
(2014) 11 AP CK 0033

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1482 of 2009

Dr. Reddy's Laboratories Limited

APPELLANT

Vs

Reddy Pharmaceuticals Limited Delhi

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357(3)

Negotiable Instruments Act, 1881 (NI) — Section 138, 139, 20

Citation : (2015) 2 ALD(Cri) 1026 : (2015) 2 ALT(Cri) 310 : (2016) 1 Crimes 385

Hon'ble Judges : U. Durga Prasad Rao, J

Bench : Single Bench

Advocate : Srinavasa Iyengar, Advocate for the Appellant; A. Hari Prasad Reddy, Advocate for the Respondent

Judgement

U. Durga Prasad Rao, J.—Aggrieved by the judgment dated 24.04.2009 in C.C. No. 343 of 2004 passed by the learned XIV Additional Chief Metropolitan Magistrate, Hyderabad acquitting the accused for the offence under Section 138 of Negotiable Instruments Act, 1881 (for short "N.I Act"), the complainant preferred the instant Criminal Appeal.

2. On factual side, the case of Complainant Company is that it is engaged in manufacture and sale of bulk drugs, finished formulations etc., in India and abroad. Whereas A.1 is the public limited company carrying business in purchase and sale of active pharmaceutical ingredients (products), A.2 is its Managing Director. A.1 Company was appointed as Commercial Del credere agent of complainant for one year from 01.04.2003 for sale of complainant's products to customers in Northern India. The further case of complainant is that it supplied products from time to time on credit against the invoices and A.1 was due a sum of Rs. 69,03,380/-. A.1 issued 14 cheques all dated 06.01.2004 towards part discharge of the debt. A.2 signed on the cheques on behalf of A.1 drawn on Standard Chartered Bank, Hyderabad. The complainant deposited the cheques for collection through their bankers Standard Chartered Bank, Raj Bhavan Road,

Hyderabad. However, all the cheques were returned dishonoured with endorsement "payment stopped by drawer". Hence, the complainant issued a registered legal notice dated 17/21.01.2004 to A.1 demanding payment of the amounts covered by the cheques. For which, A.1 issued reply notice dated 02.02.2004 with false allegations. Hence, the complainant filed the private complaint in C.C. No. 343 of 2004 in respect of two cheques bearing Nos. 792483 and 792484 dated 06.01.2004 for Rs. 7,68,834/- and Rs. 78,980/- respectively, out of 14 cheques.

3. The judgment shows that during trial, P.Ws. 1 and 2 were examined and Exs. P.1 to P.17 were marked on behalf of complainant. D.W. 1 was examined and Exs. D.1 to D.23 were marked on behalf of accused.

4. The defence plea is that as per agreement dated 01.04.2003 entered into by both parties, the complainant was obligated to supply drugs to accused as per the orders placed from time to time and in order to secure the interest of complainant, the accused given several undated but signed cheques which were to be presented for encashment on instructions from the accused. In fact as per such instructions dated 28.11.2003, the complainant deposited three cheques worth Rs. 8,32,920/- on 29.11.2003 and got them encashed. While so, unfortunately disputes arose between parties leading to termination of agreement dated 01.04.2003 as per the letter of the complainant dated 12.12.2003. In the said letter, the complainant also made a claim for Rs. 1,65,95,873/-. Rebutting the said claim, the accused in his reply letter dated 22.12.2003 requested complainant to send a statement of account for ascertaining the actual amount due if any and for settlement of the claim. However, no such statement of account was forwarded by the complainant and in the absence of reconciled outstanding amount, the accused was not willing to pay any further amount. Most importantly, the further contention of the accused was that in his reply letter dated 22.12.2003, the accused advised complainant not to deposit any further cheques which were duly signed and lying with the complainant till the dispute was resolved but the complainant presented those cheques for encashment contrary to the instructions issued by the accused. He contended that there was no failure on his part to arrange funds but he was ready to discharge liabilities, provided accounts were reconciled as demanded in his letter dated 22.12.2003. The further plea of the accused is that the complainant was guilty of presenting the cheques lying in trust with him contrary to the instructions given by the accused.

5. The judgment would show that the trial Court accepted the defence plea on the following observations:

"i) There is no dispute about the accused issuing Exs. P.4 and P.5--cheques along with other cheques in favour of the complainant company and hence the presumption under Section 139 of N.I Act follows (vide Paras 16 to 21 of the judgment).

ii)The defence plea that they issued undated cheques and as per practice, they should be presented by the complainant on the written instructions given by the accused is probablised by Exs. D.2 to D.10--letters produced by the accused. (vide Paras 23 and 24 of the judgment).

iii)The accused sought for producing the statement of accounts to know the actual amount due but the complainant did not do so.

iv)Ex. P.14--agency agreement (=Ex. D.1) was terminated and civil litigation was pending before the Delhi High Court between the parties and there were no cordial terms between them by 06.01.2014 i.e. the date of cheques. Further, the accused issued a reply notice requesting the complainant not to present the undated cheques even prior to 06.01.2004. In that backdrop, no prudent person can issue bulk of cheques including the subject cheques after disputes have arisen. (vide Paras 27 and 28 of the judgment)

v)If really the accused was due to complainant company a sum of Rs. 69,03,380/-, he would have issued only one cheque for entire amount but not 14 cheques that too on a single day for different amounts and it creates doubt over the issuance of the subject cheques on the said date. If really, the invoices of different dates were correct, the complainant would have taken cheques immediately after supply of the medicines but not 14 cheques on a single day for different amounts that too long after the said invoices. No prudent person would issue such bulk of cheques on a single day that too after disputes arose between them. (vide Paras 28 to 30 of the judgment)

vi)Though the complainant has established that the accused issued cheques but failed to prove that they were issued for legally enforceable debt. On the other hand, the accused was successful in probablising his defence by adducing oral and documentary evidence."

Accordingly, the trial Court acquitted the accused.

Hence, the appeal by complainant.

6. The parties in this appeal are referred as they stood before the Tribunal.

7. Heard arguments of Sri Srinivasa Iyengar, learned counsel for appellant and Sri A. Hari Prasad Reddy, learned counsel for Mrs. D. Sangeetha Reddy, learned counsel for respondents/accused.

8. a) Impugning the judgment, learned counsel for appellant argued that though the trial Court rightly observed that the accused issued the subject two cheques and other 12 cheques and drew presumption under Section 139 of N.I Act, but thereafter misread the facts and evidence and erroneously held as if the accused successfully rebutted the presumption by probablising his defence. Expatiating his argument, learned counsel submitted that when once the issuance of cheques is admitted, the legal presumption under Section 139 of N.I Act would follow to the effect that the cheques were issued to discharge legally enforceable debt and

thereupon the burden rests on the accused to rebut the presumption with cogent and plausible evidence. In this case, the accused failed to successfully rebut the presumption inasmuch as though the accused took the plea that he issued blank cheques as a security but not in due discharge of any legally enforceable debt but D.W. 1 admitted in his cross-examination that he issued undated cheques which implies that the cheques were not blank cheques. Further, to prove that the date on the cheques was not mentioned by the accused, he did not seek to send the cheques to the handwriting expert. Thus, it would show that the accused issued cheques having fully filled up.

b) Learned counsel further argued that though the accused took the plea that the amount due to complainant was not finalised and so his issuing cheques for such unascertained amount is quite believable, it should be noted the accused has not challenged the amounts covered by the invoices towards supply of medicines as mentioned in Ex. P.8. Further, the amounts covered by 14 cheques are tallying with the amounts mentioned in the invoices and as such there is no ambiguity regarding the amount due. In spite of it, the trial Court erroneously held as if the complainant failed to produce the accounts to show that the amounts covered by cheques are legally due to the complainant. He argued that when there is no challenge about the invoice mentioned supplies and amounts covered by the invoices and also issuance of the cheques, the question of complainant furnishing the accounts does not arise.

c) Next, he argued that merely because the accused issued Ex. D.14 letter even prior to 06.01.2004 to the complainant instructing him not to present the cheques lying with complainant that is not a proof positive that some undated cheques were given by the accused to complainant for security purpose alone and not towards the discharge of legally enforceable debt. If really, blank or undated cheques were deposited by the accused with the complainant as a security, he would have got that fact mentioned in Ex. P.14--agreement for his safety and he would have also got it mentioned that the complainant should present those cheques only after receiving the written instructions from the accused. In spite of absence of such a stipulation in the agreement, he vehemently argued, the accused falsely contended as if he left some blank cheques with complainant for security purpose and in spite of his notice not to present them without his written instructions, the complainant presented them. The trial Court erred in believing this contention and holding as if the complainant is bound to present the cheques only after getting written instructions from the accused. Learned counsel argued that though accused filed Exs. D.2 to D.10 and D.23--letters to contend that on previous occasions when he issued cheques with a request letter to present them upon receiving his instructions, the complainant used to oblige the same, Exs. D.2 to D.10 and D.23 do not contain the acknowledgment or office seal of the complainant but the trial Court erroneously believed as if those letters were issued by the accused to the complainant. He alternatively argued that even if Exs. D.2 to D.10 and D.23 are believed to be true, still those letters contain only a request but not mandate. So

far as present transactions are concerned, there is no stipulation in Ex. P.14--agreement to the effect that the cheques issued by the accused should be presented by the complainant in the bank only after receiving instructions from him. As such, the complainant is not bound by the contents in Ex. D.14--letter asking complainant not to present the cheques.

d) Learned counsel finally argued that as per the evidence of P.W. 2, the accused had only a paltry sum of Rs. 24,000/- and odd in his bank account by 06.01.2004 i.e. date of presentation of the cheques and in order to avoid prosecution only, he issued instructions to the bank to stop payment and as such he is liable for punishment under Section 138 of N.I Act.

He thus prayed to allow the appeal.

9. Per contra, while supporting the judgment learned counsel for respondents/accused argued that there were business dealings between the parties not only under the present agreement but also from 1997 onwards and as per the established practice, the complainant was supplying medicines on credit basis and accused while paying amounts through cheques requesting him to present the cheques upon receiving written instructions from him and the complainant used to oblige. He submitted that Exs. D.2 to D.10--letters would confirm the same. He further argued that so far as present agreement under Ex. P.14 is concerned, the complainant as usual supplied medicines on credit basis and to secure his interest, the accused gave several undated but signed cheques which were to be presented for encashment on the instructions from accused. While so, disputes arose between the parties during second half of 2003 and complainant filed suit against the accused under Trademarks Act and the matter is pending in Delhi High Court. As a result the complainant unilaterally terminated agreement vide Ex. D.22--letter dated 12.12.2003 wherein he claimed an amount of Rs. 3 Crores but reduced to Rs. 1.65 Crores. The accused issued reply letter dated 22.12.2003 under Ex. D.14 denying the claim and requested complainant to produce the statement of accounts to ascertain the correct amount due if any to enable him to pay the same. In that letter, he also mentioned not to present the cheques issued by the accused and lying with him. He also issued Ex. D.13--letter to Standard Chartered Bank to stop payment of the 14 cheques. In spite of such clear instructions, learned counsel argued, the complainant instead of producing the statement of account, cheated the accused by presenting the cheques mentioning the date as 06.01.2004. In this backdrop, as the accounts are not settled and the amount due is not finalised and disputes are pending between parties, the complainant cannot claim that accused issued him cheques dated 06.01.2004 for discharge of the alleged legally enforceable debt. Since the cheques were deposited only as a security in the circumstances stated supra, the complainant cannot press them into service to coerce the accused. He submitted that the criminal case is not maintainable because there was no legally enforceable debt existing and further the accused instructed his banker to stop payment not because of lack of funds in his account but for a valid reason as

narrated. The trial Court rightly acquitted him. He thus prayed to dismiss the appeal.

10. In the light of above rival arguments, the points that arise for determination in this appeal are:

"1. Whether the stop payment instructions issued by the Accused to his banker will attract penal liability under Section 138 of N.I. Act?

2. If Point No. 1 is held in affirmative, whether accused could successfully rebut the presumption drawn under Section 139 of N.I. Act in favour of the appellant/complainant?

3. To what relief?"

11. Point No. 1: In the instant case, admittedly Exs. P.4 and P.5-cheques were returned by the Standard Chartered Bank with the Exs. P.6 and P.7: endorsement--"payment stopped by the drawer". P.W. 2-the Branch Manager deposed that their bank stopped the payment on receiving the written request from the accused company dated 22.10.2003 (sic 22.12.2003). D.W. 1 also admitted this fact in his evidence and deposed that under Ex. D.13-letter he intimated the bank not to honour the cheques and keep them in abeyance. Of course the explanation of the accused for giving such instructions is that the accounts were not settled and hence statement of account was sought for from the complainant and that the cheques in issue were issued only as a security but not in due discharge of any legally enforceable debt. Be that it may, the pertinent point is when a drawer admits issuance of a cheque and before the holder-in-due course realises the cheque amount by presenting it in the bank, issues a stop payment instruction to his banker whether prosecution under Section 138 of N.I. Act is maintainable or not.

12. a) It is imperative to discuss the case law on this aspect.

"i)In M/s. Electronics Trade and Technology Development Corpn. Ltd., Secunderabad Vs. M/s. Indian Technologists and Engineers (Electronics) Pvt. Ltd. and another, , a Division Bench of Hon''ble Apex Court expressed the view that the stop payment instructions would attract penal liability under Section 138 of N.I Act under certain circumstances only. It held thus:

"Para 7: xx xx... It is seen that once the cheque has been drawn and issued to the payee and the payee has presented the cheque and thereafter, if any instructions are issued to the Bank for non-payment and the cheque is returned to the payee with such an endorsement, it amounts to dishonour of cheque and it comes within the meaning of Section 138. Suppose after the cheque is issued to the payee or to the holder in due course and before it is presented for encashment, notice is issued to him not to present the same for encashment and yet the payee or holder in due course presents the cheque to the Bank for payment and when it is returned on instructions, Section 138 does not get attracted."

ii)The above view was followed in a subsequent decision reported in K.K. Sidharthan Vs. T.P. Praveena Chandran and Another, .

iii)However, a full bench of Hon"ble Apex court has overruled the above two decisions in its judgment reported in M/S Modi Cements Limited Vs. Shri Kuchil Kumar Nandi, . The full bench observed thus:

"Para 16: xx xx... It is for this reason we are of the considered view that the observations of this Court in Electronics Trade & Technology Development Corporation Ltd., Secunderabad (supra) in paragraph 6 to the effect "Suppose after the cheque is issued to the payee or to the holder in due course and before it is presented for encashment, notice is issued to him not to present the same for encashment and yet the payee or holder in due course presents the cheque to the bank for payment and when it is returned on instructions. Section 138 does not get attracted", does not fit in with the object and purpose for which the above chapter has been brought on the Statute Book."

"Para 20: xx xx... For the reasons stated hereinabove, we are unable to share the views expressed by this Court in the above two cases and we respectfully differ with the same regarding interpretation of Section 138 of the Act of the limited extent as indicated above."

Thus it is clear that the penal liability under Section 138 of NI Act gets attracted when stop payment instruction is issued either before or after presentation of the cheque.

iv)In a subsequent decision reported in M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another, , the Apex Court reiterated the same point and held thus:

"Para 19: Just such a contention has been negated by this Court has, in the case of Modi Cements Ltd. v. Kumar Nandi (supra). It has been that even though the cheque is dishonoured by reason of stop payment instruction an offence under Section 138 could still be made out. It is held that the presumption under Section 139 is attracted in such a case also. The authority shows that even when the cheque is dishonoured by reason of stop payment instruction by virtue of Section 139 the Court has to presume that the cheque was received by the holder for the discharge in (SIC) or in part, of any debt or liability. Of course this is a rebuttable presumption. The accused can thus show that the "stop payment" instructions were not issued because of insufficiency or paucity of funds. If the accused shows that in his account there was sufficient funds to clear the amount of the cheque at the time of presentation of the cheque for encashment at the drawer bank and that the stop payment notice had been issued because of other valid causes including that there was no existing debt or liability at the time of presentation of cheque for encashment, then offence under Section 138 would not be made out. The important thing is that the burden so proving would be on the accused."

(Emphasis supplied)

v)In the case of Pulsive Technologies P. Ltd. Vs. State of Gujarat, , the Apex Court reiterated the same view."

b) Thus from the above case law it is clear that the prosecution is maintainable for an offence under Section 138 of N.I Act when the drawer of a cheque issues stop payment instructions to his banker. In the resultant criminal case, in order to effectively rebut the presumption under Section 139 of N.I Act, the accused shall establish that he has issued stop payment instruction not for want of sufficient funds in his account but for a valid reason. It has now to be seen in the point infra whether respondent/accused could discharge his burden or not.

13. Point No. 2: The admitted facts which sprouted from the pleadings and evidence are that the complainant is a pharmaceutical organisation engaged in manufacture and sale of bulk drugs and innovative pharmaceutical healthcare salutations. Whereas accused company is engaged in business of purchase and supply of active pharmaceutical ingredients (products). Both of them did business together from 1997 onwards and later, this case is concerned, they entered into an agreement dated 01.04.2003 for a period of one year under Ex. P.14. Therefore, this case is concerned, Ex. P.14 is a binding document between the parties. Under Ex. P.14, complainant appointed accused as its commercial Delcredere agent to promote the sale of active pharmaceutical ingredients listed in the Annexure-I to the customers listed in Annexure-II. Later some disputes arose between the parties regarding usage of the Trademark name "Reddy" and thereby the complainant issued Ex. D.22--letter dated 12.12.2003 terminating the agreement under Ex. P.14, besides instituting proceedings before Hon''ble High Court of Delhi and also arbitration proceedings.

"a) Then it is the case of complainant that from time to time he supplied drugs to accused on different invoices worth Rs. 69,03,380/- as mentioned in Para 3 of his notice dated 17.01.2004 vide Ex. P.8, for which in part discharge, the accused issued 14 cheques all dated 06.01.2004 and on presentation they were returned by the Standard Chartered Bank, Hyderabad on the ground that payment was stopped by the accused. The stop payment instruction is not denied by the accused. As already discussed supra, the stop payment instructions would attract the prosecution under Section 138 of N.I Act and the presumption under Section 139 of N.I Act also gets attracted. In this backdrop, it has to be seen whether the accused could probablise his defence."

14. The accused to rebut the presumption has put-forth the following contentions:

"a) His first and foremost contention is that he issued blank and undated cheques to complainant as a security but not towards the discharge of any legally enforceable debt. It may be noted that for this contention there is no direct evidence that is to say in the Ex. P.14--agreement there is no stipulation to the effect that the accused gave blank cheques to complainant as a security at the time of agreement or he would deposit cheques in future. Further, the accused

has not produced the office copy of the covering letter for remitting the blank cheques nor did he produce acknowledgment issued by the complainant. So also he did not produce any accounts or registers to show that he tendered blank cheques to the complainant. So there is no direct evidence on this aspect. Instead, the accused has come up with certain circumstances to probablise his contention.

i)One of the main circumstances which was also found favour with the trial Court was Ex. D.14-letter sent as his reply to Ex. D.22 issued by the complainant and also his letter under Ex. D.13 to the Branch Manager, Standard Chartered Bank. In Ex. D.14 the accused at the end instructed the complainant not to deposit any further cheques so as to enable him to cross-check. It may be noted that in this letter he did not specifically mention that he tendered 14 blank and undated cheques to the complainant. Then coming to Ex. D.13, the accused addressed a letter to the Branch Manager, Standard Chartered Bank, New Delhi stating that disputes arose between him and complainant and till final settlement of accounts was made, the bank may not permit complainant to encash the list mentioned cheques. He enclosed list of 14 cheques he gave to complainant. Curiously enough this list contains not only the cheque numbers but also corresponding amounts. The cheque numbers and amounts mentioned in Ex. D.13 squarely tallies with the invoices, cheque numbers and amounts mentioned in Ex. P.8-notice issued by the complainant. From this, the only inference that can be drawn is that the accused has not issued blank and undated cheques as a security as alleged by him but on the other hand, having fully satisfied with the invoice amounts claimed by the complainant, he issued those cheques to the complainant. Probably realising that in Ex. D.13 he mentioned cheque numbers and also the amounts which go against his claim that he issued blank cheques, accused in his cross-examination admitted that he issued disputed cheques but without putting date. Of course, he denied the suggestion that he issued disputed cheques with date as appearing on the cheques. Keeping aside the issue as to whether the accused mentioned or not the date on the cheques, it is crystal clear that he filled the cheques with the amounts also. As otherwise, if only he issued blank signed cheques without mentioning the amounts as a security and if the complainant filled the amounts and date of his choice, there was no possibility for the accused to know how much amount was mentioned against a particular cheque to mention them in his Ex. D.13-letter. Therefore, mere mentioning in Ex. D.14 that some cheques were with complainant and he should not present them with the bank, it cannot be taken as a proof positive that some blank and undated cheques were given by him to complainant as a security but not towards the discharge of the debt. On the other hand a conjunctive study of Ex. D.14 along with Ex. D.13, would confirm that the cheques were issued towards discharge of the amounts due under the invoices. Unfortunately the trial Court has not considered Exs. D.13 and D.14 in a proper perspective.

ii)The second circumstance projected to show that the cheques were issued only as security is that by the date of cheques i.e. 06.01.2004, the parties were

already at loggerheads as the termination of contract and exchange of notices took place and civil proceedings were also pending at New Delhi and as such the question of accused giving cheques on 06.01.2004 does not arise. This circumstance also will not help accused in view of his clear mentioning the cheque numbers and corresponding amounts in Ex. D.13-letter dated 29.12.2003 which, as already discussed correlate with the invoice mentioned cheques and amounts. The inference from Ex. D.13 is that the accused not only mentioned the invoice amounts but also mentioned the dates and issued post dated cheques. Even assuming that he issued undated cheques by filling other particulars and later the complainant put the date as 06.01.2004 on the subject cheques and other cheques and presented with the bank, the legality and enforceability of the cheque will not be effected in view of Section 20 of N.I Act. Section 20 reads thus:

"Section 20 - Inchoate stamped instruments: Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in [India], and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby, gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder-in-due course for such amount;

Provided that no person other than a holder-in-due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder."

Under this section, the holder-in-due course is entitled to fill up the blanks in the cheques signed by the drawer. Such a right is discussed and upheld in a decision reported in Babu Vs. Vinayagam, .

"Para 8: As per Section 20 of the Negotiable Instruments Act, a holder in due course is authorised or empowered to fill up an instrument so as to make it a negotiable instrument. In this case, the petitioner had admitted the entrustment of the cheques as well as promissory notes in blank and therefore, the respondent/complainant as a holder in due course, is entitled to fill up the cheques and that cannot be questioned by the petitioner/accused."

iii)The third circumstances projected is that the exact amount due to complainant was not ascertained and as such in Ex. D.22 at one place he claimed Rs. 3 Crores and later claimed Rs. 1.65 Crores and that was why the accused in his Ex. D.23--letter asked to furnish the statement of accounts for reconciliation but the complainant did not furnish the same and in that backdrop, the accused would not be expected to issue 14 cheques towards discharge of uncrystallised and indefinite amount. Hence the cheques issued should be treated as a security only. This argument is untenable. In Ex. D.22 while mentioning that originally a

sum of Rs. 3,15,00,000/- and odd was due, the complainant mentioned that on the request of accused they adjusted Rs. 2 Crores from the security deposit lying with them and the balance amount as on that date due was Rs. 1,65,90,873.20/-. No doubt the accused in his Ex. D.14--reply letter sought for statement of accounts. Be that it may, what is relevant for the purpose of the present case and other connected cases is that whether complainant supplied the Ex. P.8--invoices mentioned medicines and whether the accused admitted receipt of medicines and their prices so as to create a legal liability on him. In this regard in Para 3 of Ex. P.8--notice, the claimant clearly mentioned the particulars of the medicines supplied by him under 14 invoices and their prices etc. It is pertinent to note that in Ex. P.13--reply, the accused has not denied the receipt of aforesaid Para 3 mentioned medicines. His only contention is that out of 1000 kgs of Ranitidine Hydrochloride sent under invoice No. 108, the accused returned 800 kgs due to shorter expiry period. It appears, it is his grievance that the complainant claimed for full value without deducting any amount. Except that he did not challenge the supply of medicines as mentioned in Ex. P.8. That being so, as rightly argued by the learned counsel for appellant, non-furnishing of accounts is not a consequence so far as the 14 invoices are concerned, since supply of the medicines and their values are admitted facts. Therefore, calling for statement of account cannot be taken as a valid circumstance to conclude that cheques were issued only as security but not towards discharge of the debt. On the contrary, it appears the accused called for the accounts only to avoid payment of the due amount.

iv)The fourth circumstance projected is that if the accused were to discharge the amounts due under invoices, he would in normal course issue only one cheque but not 14 cheques. The contrary shows that those cheques were deposited by him as a security but not issued towards discharge of the liability. This is not a tenable objection in my view, as the medicines were supplied under 14 different invoices, different cheques might have been issued by the accused."

So I have no hesitation to hold that Exs. P.4 and P.5--cheques and other cheques were issued by the accused towards discharge of his legal liability but not as security.

15. The second contention raised to rebut the presumption is that having regard to the past practice, the complainant should not have presented the cheques without the written instructions from the accused. Much reliance is placed on Exs. D.2 to D.10 and Ex. D.23. The complainant disputed about their genuineness on the contention that they do not bear the seal or stamp or Complainant Company as having received by them. Be that it may, even assuming the genuinity of Exs. D.2 to D.10 and Ex. D.23, they will not improve the defence of accused. Exs. D.2 to D.10 and Ex. D.23 are the covering letters purportedly written by accused to complainant while forwarding cheques with a request not to present them till after receiving a written confirmation from him. It is true that the two cheques in Ex. D.9, 7 cheques in Ex. D.10 and 5 cheques

in Ex. D.23 correlate with the Ex. P.8 mentioned cheques. Even if so, as rightly argued by the learned counsel for appellant they are only in the form of a request made by the accused to deposit the cheques after receiving a written confirmation from the accused, but they cannot be construed as a mandate to bind the complainant. We do not find any binding clause to this effect in Ex. P.14--agreement which governs the parties in the present case. Therefore, the accused cannot bank upon the past practices if any to compel the complainant not to present cheques till he gives a green signal.

"a) Above all, there were no sufficient funds in the account of accused by 06.01.2004 as deposed by P.W. 2. P.W. 2 stated that in the account of accused there was only an amount of Rs. 24,404.69 as on 06.01.2004 which was far lower than the cheques amounts. This would show that without having sufficient funds in his account, the accused issued cheques. Though the accused disputed the evidence of P.W. 2, he did not produce any convincing evidence to establish that there were enough funds in his account."

16. So on a conspectus of the facts and evidence, I hold that the accused failed to rebut the presumption under Section 139 of N.I Act and consequently render themselves guilty of the offence punishable under Section 138 of N.I. Act.

This point is answered accordingly.

17. Point No. 3: In the result, A.1 and A.2 are found guilty of the offence punishable under Section 138 of Negotiable Instruments Act. Having regard to the nature of offence and circumstances under which it was committed and taking into consideration that in respect of the claims covered by the subject cheques and cheques in other connected cases, an arbitration award was already passed on 22.08.2008 in Arbitration Case No. 1 of 2006, the following order is passed:

"i)Crl. A. No. 1482 of 2009 is allowed by setting aside the judgment in C.C. No. 343 of 2004 passed by learned XIV Additional Chief Metropolitan Magistrate, Hyderabad.

ii)A.1 and A.2 are convicted for the offence under Section 138 of N.I. Act and A.2 who is the Managing Director and incharge of A.1 company for its conduct and business, is sentenced to undergo simple imprisonment for one(1) day till raising of the trial Court. A.2 is directed to surrender before the trial Court on or before 05.12.2014 at 10:30am on a Court working day and on such surrender, the trial Court shall implement the sentence in the Court Hall. The substantive sentence of imprisonment passed in the present appeal and other connected Criminal Appeal Nos. 1483, 1484, 1485 and 1486 of 2009 shall run concurrently.

iii)Further, the accused are directed to pay a compensation of Rs. 7,47,814/- (Rupees seven lakhs forty seven thousand eight hundred and fourteen only) to the complainant in terms of Section 357(3) Cr.P.C and said amount shall be deposited by the accused before the trial Court within three (3) months from the

date of this judgment failing which the trial Court shall resort to the steps permitted by law to realise it from the accused. The compensation amount paid or realised shall be given set off from the amount payable by the accused to complainant in terms of the award in Arbitration Case No. 1 of 2006, if competent Court confirms the arbitration award on merits."

As a sequel, miscellaneous applications pending, if any, shall stand closed.