9375/2013 and 9376/ 2013 and to acquit the accused in both the cases.

Criminal revision petition No.358/2016 and 359/2016 are filed by the same petitioner u/s.397 r/w.401 of Cr.P.C., praying to modify the order dated 20.4.2016 passed by learned VII Addl. Judge & XXXII ACMM Court (Small Couses Court. SCCH-3), Bangalore, in C.C.No.9375/13 and 9376/13 and praying to direct the payment of double the amount of cheque to the petitioner out of the fine amount.

2. The appellant of both the appeals was the accused before the Trial Court. The respondent of both the appeals was the complainant before the Trial court. The revision C/w. Crl.R.P.358/2016 & 359/16 petitioner of both the revision petition was the complainant before the trial court and the respondent of both the revision petition was the accused before the trial court. The rank of the parties to this appeal will be hereinafter referred to with the same rank as assigned to them before the trial court for the sake of convenience.

3. Both the appeals and both the revision petitions are arising out of two judgments having similar facts and circumstances. The Crl.Appeals are filed by the accused challenging the impugned judgment of conviction passed by the trial court. Whereas the Crl.Revision petitions are filed by the complainant challenging the quantum of compensation awarded by the trial court. Hence, common judgment is passed in all the aforesaid four cases for the sake of convenience and to avoid repetition of facts eventhough the cases were not clubbed together at the time of hearing. Further, it is to be noted here that in the LCR of C.C.Nos.9375/13 and 9376/13, the documents and evidence are found to be mixed up and as such, it is necessary to club all the four cases together and to pass common judgment. As such, common judgment is passed.

Crl.A.No.595/2016, 596/2016 C/w. Crl.R.P.358/2016 & 359/16

4. The brief facts which leads to file both the appeals and revision petitions in nutshell are as follows:

> (a) The complainant/respondent had filed two private complaints before the trial court bearing PCR No. 4195/2013 and 4196/2013 against the accused alleging the commission of offence punishable u/s.138 of N.I. Act.

The complainant has alleged in this complaint before the trial court that the accused had borrowed a sum of Rs.4,00,000/- from him for financial difficulty and improvement of business. The accused was paying the interest promptly. It is further alleged in the complaint that since the complainant sought for return of principal amount, the accused had issued five cheques bearing No.215780 dt.3.12.2012 for Rs.1,00,000/-, Cheque bearing No.215781 dt.13.12.2012 for Rs.1,00,000/-, cheque bearing No.215782 dt.24.12.2012 for Rs.1,00,000/- and cheque bearing No.215783 dt.7.1.2013 for Rs.1,00,000/- drawn on State Bank of Mysore, Chamarajpet, Bangalore. It is further alleged in the

complaint that he had presented the cheques bearing No.215782 and 215783 for C/w. Crl.R.P.358/2016 & 359/16 encashment to his Banker i.e. Karnataka State Apex Co-op. Bank Limited, Vijayanagar Branch, Bangalore. He has presented cheque No.215780 and 215781 for encashment to his Banker i.e. Karnataka Bank Limited, Rajajinagar Branch, Bangalore. But those four cheques were dishonoured by the accused Bank with endorsement dated 11.1.2013 to the effect "refer to drawer". It is further alleged in the complaint that the complainant had got issued legal notice dt.17.1.2013 through RPAD to the accused calling upon him to pay the cheque amount. The accused even after receipt of the said notice had failed to make payment of cheque amount. With these allegations, private complaints were filed by the complainant before the trial court by contending that the accused has committed offence u/s.138 of N.I. Act.

(b) The learned Trial Judge took cognizance for the offence u/s.138 of N.I.Act and registered two private complaints against the accused and recorded the sworn statement of the complainant. Thereafter, the learned Trial Judge had registered two criminal cases against the accused in C.C.No.9375/13 and 9376/13 for the offence C/w. Crl.R.P.358/2016 & 359/16 punishable u/s.138 of N.I.Act and issued summons to the accused.

(c) In pursuance of summons, the accused had appeared before the trial court in both the cases and he was enlarged on bail. Thereafter, the matter was posted for evidence of the complainant.

(d) The complainant had adduced his oral evidence as PW.1 in both the cases before the trial court and he has produced 8 documents in C.C.No.9376/13 and got them marked as Ex.P.1 to P.8 and 6 documents in C.C.No.9375/13 on his behalf and got them marked as Ex.P.1 to P.6 and closed his side.

(e) Thereafter, the statement of accused u/s.313 of Cr.P.C., was recorded by the trial court. The accused had led his defence evidence in both the cases by adducing his oral evidence as D.W.1. He has also examined one witness on his behalf as DW.2. The accused has produced 44 documents on his behalf in both the cases and got them marked as Ex.D.1 to D.44 and closed his side. Then, the matter was posted for arguments by the learned Trial Judge.

C/w. Crl.R.P.358/2016 & 359/16

(f) Learned Trial judge after hearing the arguments and after perusing the oral and documentary evidence adduced on behalf of both the parties and after perusing the other materials on record was pleased to pass separate judgment on 20.4.2016 in C.C.No.9375/13 and 9376/13 by convicting the accused for the offence punishable u/s.138 of N.I.Act and sentencing the accused to pay fine of Rs.1,10,000/- and by directing to pay Rs.10,000/- as compensation to the complainant out of the said fine amount in both the cases.

(g) The accused being aggrieved by the said judgment of the trial court in both the cases has preferred this appeal by taking similar grounds in both the appeals.

5. Grounds of appeals in brief as stated in the appeal memorandum of both the appeals :-

(a) The impugned judgment and sentence passed by the trial court is against law and all probabilities of case.

(b) The learned Magistrate has not chosen to read the evidence by adopting the principle of this passionate consideration. It has read into evidence certain things which are not available on record in the case.

C/w. Crl.R.P.358/2016 & 359/16

(c) The judgment, conviction and sentence passed by the learned Trial judge is based more on surmises and inferences than on the evidence available on record.

(d) The learned Trial Judge while giving a finding about the guilt of the accused has given total goby to the settled on point as held by various Hon'bel High Court and Hon'ble Apex court of India. The accused was successful in rebutting the initial presumption u/s.138 of N.I. Act. The learned Trial Judge has not considered the fact that the accused has adduced sufficient evidence to rebut the initial presumption.

(e) The learned trial judge has not properly considered the fact that the complainant has presented the cheque in question even after receiving the entire amount from the accused. The trial court ought to have held that the complainant has not been able to establish the fact that accused did issue cheque in question for the discharge of his liability towards the complainant.

(f) The learned trial judge has failed to appreciate the evidence and defence of the accused that the complainant had received cheques for the purpose of security only. The C/w. Crl.R.P.358/2016 & 359/16 accused has also produced the documents to show that he has paid the cheque amount to the complainant. The trial Trial judge has erred in coming to the conclusion that the amount paid by the accused is not towards principal amount of Rs.4,00,000/- and it is towards interest. The complainant has filed false complaint only to extract money from the accused.

(g) The trial Trial judge has also not chosen to comply all the mandatory requirements of law as contemplated u/s.190, 200, 251, 260 and 313 of Cr.P.C., and u/s.143 of N.I.Act. This has resulted in serious prejudice to the defence of the accused.

(h) The sentence imposed by the learned Trial judge on accused is too harsh and excessive when compared to the offence said to have been committed by him.

(i) The complainant has failed to prove that there is any enforceable debt for which the accused is liable and as such, Sec.138 of N.I. Act will not be applicable to the facts and circumstance of the case. Therefore, the impugned judgment is illegal, arbitrary and without any authority of law.

C/w. Crl.R.P.358/2016 & 359/16 Hence, on these among other grounds stated in the appeal memorandum, the appellant has prayed to set aside the order of the trial court and prayed to acquit him in both the criminal cases.

6. The revision petitioner being aggrieved by the judgment of the trial court regarding quantum of compensation awarded in both the cases has preferred the aforesaid two revision petitions by taking similar grounds.

The Grounds urged in the revision petition in nutshell are as follows :

> (a) The sentence of fine imposed by the learned Trial Judge is grossly inadequate and does not commensurate with the nature of the crime and value thereof and also, it does not amount to granting simple interest to the amount of cheque.
>
> (b) The learned Trial Judge is erred in law in awarding fine of Rs.1.10,000/- only as against cheque amounts. The reasons assigned by the learned Trial Judge for doing so is only untenable.
>
> (c) The complainant has not accept that he has received Rs.5,70,000/- from the accused. He has only C/w. Crl.R.P.358/2016 & 359/16 admitted that he has received the amount from the accused towards interest every month.
>
> (d) The learned Trial Judge is erred in not awarding double the amount of cheque despite of noting admission of payment of interest alone. The learned Trial Judge has completely misread the provision of law and failed to impose double the amount of cheque as fine. The learned Trial Judge has also not considered the judgment of Hon'ble Supreme Court of India and Hon'ble High Court of Karnataka wherein, it is clearly held that for commission of offence u/s.138 of N.I.Act, the court should impose double the cheque amount as fine.

On these among other grounds as stated in the petitions, the petitioner has prayed to allow both the petitions.

7. After filing of the appeals and revision petitions, notice was issued to the respondent. In pursuance of notice, the respondent of appeals and revision petitions have appeared before the court through their counsel. Thereafter, the lower court record was called for in both the C/w. Crl.R.P.358/2016 & 359/16 appeals. After receipt of lower court record, the matter was posted for arguments.

8. Heard the arguments of the Learned counsel for the appellant and revision petitioner. Perused the appeal memorandum, lower court record and other materials on record.

9. Having done so, the following points will arise for my consideration in Crl. Appeal Nos.595/2016 and 596/2016:-

(1) Whether the appellant proves that the trial court is erred in convicting the accused/appellant for the offence punishable u/s.138 of N.I.Act in C.C.Nos.9375/13 and 9376/13 ?

(2) Whether the appellant proves that the interference of this court is required with the impugned judgment of the trial court in C.C.Nos.9375/13 and 9376/13 so far as convicting the accused u/s.138 of N.I.Act?

(3) Whether both the appeals filed by the appellant is deserves to be allowed?

(4) What order?

10. The following points will arise for my consideration in Crl.R.P.Nos..358/2016 and 359/2016:-

C/w. Crl.R.P.358/2016 & 359/16 (1) Whether the petitioner proves that the trial court is erred in not awarding double the cheque amount as compensation to him in the judgment of C.C.Nos.9375/13 and 9376/13?

(2) Whether the petitioner proves the interference of this court is required with the impugned judgment and decree of the trial court in C.C.Nos.9375/13 and 9376/13 ?

(3) Whether the petitions filed by the petitioner is deserves to be allowed? (4) What order?

11. My findings on the aforesaid points in Crl.A.595/2016 and 596/2016 are as under:

(1) Point No.1 .. In the Negative
(2) Point No.2 .. In the Negative
(3) Point No.3 .. In the Negative
(4) Point No.4 .. As per final order
for the following:

12. My findings on the aforesaid points in

Crl.R.P.Nos.358/2016 and 359/2016 are as under:

(1) Point No.1 .. In the Affirmative
(2) Point No.2 .. Partly in Affirmative
(3) Point No.3 .. Partly in Affirmative
(4) Point No.4 .. As per final order
for the following:

C/w. Crl.R.P.358/2016 & 359/16

R EAS O N S

13. Point No.1 to 3 in Crl.A.No.595/2016 and 596/2016:- These two points are interrelated to each other and as such, they are taken together for discussion to avoid repetition of facts.

14. Both the appeals filed by the accused of C.C.No.9375/13 and 9376/13 challenging the judgment of conviction passed by learned 7 th Addl. Judge and 32nd ACMM, Court of Small Causes, SCCH-3, Bangalore, dated 20.4.2016. The complainant has filed two private complaints bearing No.4195/13 and 4196/13 before the trial court against the accused by alleging the offence punishable u/s.138 of N.I.Act. The learned Trial Judge after recording sworn statement of the complainant and after taking the cognizance for the offence u/s.138 of N.I.Act against the accused has registered the criminal case bearing C.C.Nos.9375/13 and 9376/13 against the accused. The learned Trial Judge has also recorded the plea of accused for the offence punishable u/s.138 of N.I.Act. Hence, it is for the complainant to adduce sufficient evidence to prove all the essential ingredients C/w. Crl.R.P.358/2016 & 359/16 that are required to prove commission of offence punishable u/s.138 of N.I. Act.

15. Sec.138 of N.I. Act provides as follows:

"Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for (a term which may be extended to two years), or with fine which may extend to twice the amount of the cheque or with both. "

16. In view of the aforesaid provision, the complainant has to prove that the accused has drawn the cheque on an account maintained by him with his Banker. Further, the complainant has to prove that the said cheque is issued towards payment of any amount of money to the complainant or to discharge whole or part of any debt or other legal liability by the accused towards the C/w. Crl.R.P.358/2016 & 359/16 complainant. Further, the complainant has to prove that the cheque issued by the accused is dishonoured due to insufficiency of funds to honour the cheque or for any other purpose as provided under the said section. Now, let us examine the facts and circumstances of the case in order to adjudicate whether the complainant has proved the aforesaid essential ingredients of Sec.138 of N.I.Act or not.

17. According to the complainant, the accused has borrowed some of Rs.4,00,000/- from him for financial difficulty and improvement of his business promising to repay the said amount with interest. Further, according to the complainant, the accused has paid interest promptly but, he has failed to repay the principal amount. Further, according to the complainant, when he has insisted

the accused for payment of principal amount, the accused has issued 4 cheques bearing No.215780 dt.3.12.2012, No.215781 dt.13.12.2012, No.215782 dt.24.12.2012, and No.215783 dt. 7.1.2013 for Rs.1,00,000/- each drawn on State Bank of Mysore, Chamarajpet Branch, Bangalore. Further, according to the complainant, he has presented the cheques bearing Nos.215782 and 215783 for C/w. Crl.R.P.358/2016 & 359/16 encashment through his Bank i.e. Karnataka State Apex Co-op. Bank Limited, Vijayanagar Branch, Bangalore. He has presented cheque No.215780 and 215781 for encashment to his Banker i.e. Karnataka Bank Limited, Rajajinagar Branch, Bangalore. But, all the four cheques were returned dishonoured with an endorsement dated 11.1.2013 to the effect "refer to drawer". Further, according to the complainant, he has got issued legal notice dt.17.1.2013 through registered post to the accused demanding him to pay the cheque amount. But, the accused did not comply the said legal notice inspite of receipt of the same.

18. In order to prove the aforesaid contentions, the complainant has adduced his oral evidence as PW.1. PW.1 in his examination in chief filed by way of affidavit u/s.145 of N.I.Act has reiterated the aforesaid facts regarding issuance of cheques by the accused towards discharge of his legal liability and about dishonour of those cheques. Hence, entire examination in chief of PW.1 are not reproduced herein to avoid repetition of facts.

C/w. Crl.R.P.358/2016 & 359/16

19. The complainant apart from adducing his oral evidence has also produced 6 documents in C.C.No.9375/13 and got them marked as Ex.P.1 to P.6 and 8 documents in C.C.No.9376/13 and got them marked as Ex.P.1 to P.8. Ex.P.1 of both case are the original cheque bearing Nos.215782 dt. dt.24.12.2012 and 215780 dt.3.12.2013 for Rs.1,00,000/- each drawn on State Bank of Mysore, Chamarajpet, Bangalore. The signature of the accused is marked as Ex.P.1(a). Ex.P.2 is the original cheques bearing No.215783 dt.7.1.2013 and 215781 dt.13.12.2012 for Rs.1,00,000/- each drawn on State Bank of Mysore, Chamarajpet, Bangalore. The signature of the accused is marked as Ex.P.2(a). Ex.P.3 and 4 of both the cases are the return memo issued by State Bank of Mysore by dishonouring the aforesaid two cheques for the reasons "refer to drawer". Ex.P.5 in both the cases are the legal notice dt.17.1.2013 issued by the complainant to the accused by intimating about the dishonour of four cheques issued by him and by demanding the payment of cheque amount. Ex.P.6 is the postal acknowledgement for having served the legal notice on the accused. Ex.P.7 and 8 of C/w. Crl.R.P.358/2016 & 359/16 C.C.No.9376/13 are the complaint in C.C.No.8698/08 and deposition of PW.1 in C.C.No.82/2010.

20. The accused had cross-examined PW.1 before the trial court. During the course of cross-examination of PW.1, the accused has not put any suggestions by stating that Exs.P.1 and 2 cheques of both the cases are not issued by him to the complainant and that those cheques are not drawn on the account maintained by him with his Banker i.e. State Bank of Mysore, Chamarajpet Branch, Bangalore. Further, the accused has also not put any suggestion to PW.1 by stating that he has not borrowed loan of Rs.4,00,000/- from the complainant. During the course of cross-examination of PW,1, the accused has put suggestions about his defence. According to the accused, he has already paid Rs.5,70,000/- towards the loan amount to the complainant through cheques and by cash. Further, according to the accused, four cheques were issued by him as security

for repayment of loan amount. Further, according to the accused, inspite of payment of entire loan amount, the complainant has not returned the four blank cheques issued by him and as such, he has C/w. Crl.R.P.358/2016 & 359/16 issued notice to the complainant on 5.1.2013 requesting to return 4 cheques given by him.

21. But PW.1 has denied the suggestion put to him that the accused has repaid the loan amount and also denied the suggestion that the accused has issued cheques as security for repayment of loan amount. Since the accused has admitted his signatures on Ex.P.1 and 2 cheques and since the accused has also admitted the handing over of those four cheques to the complainant, the complainant will became the holder of a cheque within the meaning of Sec.8 of N.I.Act. Once a cheque is issued by the drawer, a presumption under Sec.139 of N.I.Act must follow.

22. Sec.139 of N.I.Act provides as follows:

> "It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Sec.138 for the discharge, in whole or in part, of any debt or other liability.

23. Thus, Sec.139 of N.I.Act raises a presumption that the cheque had been issued for discharge of a debt or liability and that the existence or legally recoverable debt is not the matter of presumption under this Act. The Hon'ble C/w. Crl.R.P.358/2016 & 359/16 Supreme Court of India in Krishna Janardhan Bhad vs. Dattatreya G.Hegde (2008) 2 SC Crl.166) has also held that Sec.139 of the Act merely raises the presumption in favour of holder of cheque that the said cheque has been issued for discharge of debt or other liability, but existence of legally recoverable debt is not a matter of presumption u/s.139 of N.I.Act. Thus, u/s.139 of N.I.Act, the initial presumption arises in favour of the complainant that the said cheque was issued for discharge of legally enforceable debt.

24. The presumption u/s.139 of N.I.Act is rebuttable presumption. It is for the accused to adduce any rebuttal evidence to rebut the initial presumption raised in favour of the complainant. The accused in order to rebut the said presumption has adduced his defence evidence as DW.1. DW.1 in his examination in chief, has deposed about his defence which was suggested to PW.1 during the course of his cross examination. DW.1 in his examination in chief has admitted that he has obtained loan of Rs.3,00,000/- from the complainant on 8.3.2007 and he has obtained C/w. Crl.R.P.358/2016 & 359/16 loan of Rs.1,00,000/- from the complainant in the month of April 2008.

25. DW.1 in his examination in chief has deposed that he has repaid the entire loan amount in instalments. He has stated that on 11.4.2007, he has paid Rs.50,000/- through cheque to the complainant. He has also deposed that he has paid Rs.6000/- each to the complainant for the period of 12 months from 19.4.2007 to 11.3.2008 through cheques. He has also deposed in his evidence that he has paid Rs.8000/- each to the complainant for the period of 23 months from 14.6.2008 to 23.4.2010 through cheques. He has also deposed in his evidence that he has paid Rs.8000/- each to the complainant for the period of 16 months from 2.8.2011 to 1.1.2013 through cheques. DW.1 has further deposed in his chief examination that he has totally paid Rs.4,34,000/- to the complainant through cheques and paid Rs.1,36,000/- by way of cash. Hence, DW.1 has stated

that he has returned Rs.5,70,000/- to the complainant.

26. The accused apart from adducing his oral evidence, has also produced his Bank statement at Ex.D.4, C/w. Crl.R.P.358/2016 & 359/16 D.5 to D.16, D.17 to D.38, and D.39 in order to prove the repayment of the loan amount by way of installments in the manner stated by him in the chief examination. Complainant in his cross examination has admitted the receipt of Rs.50,000/- from the accused on 11.4.2007 through cheque. He has also admitted that the accused has paid Rs.6000/- on 19.4.2007 . He has also admitted in his cross examination that the accused has repaid loan amounts upto 2010 through cheques and cash. PW.1 has also admitted that the accused has paid Rs.8000/- each per month to him from 2.8.2011 to 1.1.2013. But PW.1 has denied the suggestion put to him that the accused has paid extra amount of Rs.1,70,000/- to him.

27. I have perused the Bank statements produced by the accused at Ex.D.3 to D.39. In the Bank statement at Ex.D.3, there is reference about payment of Rs.3,00,000/- by the complainant to the accused in the month of March 2007. In the Bank statement at Ex.D.4, there is reference about payment of Rs.50,000/- by the accused to the complainant. Further, in other Bank statements, there is reference about payment of Rs.6,000/- each for some C/w. Crl.R.P.358/2016 & 359/16 period and Rs.8000/- each for some period. The total amount shown in the Bank statement would come to Rs.4,34,000/-. Thus, from the Bank statement produced by the accused, it is clear that the accused has paid Rs.4,34,000/- to the complainant during different period from April 2007 to January 2013.

28. The complainant has admitted the payment of Rs.4,34,000/- by the accused to him on different dates mentioned in the Bank statements. But, the complainant has not admitted the payment of Rs.1,36,000/- through cash by the accused. The accused has not adduced any satisfactory evidence in order to prove his contention that he has paid Rs.1,36,000/- through cash to the complainant. Without any documentary proof, the contention of the accused that he has paid Rs.1,36,000/- to the complainant by way of cash cannot be acceptable one.

29. Eventhough the complainant has admitted the receipt of Rs.4,34,000/- from the accused, it is the contention of the complainant that the said amount was paid by the accused towards payment of interest on the C/w. Crl.R.P.358/2016 & 359/16 loan amount of Rs.4,00,000/-. Whereas it is the defence of the accused that the said amount was paid by him towards payment of principal amount. It is the contention of the accused that he has repaid the loan amount by instalment to the complainant. The learned counsel for the accused has argued that there is no agreement or contract between the accused and complainant to pay the interest on loan obtained by the accused from the complainant and the complainant has falsely stated that the amount paid by the accused is only towards interest amount.

30. In view of presumption u/s.139 of N.I.Act, there is initial presumption in favour of the complainant that the accused has issued cheques for discharge of his legally enforceable debt. Further, as it is stated earlier, the complainant has also adduced his oral evidence as PW.1 in order to prove his contention that the accused has issued cheques towards payment of principal amount and he has also deposed in his evidence that the accused was promptly paying the interest amount

regularly. The complainant has also pleaded in the private complaint that the accused was paying the interest regularly and he has issued four C/w. Crl.R.P.358/2016 & 359/16 cheques towards repayment of principal hand loan amount. The complainant has discharged his initial burden of proving that the four cheques were issued by the accused for discharge of his legally enforceable debt. As such, the burden is upon the accused to rebut the said presumption by adducing sufficient evidence.

31. Except the oral evidence of DW.1, the accused has not produced any sufficient documentary evidence to prove that the amount of Rs.4,34,000/- paid by him is towards payment of principal amount. Further, nothing has been elicited during the course of cross examination of PW.1 in the form of admission to elicit that the payment was made by the accused towards principal amount. It is only elicited during the course of cross examination of PW.1 that there was no agreement to pay interest at the time of giving the loan amount. Even if the contention of the accused that he has made payment only towards principal is accepted for a while, the accused has not satisfactorily explained why he has made excess payment than the principal amount to the complainant. If really, the accused had intention of payment of principal amount C/w. Crl.R.P.358/2016 & 359/16 only, he would have repaid only Rs.4,00,000/- to the complainant.

32. Further, it is the defence of the accused that he has issued four cheques to the complainant as a security for repayment of loan amount. But, except the interested testimony of DW.1, there are no sufficient evidence to prove the said contention of the accused. The accused has not adduced any satisfactory evidence to prove his contention that he has issued four cheques for Rs.4,00,000/- to the complainant as security for repayment of loan amount. It is to be noted here that during the course of cross examination of DW.1, DW.1 has stated that he has issued 4 cheques to the accused during the year 2008 at the time of obtaining 2nd instalment of hand loan amount of Rs.1,00,000/-. Further, in Ex.D.1 the notice dt.5.1.2013 issued by the accused to the complainant, it is mentioned that he has received 2nd installment of hand loan amount of Rs.1,00,000/- in the year 2008 and at that time, he had issued 4 cheques to the complainant as security purpose at the request of the complainant.

C/w. Crl.R.P.358/2016 & 359/16

33. As per the admission of accused himself, during the year 2008, he has received only Rs.1,00,000/- from the complainant. As per the contention of the accused and as per the Bank statement produced by the accused, the accused has received Rs.3,00,000/- from the complainant in the month of March 2007. Further, the accused has also made payment of the amount to the complainant from April 2007 onwards in installments. On 11.4.2007, the accused has paid Rs.50,000/- to the complainant and thereafter, till March 2008, the accused has paid Rs.6,000/- each to the complainant. Till 2008, the accused has paid more than Rs.1,00,000/- to the complainant at different dates. If really, the accused had intention of issuing the cheques to the complainant as security purpose, he would have issued cheques only to the balance amount to be paid by him to the complainant at the time of issuing the cheques after deducting the amount which is already paid by him as stated above. The accused has not properly explained why he has issued 4 cheques for Rs.1,00,000/- each at the time of obtaining 2 nd installment of loan amount of

Rs.1,00,000/- eventhough he C/w. Crl.R.P.358/2016 & 359/16 has already repaid more than amount of Rs.1,00,000/- to the complainant is not properly explained by the accused. This fact supports the contention of the complainant that the earlier amount repaid by the accused on different dates is towards the payment of interest amount, and not towards the payment of principal amount.

34. Further, it is to be noted here that during the course of cross examination of DW.1, it is elicited on behalf of the complainant that C.C.No.82/2010 was filed by the accused against one S.T.N.Murthy regarding dishonour of cheque. Since DW.1 has admitted the documents pertaining to said proceedings, those were marked as Ex.P.7 and P.8 during the course of cross examination of DW.1. DW.1 in his cross examination has clearly admitted that in the said proceedings, he has admitted about receipt of Rs.4,00,000/- hand loan amount from the complainant. He has also admitted that he has stated in the said proceedings that he has been paying interest at the rate of 2% on the said amount. In Ex.P.7 is the complaint filed by the present complainant and the same was numbered as C.C.No.82/2010. Ex.P.8 is his deposition. In the cross C/w. Crl.R.P.358/2016 & 359/16 examination dated 1.4.2011, he has clearly admitted that he has borrowed sum of Rs.4,00,000/- from one Raghu who is the complainant of the present case and he has been paying 2% interest per month to the said amount. Since the accused in the said case has clearly admitted that he has been paying interest of 2% per month on Rs.4,00,000/- hand loan amount obtained from the complainant, the contention of the accused that the amount paid by him to the complainant is towards payment of principal amount cannot be acceptable one. The said admission of the accused strengthen the contention of the complainant that the payment of more than Rs.4,00,000/- made by the accused to him is only towards interest amount and not towards principal amount. Eventhough there is no specific written contract for payment of interest on Rs.4,00,000/- at the rate of 12% p.m, the aforesaid admission of accused in C.C.No. 82/2010 and for the other facts and circumstances which are discussed above, the contention of the complainant that amount paid by the accused is only towards payment of interest of amount can be accepted as true. For the C/w. Crl.R.P.358/2016 & 359/16 reasons stated above, the contention of the accused that he has paid the amount of Rs.4,34,000/- to the accused towards principal amount and he has issued four cheques to the complainant in the year 2008 as a security for repayment of Rs.4,00,000/- cannot be acceptable one.

35. The learned counsel for the accused has much relied upon Ex.D.1, the notice issued by the accused to the complainant stating that he has already repaid excess amount than the loan amount and demanding the return of four cheques issued by him. The said legal notice is dt.5.1.2013. Whereas the legal notice issued by the complainant to the accused is dt.17.1.2013. The learned counsel for the accused has argued that the accused has issued legal notice to the complainant much earlier than the notice issued by the complainant to him. Four cheques produced by the complainant at Ex.P.1 and 2 are dt.24.12.2012, 7.1.2013, 3.12.2012 and 13.12.2012. The notice issued by the accused to the complainant is dt.5.1.2013. There is possibility that the accused might have issued the said notice to the complainant immediately after issuance of four cheques by predicting dishonour of C/w. Crl.R.P.358/2016 & 359/16 those cheques and in order to make a ground of defence in case if the complainant filed case against him for the offence u/s.138 of N.I.Act. The accused has failed to adduce any sufficient evidence to prove his contention that he has issued four cheques to the

complainant in the year 2012 itself and the complainant has put the dates subsequently and presented the same for encashment.

36. The accused has clearly admitted his signatures on all the four cheques. He has also clearly admitted that those cheques were issued by him to the complainant. The accused has also clearly admitted that the contents of the cheques except the date were written by him. Further, the accused has also clearly admitted that those cheques were drawn by him on the account maintained by him in State Bank of Mysore. The accused has also clearly admitted that he has borrowed hand loan of Rs.4,00,000/- from the complainant. But as discussed earlier, the accused has failed to adduce any satisfactory rebuttal evidence to prove his contention that he has issued those two cheques and other two cheques to the complainant as security for repayment of loan amount. Further, the accused has also C/w. Crl.R.P.358/2016 & 359/16 failed to prove his contention that he has already repaid the loan amount to the complainant and as such, there is no legally enforceable debt payable by him to the complainant as on the date of issuance of those cheques.

37. On the other hand, there are sufficient materials to show on record that the amount paid by the accused to the complainant is only towards payment of interest and not towards payment of principal amount. As such, from those materials and also from the evidence adduced on behalf of the complainant and also by raising presumption u/s.139 of N.I.Act, it can be come to the conclusion that the accused had issued the cheques to the complainant for discharge of his legal liability. Under these facts and circumstances, I am of the opinion that the complainant has proved all the essential ingredients of Sec.138 of N.I.Act and proved that the accused has issued four cheques on an account maintained by him with his Banker for discharge of his legally enforceable debt and those cheques were dishonoured and the accused has not repaid the said amount inspite of issuance of legal notice by him. As such, the learned Trial Judge has rightly answered C/w. Crl.R.P.358/2016 & 359/16 point NO.1 in Affirmative in both the cases. The finding of the trial court on point NO.1 framed by it in both the cases is based upon proper appreciation of oral and documentary evidence adduced on behalf of both the parties. The said finding cannot be considered as illegal, perverse or against to facts and circumstances of the case. I do not find any merits in the contention of the learned counsel for the appellant that the trial court is erred in answering issue No.1 in affirmative. As such, I do not find any grounds to interfere with the finding of the trial court on point No.1 of C.C.No.9375/13 and 9376/13.

38. The proviso (a) to Sec.138 of N.I. Act provides that the cheque must be presented to the Bank within the period of 6 months on the date which was drawn. The On the other hand, there are sufficient materials to show on record that the amount paid by the accused to the complainant is only towards payment of interest and not towards payment of principal amount. As such, from those materials and also from the evidence adduced on behalf of the complainant and also by raising presumption u/s.139 of N.I.Act, it can be come to the conclusion that the C/w. Crl.R.P.358/2016 & 359/16 accused had issued the cheques to the complainant for discharge of his legal liability. Under these facts and circumstances, I am of the opinion that the complainant has has presented the cheque within the period of 6 months from the date when four cheques were drawn. Further, proviso (b) to Sec.138 of N.I.Act provides for issuance of notice in writing to the drawer of the cheque within 30 days of receipt of information from the Bank regarding return of cheque as

unpaid. Ex.P.1 and P.2 cheques were returned as dishonoured on 11.1.2013. The complainant has issued legal notice to the accused on 17.1.2013 about dishonour of the cheques issued by him and demanding the repayment of cheque amount. Proviso

(c) to Sec.138 of N.I.Act provides for grace period of 15 days for making payment after receipt of the legal notice. Thereafter, the complaint has to be filed within the period of 30 days from the date of expiry of grace period of 15 days. The legal notice was served upon the complainant on 21.1.2013. Whereas the two private complaints were filed by the complainant before the court on 2.3.2013. Both the private complaints were filed within the period 45 days C/w. Crl.R.P.358/2016 & 359/16 from the date of service of legal notice on the accused. The complainant has complied all other essential ingredients as provided u/s.138 of N.I.Act and followed the statutory provisions provided under the said Act prior to the date of filing of private complaint. Under these facts and circumstances, I am of the opinion that the complainant has proved beyond reasonable doubt that the accused has committed the offence punishable u/s.138 of N.I.Act. As such, I am of the opinion that the trial court has rightly answered point No.2 and 3 in Affirmative in C.C.No.9375/13 and 9376/13. As such, I do not find any grounds to interfere with the finding of the trial court that the accused has committed offence punishable u/s.138 of N.I.Act and the complainant has complied all the provisions of Sec.138 of N.I.Act. I do not find any merits in the contention of the learned counsel for the appellant that the trial court is erred in holding that the accused has committed offence u/s.138 of N.I.Act. I do not find any merits in any of the grounds urged by the appellant in the appeal memorandum of both the appeals and those grounds are not sufficient to come to the conclusion that C/w. Crl.R.P.358/2016 & 359/16 the trial court is erred in holding that the accused is guilty of the offence punishable u/s.138 of N.I.Act in C.C.No.9375/13 and 9376/13. As such, I do not find any reasons to interfere with the finding of the trial court on any of the points raised by it. The appellant has failed to prove point No.1 and also failed to prove that the interference of this court is required with the finding of the trial court regarding conviction of the accused for the offence punishable u/s.138 of N.I.Act. Since the appellant has failed to prove that the trial court is erred in convicting the accused for the offence punishable u/s.138 of N.I.Act in C.C.No.9375/13 and 9376/13, I am of the opinion that both the appeals filed by the appellant are deserves to be dismissed. Accordingly, I answer point No.1 to 3 of Crl.A.Nos.595/2016 and 596/2016 in Negative.

39. Point No.1 to 3 in Crl.R.P.No.358/2016 and 359/2016 :- All the aforesaid points are interrelated to each other and as such, they are taken together for discussion to avoid.

40. The learned trial Judge after holding the accused guilty of the offence punishable u/s.138 of N.I. Act in C/w. Crl.R.P.358/2016 & 359/16 C.C.No.9375/13 and 9376/13 was pleased to convict him u/s.255(2) of Cr.P.C., and sentenced the accused to pay fine of Rs.1,10,000/- in both the cases. Further, the learned trial Judge by acting u/s.357 of Cr.P.C., has directed to pay Rs.10,000/- as compensation to the complainant out of the said fine amount in both the cases. The learned trial judge has also directed the accused to undergo simple imprisonment for the period of six months in default of payment of fine amount in both the cases.

41. The petitioner in the revision petitions has contended that the trial court ought to have awarded double the cheque amount as compensation amount and trial court is erred in awarding

compensation of only Rs.10,000/- each in both the cases to the complainant. It is also contended by the revision petitioner that the reason assigned by the trial court for awarding fine of only Rs.1,10,000/- and compensation of Rs.10,000/- in both the cases is not proper and judicious.

42. The learned counsel for the revision petitioner in support of his arguments that awarding of double the cheque amount as compensation to the complainant in C/w. Crl.R.P.358/2016 & 359/16 case of conviction of the accused for the offence punishable u/s.138 of N.I.Act is mandatory, has relied upon the judgment of Hon'ble Supreme Court of India in (1) Crl.A.123/2021 (arising out of SPL(Crl.) No.1876/18 (M/s.Kalamani Tex and another vs. P.Bala-subramanian) decided on 10.12.2021.

(2) Smt.Ankush Shivaji Gaiwad vs. State of Maharashtra (2013) 6 SCC 770.

(3) The Judgment of Hon'ble High Court of Karnataka in Smt.Bhavani vs. D.C. Doddarangaiah and another (2002) Crl.L.J. 3814.

43. I have perused Sec.138 of N.I. Act and the aforesaid decisions relied upon by the learned counsel for the petitioner. Sec.138 of N.I.Act provides punishment for dishonour of cheques for insufficiency of funds etc., It provides that one who is defaulter can be punished with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of the cheque or both. Thus, it is clear from the aforesaid provision that it is not mandatory that in every case for the offence u/s.138 of N.I. Act, double the cheque amount shall be imposed as fine. Apart from that the Complainant C/w. Crl.R.P.358/2016 & 359/16 has no absolute right to insist that double the cheque amount shall be imposed as fine. It is purely discretion of the Magistrate. The exercise of discretionary power u/s.138 of N.I.Act cannot be considered as illegal and against to the provision of law. But, the discretion of the court has to be exercised judiciously so that, it would not cause any injustice to any of the party.

44. Though the trial court has awarded compensation of Rs.10,000/- to the complainant u/s.357 of Cr.P.C., in C.C.No.9375/13 and 9376/13, the trial court has not properly discussed why it has restricted the compensation amount to Rs.10,000/- only eventhough it has imposed fine of Rs.1,10,000/- in both the cases.

45. As it is rightly argued by the learned counsel for the petitioner, the trial court has not properly applied its mind to the provision of Sec.357 of Cr.P.C. Sec.357 of Cr.P.C., provides for passing order to pay compensation. It provides that when a Court imposes a sentence of fine or a sentence of which fine forms a part, the Court may, when passing judgment, order whole or any part of the fine recovered to be applied - (a) in defraying the expenses C/w. Crl.R.P.358/2016 & 359/16 properly incurred in the prosecution; (b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court etc.

46. Hon'ble Supreme Court of India in the decision relied upon by the learned counsel for the petitioner in M/s.Kalamani Tex and another vs. P.Balasubramanian (Crl.Appeal No.123/21

DD.10.2.2021) has observed that "object of Chapter XVII of N.I.Act is not only punitive but also compensatory and restitutive provisions of N.I.Act envision a single window for criminal liability for dishonour of cheque as well as civil liability for realization of the cheque amount. There needs to be a consistent approach towards awarding compensation and unless these exists special circumstances. The court should uniformly levy fine upto twice the cheque amount along with simple interest at the rate of 9% p.a."

47. In the aforesaid decision of Hon'ble Supreme Court of India has not made it mandatory to levy fine upto twice the cheque amount. But states that in exceptional circumstances, the fine amount less than double the C/w. Crl.R.P.358/2016 & 359/16 cheque amount can be levied. But the Hon'ble Supreme Court of India has clearly held that unless these are exceptional circumstances, the court has no discretionary power to impose the fine amount less than double the cheque amount.

48. The trial court in para No.19 of its judgment has observed that the accused had repaid more than principal amount to the complainant. The trial court has also observed that the accused has promptly repaid the rate of interest much more than the principal amount to the complainant. Further, the trial court has also observed that having regard to promptness shown by the accused in payment of rate of interest towards amount borrowed by him, it will not be just and proper to convict the accused to pay the entire principal sum covered under the cheque in question. It is further observed by the learned trial judge that taking into consideration the promptness of the accused in payment of rate of interest towards sum borrowed by him, it appears just and proper to convict him to pay cheque amount/principal sum at Rs.100,000/- each C/w. Crl.R.P.358/2016 & 359/16 in both the complaints i.e. Rs.2,00,000/- out of Rs.4,00,000/- as claimed by the complainant.

49. Eventhough the learned trial judge in para No.19 of his judgment has observed that it appears just and proper to convict the accused to pay the cheque amount/principal sum, but in para No.20 of the judgment, it is observed that it would be sufficient to sentence the accused to pay sum of Rs.1,00,000/- loan amount by way of fine and Rs.10,000/- by way of compensation. The reasons assigned by the learned trial judge in awarding fine of Rs.1,10,000/- and in awarding compensation of Rs.10,000/- against the cheque amount in C.C.No.9375/13 and 9376/13 does not seems to be proper and judicious.

50. The learned trial judge in his judgment has given categorical finding stating that the amount of more than Rs.4,00,000/- paid by the accused to the complainant is only towards payment of interest amount on Rs,4,00,000/- hand loan amount and not towards payment of principal amount. It is already discussed and held above that the appellant has failed to prove his contention that he has C/w. Crl.R.P.358/2016 & 359/16 made payment of more than Rs.4,00,000/- to the complainant towards repayment of principal amount of Rs.4,00,000/-. When the trial court has given specific finding that the accused has made the payment only towards interest amount, the trial court ought to have held that the complainant is entitled for the principal loan amount of Rs.4,00,000/-. The trial court is erred in holding that the complainant is not entitled for principal amount of Rs.4,00,000/-. When the accused is liable to pay principal amount of Rs.4,00,000/- to the complainant and when it is held by the trial court that the accused has issued four cheques towards

payment of principal amount, the trial court is grossly erred in holding that the complainant is entitled to get compensation of Rs.10,000/- only and the trial court is also erred in imposing fine of Rs.1,10,000/- only in C.C.No.9375/13 and 9376/13.

51. Hence, the reasons assigned by the learned trial judge for imposing fine of Rs.1,10,000/- and for awarding compensation of Rs.10,000/- to the complainant out of the said fine amount in C.C.No.9375/13 and 9376/13 does not seems to be proper and judicious and it is completely C/w. Crl.R.P.358/2016 & 359/16 against to the spirit of Sec.357 of Cr.P.C., and Sec.138 of N.I.Act and also against to the decisions of Hon'ble Supreme Court of India and Hon'ble High Court of Karnataka.

52. The trial court has not considered any exceptional circumstances for imposing fine amount of less than the cheque amount. Payment of interest amount by the accused to the complainant cannot be considered as exceptional circumstances to levy fine amount less than the cheque amount. The complainant is entitle under law to recover the principal hand loan amount from the accused. Payment of interest amount by the accused as per the mutual agreement between him and the complainant does not dissolve the accused from making the payment of principal amount to the complainant. Imposition of fine less than the cheque amount would enable the accused to make unjust enrichment for himself. The accused is bound under law to make payment of entire principal loan amount inspite of he paying the interest amount more than the cheque amount.

C/w. Crl.R.P.358/2016 & 359/16

53. As such, I am of the opinion that the learned trial judge is absolutely erred in law in not imposing the fine amount less than the cheque amount. The learned trial judge has not exercised her discretionary power judiciously in reducing the fine amount and in awarding compensation of Rs.10,000/- only to the complainant. As such, I am of the opinion that the quantum of fine imposed by the trial court is not in commensurate with the quantum of amount involved in the established crime. As such, I am of the opinion that interference of this court is required with the quantum of fine amount and compensation amount awarded by the trial court in C.C.No.9375/13 and 9376/13.

54. It is an admitted fact that the accused has obtained hand loan of Rs.4,00,000/- from the complainant. It is also an admitted fact that the accused has repaid more than Rs.4,00,000/- to the complainant. But it is discussed and held above that the said payment was made by the accused to the complainant towards payment of interest amount on principal amount of Rs.4,00,000/-. It is also discussed and held above that the payment of interest C/w. Crl.R.P.358/2016 & 359/16 amount by the accused more than the principal amount will not absolve the accused of his liability of paying the principal amount of Rs.4,00,000/-. Since the accused has already paid Rs.4,34,000/- to the complainant towards interest amount, if the accused is held liable to pay fine amount of twice the cheque amount as provided u/s.138 of N.I.Act, the accused would be put to hardship since he had already made payment more than the principal amount. As it is discussed earlier, imposing of twice the amount of cheque as fine amount is discretionary power of the court. In view of payment of interest amount by the accused which is more than the principal amount, I am of the opinion that it would not be proper for this court to exercise the discretionary power to impose twice the amount of cheque on the accused as prayed for by the complainant.

55. Under the facts and circumstances of the case which are discussed above, I am of the opinion that it would be sufficient if cheque amount is awarded as fine. If the cheque amount is awarded as fine amount, it would meet ends of justice to both the accused as well as C/w. Crl.R.P.358/2016 & 359/16 complainant. Ex.P.1 and P.2 cheques produced in C.C.No.9375/13 and 9376/13 are for Rs.1,00,000/- each. Under these facts and circumstances, I am of the opinion that the judgment of conviction passed by the learned trial judge is required to be modified by directing the accused to pay fine of Rs.2,05,000/- each in C.C.No.9375/13 and 9376/13 and out of the said amount, it may be directed to pay compensation of Rs.2,00,000/- each in C.C.No.9375/13 and 9376/13 to the complainant and by directing to pay the remaining sum of Rs.5,000/- as fine amount. Hence, I am of the opinion that the revision petitioner has proved point No.1. Accordingly, I answer Point No.1 of Crl.R.P.No.358/16 and 359/16 in Affirmative.

56.The revision petitioner has proved that the interference of this court is required with the impugned judgment of the trial court so far as awarding of fine and compensation in C.C.No.9375/13 and 9376/13 is concerned. Accordingly, I answer point No.2 of Crl.R.P.No.358/16 and 359/16 partly in Affirmative.

C/w. Crl.R.P.358/2016 & 359/16

57. Since it is held that twice the amount of cheque cannot be awarded as fine amount as contended by the revision petitioner and since it is held that the cheque amount can be awarded as fine amount, I am of the opinion that both the revision petitions filed by the petitioner are partly deserves to be allowed. Accordingly, I answer Point NO.3 of Crl.R.P.No.358/16 and 359/16 partly in affirmative.

58. Point No.4:- In view of my findings on point No.1 to 3 in Crl.A.Nos.595/2016, 596/16 and Crl.R.P. Nos.358/2016 and 359/16, I proceed to pass the following:

> ORD ER Crl.A.Nos.595/2016 and 596/16 filed by the appellant u/s.374(3) of Cr.P.C., are hereby dismissed.
>
> Crl.R.P.Nos.358/2016 and 359/2016 filed by the petitioner u/s.397 r/w. S.401 of Cr.P.C., are hereby partly allowed.
>
> The impugned judgment passed by learned 7 th Addl. Judge and 32nd ACMM, (Court of Small Causes, SCCH-3) Bangalore, in C.C.No.9375/2013 is hereby set aside so far as awarding fine amount and compensation is concerned and it is modified as follows:-
>
> "Acting u/s.255(2) of Cr.P.C., accused is hereby convicted for the offence punishable u/s.138 of N.I.Act.
>
> C/w. Crl.R.P.358/2016 & 359/16 The accused is hereby directed to pay fine of Rs.2,05,000/- for committing the offence punishable u/s.138 of N.I.Act.

Acting u/s.357 of Cr.P.C., out of the fine amount of Rs.2,05,000/- it is held that the complainant is entitled to get compensation amount of Rs.2,00,000/-.

In default of payment of fine amount, the accused shall undergo simple imprisonment for six months."

******** The impugned judgment passed by learned 7 th Addl. Judge and 32nd ACMM, (Court of Small Causes, SCCH-3) Bangalore, in C.C.No.9376/2013 is hereby set aside so far as awarding fine amount and compensation is concerned and it is modified as follows:-

"Acting u/s.255(2) of Cr.P.C., accused is hereby convicted for the offence punishable u/s.138 of N.I.Act.

The accused is hereby directed to pay fine of Rs.2,05,000/- for committing the offence punishable u/s.138 of N.I.Act.

Acting u/s.357 of Cr.P.C., out of the fine amount of Rs.2,05,000/- it is held that the complainant is entitled to get compensation amount of Rs.2,00,000/-.

In default of payment of fine amount, the accused shall undergo simple imprisonment for six months."

Copy of this judgment is ordered to be kept in both Crl.A.Nos.595/2016 and 596/2016 and Crl.R.P. Nos.358/2016 and 359/16.

C/w. Crl.R.P.358/2016 & 359/16 Send back the lower court records along with copy of this order.

(Dictated to the Judgment Writer directly on computer, typed by her, corrected and then pronounced by me in the open court on this the 23rd day of June, 2021).

(B.G.Pramoda) LII Addl. City Civil & Sessions Judge, Bangalore.

C/w. Crl.R.P.358/2016 & 359/16 (B.G.Pramoda) LII Addl. City Civil & Sessions Judge, Bangalore.