

(2008) 06 BOM CK 0014
In the Bombay High Court
Case No : Criminal Appeal No. 70 of 2006

Balaji Agencies Pvt. Ltd.

APPELLANT

Vs

Vilas Bagi and Another

RESPONDENT

Date of Decision : 16-06-2008

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 118, 138, 20

Citation : (2010) 1 BC 147 : (2009) CriLJ 4250

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : V.A. Lawande and F.M. Mesquita, for the Appellant; Winnie Coutinho, Public Prosecutor for No. 2 and Y.V. Nadkarni, for No. 1, for the Respondent

Judgement

N.A. Britto, J.—This is complainant's appeal against the acquittal of the accused u/s 138 of the Negotiable Instruments Act, 1881 by virtue of judgment dated 24-3-2006 of the learned J.M.F.C., Panaji.

2. There is hardly any dispute as to the facts.

3. M/s. Balaji Agencies was a proprietorship concern of Vijay M. S. Usgaonkar till about 1998 with whom the accused who is the Chairman and Managing Director of M/s. Bagi Packages Ltd. had dealings.

4. Thereafter, the said Vijay along with his brother Venkatesh formed a company and registered under the Indian Companies Act, 1956. Both were the distributors for Indian Petro Chemicals Company Ltd. and the accused had dealings with both of them. The accused placed an order for supply of certain material sent by letter dated 22-9-1997 addressed to M/s. Balaji Agencies and along with the said letter sent the subject cheque bearing No. 294434, not over Rs. 5,00,000/- as token of security. The terms agreed upon were also noted in the said letter, and, inter alia, it was stipulated that the said Balaji Agencies would give a rotating credit limit of Rs. 5,00,000/- against the deposit of the said undated cheque for Rs. 5,00,000/-. The payment would be made by the Company of the accused against

the supply of material in favour of I.P.C.L. The Company of the accused would make the payment within 15 to 30 days either in part or in whole and payment made after availment of I.F.C. would attract an interest of 21%.

5. Thereafter, by letter dated 16-3-1999. produced by the accused in the course of cross-examination, the Complainant brought to the notice of the accused that as per discussion held on 15-3-1999 the outstanding overdue as on 31-3-1999 was Rs. 9,69,647.05 including interest of Rs. 2,32,503-00. The Complainant also called upon the accused to send! a Bank Guarantee covering the said outstanding amount of 9,69,647.05 and further informed that in case they did not receive "the Bank Guarantee by 15-4-1999 then they would be forced to deposit the blank cheque on 16-4-1999 which was given to them as security for purchases made by them and in case the cheque was returned for whatsoever reasons then they would be compelled to initiate legal action against them. It was also informed that in case they desired to further purchase any raw material, they would still be in a position to supply the same on 15 days credit basis as specified by their suppliers M/s. Indian Petrochemicals Corporation Limited but the amount of purchase of raw material should be included in the Bank Guarantee over and above the total overdue outstanding. It was also explained that in case the accused desired to purchase any raw material, of Rs. 2,00,000/- then the bank guarantee should be of Rs. 11,69,647-05 plus Rs. 2,00,000/-. The accused was also requested to send TDS certificate for which provision was made in their statement of accounts for Rs. 3,610/-.

6. Admittedly, the accused did not react to the said letter dated 16-3-1999 and as a result of which the complainant completed the cheque on 31-3-1999 and presented to the State Bank of India at Panaji on 19-8-1999 for encashment only to be returned with endorsement "Exceeds Arrangements" on 24-8-1999. The complainant therefore issued a notice dated 2-9-1999 to the accused calling upon them to make the payment of the amount due on the cheque within 15 days from the receipt of the notice. The accused received the notice on 7-9-1999 but did not reply nor comply with the same. The complaint was filed by the complainant on 6-10-1999 and in support of the same the complainant examined the said Vijay M. S. Usgaonkar. The accused examined himself.

7. The learned trial Court came to the conclusion that the subject cheque was not issued in discharge of any liability, but was issued in token of security, which was not meant to be deposited and therefore the accused was entitled to be acquitted.

8. Mr. V.A. Lawande, learned Counsel on behalf of the complainant submits that even if the cheque in question was given as a security the accused was liable to be convicted in view of the law laid down by the Apex Court in I.C.D.S. Ltd. Vs. Beena Shabeer and Another, . Learned Counsel further submits that the complainant was not required to state all facts resulting into the dishonour of the cheque and in this context learned Counsel has referred to a decision of the Apex Court in M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd.

and Another, . Learned Counsel further submits that the learned trial Court has proceeded as if the presumption available in law was in favour of the accused when it was in favour of the complainant and it was for the accused to have rebutted the said presumption.

9. On the other hand, Mr. Y.V. Nadkarni, learned Counsel on behalf of the accused has submitted that when a blank cheque is issued as security then proceedings u/s 138 of the Act are not maintainable and has further submitted that the case of I.C.D.S. Limited v. Beemna Shabeer (supra) is distinguishable in that what was concerned in that case was a cheque which was given by a guarantor towards the liability of the principal debtor. Mr. Nadkarni, learned Counsel has further submitted that in this case a blank cheque was issued along with letter dated 22-9-1997 and since the cheque was presented on 19-8-1999 the same was not presented within 6 months as required and therefore it was hit by the bar created by Section 138 of the Act. Mr. Nadkarni has also submitted that the complaint in this case was filed by a registered company and the cheque was issued to a proprietorship concern and therefore the company was not the payee or the holder in due course so as to enable it to file a complaint.

10. Two points were considered by the learned trial Court since most of the other facts were admitted on behalf of both the parties. The first is whether the complaint would be maintainable in a case where the cheque was given as security. The second is in regards the subsequent payments made by the accused.

11. As regards the first finding, there is no doubt that the powers of the appellate Court in dealing with appeal against acquittal of the accused are well settled. This Court in Om Shri Finance & Investment Corporation v. Mohammed A. Sheikh and Anr. 2007 (11) LJ SOFT (URC) 24 relying upon the Judgment of the Apex Court in State of Rajasthan Vs. Raja Ram, has stated that unless the Judgment of the trial Court is perverse, it cannot be interfered with in an appeal against acquittal. If the view taken by the trial Court is a reasonably possible view, the order of acquittal cannot be interfered with because the presumption of innocence of the accused is further strengthened by acquittal and if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. An order of acquittal can be interfered with only when there are compelling and substantial reasons for doing so. However, if the view taken by the trial Court is a reasonably possible view, it should not be interfered with and it is not open for this Court to substitute its own view in place of the trial Court's view.

12. In my view, the view taken by the trial Court is unreasonable in that the learned trial Court has not found out what was the effect of the complainant's letter dated 16-3-1999 which was admitted to have been received by the accused and regarding which the accused had no answer whatsoever until the complaint was filed against him. Moreover, the learned trial Court, also does not

appear to have taken note of the admission of the accused in his own evidence when the accused stated that the cheque was issued as security and it could have been used only if there was any legally enforceable debt. It was not the case of the accused that when the complainant completed the cheque on 31-3-1999 he had no liability to be met towards the complaint. That there was a legally enforceable debt is also evident from the fact that the accused after complaint was filed, made payments of substantial amounts to the complainant which will be seen hereinafter.

13. On behalf of the complainant as well as the accused a number of authorities have been cited. On behalf of the complainant, apart from the case of I.C.D.S. Ltd. Vs. Beena Shabeer and Another, the complainant has placed reliance on the case of Laxmikant D. Naik Karmali v. Santosh V. Naik and Anr. 2006 (2) GLR 251 and Purushottam Maniklal Gandhi Vs. Manohar K. Deshmukh and Another, . In the case of Laxmikant D. Karmali v. Santosh V. Naik and Anr. (supra) this Court after referring to the case of Jayam Company and Senthil Murugan Company Vs. T. Ravichandran, observed that silence on the part of the accused in not replying to a notice could at the most be taken as one of the circumstances against the accused. In the case of Purushottam Maniklal Gandhi v. Manohar K. Deshmukh and Anr. (supra) this Court observed that "there would be no question of the instrument becoming time barred, since it would become time barred only from the date of issue, which, in view of the provision 118 would be the date on the cheque; which, u/s 20, the holder had the authority to fill.

14. The question whether an accused can be convicted, if he gives a cheque as a security, has come for consideration before various Courts. One of the many common defences taken by an accused who has issued a cheque and who is prosecuted u/s 138 of the Act is that it was given by way of security and many a times even without specifying what was the nature of ,the security it was given or how such security was agreed to be enforced. Besides, the judgment of the Apex Court in I.C.D.S. Ltd. Vs. Beena Shabeer and Another, on which reliance has been placed on behalf of the complainant, learned Counsel on behalf of the accused has brought to my notice two other judgments of the Apex Court.

15. In the case of M.S. Narayana Menon @ Mani Vs. State of Kerala and Another, one of the defences taken by the accused is that one of the cheques was given by way of security and the other was given for the purpose of discounting. The prosecution was confined to the cheque given as security. The Apex Court then referred to the observation of the first appellate Court wherein it was observed that "the parties came to know each other personally at Cochin Stock Exchange and till the fifteen settlements they did not meet. It was further found that before such acquaintance ripened into thick business relations some security from the appellant was sought for by the second respondent by way of abundant caution where for only according to the appellant a blank cheque was given. The court having regard to the facts and circumstances of this case, came to the conclusion that the said version of the appellant is quite credible and probable. In

doing so, the business practice that some security is always asked for in similar transaction was noticed" and concluded that in the facts and circumstances of the case, they need not go into the question as to whether even if the prosecution falls to prove that a large portion of the amount claimed to be a part of the debt was not owing and due to the Complainant by the accused and only because he had issued a cheque for a higher amount, he would be convicted if it is held that existence of debt in respect of large part of the amount has not been proved. The appellant clearly said that nothing is due and the cheque was issued by way of security. The said defence was accepted as probable. If the defence is accepted as probable the cheque therefore cannot be held to have been issued in discharge of the debt as, for example, if a cheque is issued for security or for any other purpose the same would not come within the purview of Section 138 of the Act.

16. In *Kamala S. Vs. Vidyadharan M.J. and Another*, the defence token by the accused was that she had issued a signed blank cheque as a security along with Exh.P-1 agreement. The trial Court had come to the conclusion that "... This also suggests that Ext. P-2 may be a signed blank cheque issued by the accused to PW 1 as a security. Thus the facts and circumstances discussed above lead one to the conclusion that the defence set up by the accused that she had issued a signed blank cheque as a security along with Ext. P-1 agreement and Ext. P-2 is that cheque she had issued is probable. The circumstances discussed above are badly damaging the prosecution case and they are sufficient to displace the presumptions available to the complainant. These circumstances in fact corroborate PW 1 to show the reasonable possibility of the non-existence of the presumed fact. The accused need not prove his defence case beyond reasonable doubt. Here the evidence tendered by DW1 together with the circumstances discussed above is seen sufficient to rebut the presumptions. Now the burden again shifts to the complainant and he is to prove by independent positive evidence the most material fact of existence of debt of the accused. The complainant had not produced sufficient evidence to prove his case beyond reasonable doubt, without the help of the presumptions. Thus the complainant failed to prove beyond reasonable doubt that the accused had issued Ext. P-1 cheque towards the repayment of Rs. 1,00,000 he had borrowed from PW 1 as alleged". The Apex Court therefore observed that having considered the entire fact situation they were of the opinion that the defence case cannot be said to be wholly improbable one. If it was probable, the findings of the learned trial Judge could not have been thrown out without meeting the reasonings therefore. The High Court, therefore, in our opinion, was not correct in interfering with the said judgment.

17. It may be relevant to be noted that the decision of the Apex Court in *I.C.D.S. Ltd. Vs. Beena Shabeer and Another*, was not cited before the Apex Court in the aforesaid two decisions.

18. In *I.C.D.S. Limited v. Beemna Shabeer (supra)* the Apex Court was dealing,

inter alia, with a judgment of the Andhra Pradesh High Court which was followed by Kerala High Court in *Sreenivasan v. State of Kerala* 1999 (3) KLT 849 wherein it was held that when a cheque has been issued as a security, no complaint would lie u/s 138 of the Negotiable Instruments Act. Having referred to the said decisions, the Apex Court noted that time had come for them to assess the acceptability of such a wisdom. Thereafter the Apex Court in para 10 of the judgment noted that the language, however, has been rather specific as regards the intent of the legislature. The commencement of the Section stands with the words "where any cheque". The above noted three words are of extreme significance, in particular, by reason of the use of the word, "any" the first three words suggest that in fact for whatever reason if a cheque is drawn on an account maintained by him with a banker in favour of another person for the discharge of any of debt or other liability, the highlighted words if read with the first three words at the commencement of Section 138, leave no manner of doubt that for whatever reason it may be, the liability under this provision cannot be avoided in the event the same stands returned by the banker unpaid. The legislature has been careful enough to record not only discharge in whole or in part of any debt but the same includes other liability as well. This aspect of the matter has not been appreciated by the High Court, neither been dealt with or even referred to in the impugned Judgment.

19. The other decisions relied by the learned Counsel on behalf of the accused are *Santan Financers & Real Estate Pvt. Ltd. v. Shri Devapa A. Sarvi and Anr.* 2005 All MR (Cri) 1116, *Goa Handicrafts, Rural & Small Scale Industries Development Corporation Ltd. v. Samudra Ropes Pvt. Ltd. and Ors.* 2005 All MR (Cri) 2643 : 2006 (2) AIR Bom R 735, *Shri Ramdas Anant Naik v. Shri Jacob Fernandes* unreported decision dated 4-8-2005 in Criminal Appeal No. 23 of 2004, *Laxmikant D. Naik Karmali v. Santosh V. Naik and Anr.* 2006 (10) LJ SOFT (URC) 59, *Karekar Finance Pvt. Ltd. v. M.N. Bashyam and Anr.* 2007(9) LJ SOFT 15 : 2008 (6) AIR Bom R (DOC) 63 and *Om Shri Finance & Investment Corporation v. Mohammed A. Sheikh and Anr.* 2007(11) LJ SOFT (URC) 24. However, the fact situation in this case is quite different and therefore I need not refer to the said decision in detail.

20. As already seen the accused by letter dated 22-9-1997 had sought a rotating credit limit up to Rs. 5,00,000/- and had given a blank cheque as a token of security for a sum not over Rs. 5,00,000/- and had called upon M/s. Balaji Agencies to make certain supplies. When the Complainant's dues were not being cleared and went over and above the limit of Rs. 5,00,000/- credit and in fact to Rs. 9,69,647-05, the Complainant by his letter dated 16-3-1999 brought to the notice of the accused that the outstanding dues as on 31-3-1999 were Rs. 9,69,647-05 and called upon the accused to give a Bank Guarantee covering the said outstanding liability and in case the Complainant did not receive the Bank Guarantee by 15-4-1999 then they would be forced to deposit the blank cheque on 16-4-1999 which was given to them as security for the purchases made by the accused. The accused was further informed that in case the cheque was

returned for whatsoever reasons then they would be compelled to initiate legal action. It is very important to note that the accused received the said letter dated 16-3-1999 as he himself produced it before the Court but did not react to the same. The accused did not dispute his liability to make the payment as was required by the Complainant nor informed the Complainant that the Complainant should not proceed with deposit of the said cheque to recover the amount due by the Complainant. The silence of the accused was taken as his consent, as it was bound to be so taken, and the Complainant proceeded to complete the cheque and deposit the same only to be returned with endorsement that the funds were insufficient.

21. The expression "secure", as per Black's Law Dictionary means to give security, to assure payment. As per Oxford dictionary security, inter alia, means thing deposited or hypothecated as pledge for fulfilment of undertaking or payment of loan to be forfeited in case of failure. Security is given, not as a piece of paper to be retained by the creditor but to be enforced when the debtor fails to pay the amount. In this case the subject cheque was given to assure the payment of the goods taken on credit by the accused and once payment was not forthcoming, nor the bank guarantee sought for by the Complainant, the Complainant was certainly entitled to enforce the security and this was done by the Complainant after due notice to the accused and in such a situation, in my humble view, it could not be said that the subject cheque was not given in payment of any debt or liability and only because it was given as security the accused would not be liable for dishonour of the same. What use is a security which cannot be enforced? Since the accused had not objected to the letter dated 16-3-1999 the Complainant was free to complete the details on the cheque, earlier given as security, and present the same to recover the amount due to the Complainant. In such a fact situation, the ratio of the Apex Court in *I.C.D.S. Ltd. Vs. Beena Shabeer and Another*, was fully attracted. In other words, no doubt the cheque was issued as security but demand to clear the debt was made and upon failure, the security was enforced.

22. In the above context, reference to the case of *Karekar Finance Pvt. Ltd. v. M.N. Bashyam and Anr.* 2007 (9) LJ SOFT (URC) 15 : 2008 (6) AIR Bom R (DOC) 63 would be relevant. Referring to the Judgment in *Mrs. Shila alias Sudha Manjunath Vernekar v. Rayaba S. Dessal and Anr.* unreported decision of this Court dated 27-1-2005 in Criminal Revision Application No. 29 of 2004 this Court observed that:

From the decisions cited on behalf of both the parties and referred to hereinabove, it appears that there is preponderance of judicial opinion in favour of the proposition that when a cheque is issued duly signed by the drawer and the holder completes the same in other respects namely as regards the amount due and the date, the presumption would still be available to the complainant/holder unless the accused shows that the said particulars were filled in without the consent of the accused/drawer.

In my view cases like this cannot be termed to be a case where there is a material alteration. Material alteration will presuppose a change of something which is there to something which was not there. In cases like this there is a tacit or implied consent by the drawer to fill in the details of the amount and the date of the cheque.

23. Subsequently, this Court in *Purushottam Maniklal Gandhi v. Manohar K. Deehmukh and Anr.* 2007 (4) AIR Bom R (DOC) 43 (supra) has stated that when a drawer of a cheque delivers a signed cheque, he obviously gives an authority to the holder to put a date of his choice. Therefore, there would be no question of the instrument becoming time barred, since it would become time barred only from the date of issue, which, in view of the provision of Section 118 would be the date on the cheque, which, u/s 20, the holder had the authority to fill. In this view of the matter, the contention that the cheque was given on 22-9-1997 and which was presented beyond the period of six months needs to be rejected. Limitation had to be reckoned from 31-3-1999. The cheque might have been given along with letter dated 22-9-1997 but was completed by the Complainant after the Complainant's letter dated 16-3-1999 and was presented within six months therefrom and therefore the prohibition contained in (a) of the proviso below Section 138 would not be applicable to the case at hand.

24. The facts of the case also show that the accused had initially dealings with the proprietorship concern of the said Vijay M. S. Usgaonkar who along with his brother formed into a Company and the accused continued to have business relations with them and not only that subsequently made the payment of the amount due to the Complainant-Company and in a situation like this the contention that the cheque was given to the proprietorship concern of the said Vijay M. S. Usgaonkar and not to the Company needs to be rejected. If the sum due was to Mr. V.M.S. Usgaonkar, why did the accused pay the amount to the Complainant, which is a Company? This only shows that the business which was carried on by Mr. Usgaonkar was continued by the Company and so did the accused who continued to do the business first with the said Mr. Usgaonkar and then with the Complainant.

25. In conclusion and considering the facts of this case, in my view, the law laid down by the Apex Court in *I.C.D.S. Ltd. Vs. Beena Shabeer and Another*, was fully attracted. Securities are given so that they can be enforced when need arises. They are not given as pieces of paper. In the case at hand, the complainant after due notice to the accused that he would enforce a security in case the Bank Guarantee was not given proceeded to enforce the security and in such a situation it cannot be said that the provisions of Section 138 were not attracted. In my view, they were fully attracted and accused is bound to be convicted for the dishonour of the cheque. In this case the Complainant by following the correct method has enforced the security given towards the liability which the accused owed to the Complainant.

26. As regards the second point, the learned trial Court has come to the

conclusion that the defence has successfully proved that payments have been made after the dishonour of the cheque. On behalf of the Complainant, it is submitted that the Complainant will accept only those payments which were made by cash and for which a receipt was issued. In fact, every payment made was brought to the notice of the Complainant and what the Complainant stated was that he required to check the account. Subsequently, the accused in his affidavit in evidence has categorically stated about the payments made by the accused and the manner in which they were made. The accused has given details of payments made to the extent of Rs. 6,42,330/- and in some cases has even given the details of the drafts obtained to make the said payments. Learned Counsel on behalf of the Complainant has placed reliance on *Krishi Vikas Kendra v. Mukund Shrikishan Funde* 2006 All MR (Cri) 416 : 2006 (6) AIR Bom R (DOC) 121 wherein this Court has stated that if the accused wanted to dispute the extent of existing civil liability it was open for him to do so (a) by raising any specific plea at the stage of reply to notice u/s 138 of the Negotiable Instruments Act, (b) during cross-examination by disclosure, suggestion, (c) during Section 313 statement and (d) by bringing his own positive evidence, either in his own possession or by summoning. In the case at hand, the accused in the course of cross-examination of the complainant gave every detail of payment made, but the Complainant chose not to deny any of the said payments but only stated that he would have to check the records, but, at no stage made a statement that he had checked the records and found that no payment was made. The accused in his turn and in his evidence categorically stated about the payments made by him and which were earlier brought to the notice of the Complainant. He also substantiated the payments to a great extent by bringing on record evidence of Bank Officials from which Banks he had obtained demand drafts, etc. On the balance of probabilities, therefore, the finding that the payment of Rs. 4,45,000/- was made by the accused could not be disputed by the Complainant.

27. The complaint was filed on 6th October, 1999. The payments came to be made after 16-12-1999. The accused stated that his Company paid an amount of Rs. 1,97,330/- on 8-1-2002 by quantity discount credit note. In cross-examination the accused stated that the said credit note was dated 31-3-1998 and it reflected in their books of account on 8-2-2002 when they actually received the credit note. It is difficult to accept, if the credit note was given way back on 31-3-1998, the credit note would be sent on 8-1-2002. Therefore, the said amount of credit note will have to be excluded from the amount of Rs. 6,42,330/- which otherwise has been paid by the accused to the complainant from 16-12-1999 to 30-5-2002 as per the statement submitted on behalf of the Complainant. In other words, the sum paid by the accused to the Complainant, after filing of the complaint, works out to Rs. 4,45,000/-.

28. The Complainant filed the complaint on 6-10-1999 but the payments came to be made from 16-12-1999 onwards. In other words, the payments came to be made after an offence u/s 138 of the Act was committed by the accused. In this context, reference to the case of *William Rosario Fernandes v. Cabral & Co.* and

Anr. 2007(2) AIR Bom R 288 requires to be made. In this case it was held that:

In my humble view no drawer of a cheque can be absolved of his liability u/s 138 of the Act if he makes the payment after the notice and before the filing of the complaint and this, I say on the basis that the offence gets completed on the failure of the drawer of the cheque to comply with the notice of demand as contemplated by proviso (b) to Section 138 of the Act. Any subsequent payment by the drawer of the cheque after failure to comply with the notice either before or after filing the complaint, could be taken only towards the mitigation of the sentence to be imposed upon the drawer of the cheque by the accused in a given case. This conclusion can be safely arrived by taking note of the observations of the Supreme Court in the three cases, namely, Kusum Ingots and Alloys Ltd., etc. Vs. Pennar Peterson Securities Ltd. and Others, of K.R. Indira Vs. Dr. G. Adinarayana, as well as Rajneesh Aggarwal Vs. Amit J. Bhalla, .

29. Consequently, the payments made by the accused subsequently cannot come in the way of convicting the accused u/s 138 of the Act.

30. As a result of the above discussion, the appeal deserves to succeed, the impugned Order dated 24-3-2006 is hereby set aside and the accused convicted u/s 138 of the Act.

31. Mr. Y.V. Nadkarni, learned Counsel on behalf of the accused submits that the amount due to the Complainant on the cheque was Rs. 5,00,000/- while the Complainant has received a sum of Rs. 4,45,000/-. Mr. Nadkarni. has also referred to the Judgment of the Apex Court in Narsingh Das Tapadia Vs. Goverdhan Das Partani and Another, and has submitted that considering that the payment was made in that case the Apex Court substituted the imprisonment awarded by mere fine of Rs. 5000/-.

32. On the other hand, Mr. V.A. Lawande, learned Counsel on behalf of the complainant submits that as per letter dated 22-9-1987 the accused was required to pay interest and the amounts paid by the accused would certainly be adjusted towards interest which the accused was required to pay. Learned Counsel further submits that as on 16-3-1999 and as per letter of that date the accused was required to pay a sum of Rs. 7,37,144-05 along with interest of Rs. 2,35,503/-. Learned Counsel further submits that the fine to be imposed could be double the amount which remains to be unpaid.

33. I am not inclined to accept the submission made on behalf of the Complainant on this aspect of the case. This is not a suit for recovery of the amount due. The cheque was for Rs. 5,00,000/-. The Complainant has received Rs. 4,45,000/-. Considering these facts and other circumstances of the case, in my view, the ends of Justice would be met by directing the accused to pay a compensation of Rs. 1,00,000/-, in default to undergo six months S.I. The fine to be paid within a period of sixty days.