

**IN THE COURT OF MS. NAINA
METROPOLITAN MAGISTRATE (N.I. Act) -07
TIS HAZARI COURTS, CENTRAL DISTRICT, NEW DELHI**

Satish Kumar Jain
Proprietor of M/s General Agencies & Trading Corp.
Having its office at
4, Makki Market, Chawri Bazar, Delhi-6
(Through Attorney Mr. Ankur Jain)

..... Complainant

VERSUS

1. M/s Pioneer Paper Agency
Through its Proprietor/authorized Signatory
Shop No. 980-81, 3/7, 1st Floor,
Makki Market Chawri Bazar, Delhi-110006

Also At:
113/6B, Gali No. 1, West Azad Nagar
Krishan Nagar, Delhi-110051

Also At
Email: rajeshjain19@gmail.com

Also at
C/o Mr. J. D. Jain
R/o F-1, 65, 2nd Floor
Mangal Bazar, Laxmi Nagar,
Delhi-110092

2. Mr. Rajesh Jain
Prop./Authorized Signatory of
M/s Pioneer Paper Agency
Shop No 980-81
3/7, First Floor, Makki Market
Chawri Bazar, Delhi-110006
Also At
113/6B, Gali No. 1, West Azad Nagar
Krishna Nagar, Delhi-110051

Also At

C/o Mr. J. D. Jain
Second Floor, F1-65
Mangal Bazar, Laxmi Nagar
Delhi-110092

Also at
Email rajeshjain19@gmail.com

Accused

New Case Number. : **523406/16**
Date of Institution of Case : **04.02.2015**
Offence Complained Of. : **138 NI Act**
Plea of the Accused. : **Pleaded not guilty**
Arguments Heard On. : **21.05.2020**
Date of Judgment. : **28.05.2020**

:: JUDGMENT ::

Facts

1. The complainant is a proprietorship firm in the name and style of M/s General Sales and Trading Corporation, from four Makki Market Chabri Bazar Delhi-6 and is in the business of all kind of papers/boards etc. The present complaint has been filed by the son of the complainant Sh. Ankur Jain who also assists the complainant in his business and is well conversant with the facts of the case. The case of the complainant is that the accused used to purchase goods on credit from the complainant and used to make on account ad interim payments by cheques to the complainant's firm. It is stated that the accused made his last purchase to the tune of Rs. 3,67,399/- vide invoice no.1624 on

30.07-2014, thereby enhancing the liability of the accused towards the complainant to Rs.1,20,57,398/-. The complainant has filed a ledger account or running account of the accused as maintained in the books of account of the complainant firm.

2. The accused issued the following cheques in part discharge of its liability in favour of the complainant.

Sl. No.	Cheque No.	Dated	Amount	Bank
1	001932	16.08.2014	4,25,000/-	DCB BANK Ltd. Chandni Chowk, Dellhi-110006
2	001889	25.08.2014	3,00,000/-	
3	001920	02.09.2014	2,00,000/-	
4	001925	04.09.2014	3,00,000/-	
5	001786	08.09.2014	3,00,000/-	
6	001771	11.09.2014	5,00,000/-	
7	001817	16.09.2014	4,00,000/-	
8	001827	19.09.2014	3,00,000/-	
9	001849	26.09.2014	2,50,000/-	
	TOTAL		29,75,000/-	

3. It is stated that all these cheques were signed by accused no. 2 Mr. Rajesh Jain, for and on behalf of M/s Pioneer Paper Agencies being its proprietor/authorized signatory. On the presentation of all the above

9 cheques they were dishonoured repeatedly for the reason insufficient funds in the bank account of the accused and lastly for reason account blocked on 15.11.2014. It is stated that the accused had issued several cheques to many persons and all were returned dishonoured due to insufficient fund in the bank account of the accused and on the approach of Paper Merchant Association, the police had marked the bank account of the accused as blocked. The balance in the account no. 2122400777777 of the accused was not sufficient to clear either of the 9 cheques. The complainant through his advocate Mr. D K Jain served legal demand notice dated 11.12.2014 upon the accused via Indian post thereby intimating the accused about dishnour of cheques and calling accused to pay the cheque amount of Rs. 29,75,000/- within 15 days. The demand notice was sent through speed post and registered post both dated 13.12.2014 and also via courier dated 12.12.2014. It is stated that the accused managed to return the notices and manipulate the envelopes. The accused failed to pay the cheques amount of Rs. 29,75,000/- within 15 days despite the service of demand notice and hence, the present complaint has been filed.

4. The son of the complainant Sh. Ankur Jain tendered Pre summoning Evidence, affidavit Ex. CW1/1A and brought on record the following documents to prove the liability of the accused :-

a)	EX CW 1/1	Original Power of Attorney
b)	EX CW 1/2	Original Complaint
c)	EX CW1/3 (colly)	Copy of page no. 45 from Members's directly of Paper Merchant Association and print of Form DP1 issued by Department of Trade and Taxes of M/s General Sales and Trading corporation
d)	EX CW 1/4 (colly)	Office copy of invoices
e)	EX CW 1/5 (colly)	Ledger
f)	EX CW1/6 (colly)	Ledger for 2014-15
g)	EX CW1/7	Certificate under section 65 B Indian Evidence Act.
h)	Ex. CW1/8 To Ex. CW1/16	Original cheques
i)	Ex. CW1/17 to Ex. CW1/25	Returning memos dated 20.09.2014.
j)	Ex. CW1/26 to Ex. CW1/34	Returning memos dated 15.11.2014.
k)	Ex. CW1/26 A	Returning memo dated 17.01.2015 with respect to cheque no. 1932.
l)	Ex. CW1/35	Legal notice dated 11.12.2014
m)	Ex. CW1/36 (colly)	Original postal receipt of speed post
n)	Ex. CW1/37	Receipt of registered AD
o)	Ex. CW1/38	Courier receipts
p)	Ex. CW1/39 to Ex. CW1/41	Tracking report
q)	Ex. CW1/42 (colly)	Envelopes received back.

5. On summoning, the accused entered his appearance and notice was framed on 01.10.2015, to which he pleaded not guilty and claimed trial. The accused took the defence that the cheques in question were issued as advance to the complainant firm in July/August 2014. The

complainant supplied him paper and board but as the material supplied by the complainant for which the cheques in question were given was defected, the cheques in question were dishonoured. He stated that he has settled the matter with the complainant in December 2014 and it was decided that he would return the defective material to the complainant and the liabilities between the complainant and the accused were settled for Rs. 40 lacs. One firm by the name of M/s Friends Paper made the payment of Rs. 40 lacs to the complainant in compliance of this settlement. Therefore, the accused stated that he has no liability towards the complainant and the complainant failed to return the cheques in question.

6. The complainant was recalled for cross examination and he was cross examined at length by the Ld. Counsel for the accused.

7. After the completion of complainant evidence, the accused was examined u/s 313 Cr.P.C. In his examination, he reiterated his defence that he received material worth Rs. 2,48,96,027/- from 01.04.2014 till 31.07.2014 from the complainant but some of the material supplied to him in June and July 2014 was defected. He complained about the same to the complainant but they asked him to use the material in its given form. However, the material could not be further sold and after checking the same in July 2014, the complainant assured him that the material would be lifted. It is stated that the

defective material was worth Rs.36,54,885/- inclusive of VAT. The complainant did not lift the defective material and the accused suffered losses and after the last payment of Rs. 5 lacs on 05.09.2014, the accused stopped the payment of the complainant and asked them to lift the defective material first. It is stated that the accused had settlement with the complainant in the first week of December 2014 and it was decided that the complainant would take back defective material and the accused would clear his account by paying Rs. 40 lacs. The accused paid Rs. 40 lacs to the complainant through M/s Friends Paper in December 2014 and January 2014. It is stated that the accused has the receiving of goods returned to the complainant. The accused stated that he asked for return of the cheques from the complainant, however they refused to return the same and misused the cheques in question.

8. Accused led defence evidence and examined himself as DW-1 and two other witnesses Sh. Aditya Marwah, Bank official as DW 2 and Sh. Krishan Kumar Ahlmad of the court Sh. Fahadudin, Ld. MM as DW3. The accused relied upon the following documents:

- a) Ex. CW1/D1: Letter dated 31.01.2015 addressed to M/s Pioneer Paper Agency by Friends Paper
- b) Ex. DW1/1: Ledger account
- c) Ex. DW1/2: Debit/credit notes
- d) Ex. DW1/3 (colly): Goods return challan

- e) Ex. DW1/4: Letter of the DCB Bank Limited dated 14.10.2014 addressed to Pioneer Paper Agencies.
- f) Ex. DW1/5: FIR no. 237 PS Jama Masjid dated 01.10.2014.
- g) Ex. DW1/6: Copy of rent deed dated 21.12.2014
- h) Ex. DW2/1 (colly): Notice under section 91 Cr.P.C issued by the PS Jama Masjid to DCB Bank dated 09.10.2014, reply dated 13.10.2014, 17.10.2014, copy of seizure memo dated 12.12.2014, copy of letter dated 14.10.2014 by bank to M/s Pioneer Paper Agencies, copy of account opening form, copy of letter dated 14.10.2014.
- i) Ex. DW3/1: Copy of list of witnesses filed by IO in case FIR No. 237/15 PS Jama Masjid.

9. Arguments on behalf of Ld. Counsel for the complainant were heard on 03.03.2020 and final arguments were further listed on 18.03.2020. In the meanwhile, the functioning of the subordinate courts was suspended due to Covid-19. The arguments on behalf of the Ld. counsel for the accused as well as rebuttal arguments on behalf of the Ld. Counsel for the complainant were heard through Video conferencing on CISCO Webex on 21.05.2020. I have heard counsel for the parties, perused the record and have gone through the relevant provisions of the law and the judgments relied upon by both the parties.

10. To make any person liable under Section 138 Negotiable

Instruments Act (hereinafter to be read as 'The Act'), the following ingredients are required to be proved by the complainant:

(i) Person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;

(ii) The cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) That cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity whichever is earlier;

(iv) That cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the 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 the bank;

(v) The payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

11. The complainant in the present case has filed on record the original cheques Ex. CW1/8 to Ex. CW1/16. As per the bank return memo Ex. CW1/26 to Ex. CW1/34, dated 15.11.2014 these cheques were dishonoured for the reason, 'account blocked'. The counsel of the complainant has sent legal notice Ex. CW1/35 dated 11.12.2014 within 30 days from the date of bank memo. In view thereof, the ingredients required for an offence under section 138 N.I. Act have been met with in this case.

12. The accused in his reply to notice put by the court u/s 251 CrPC has admitted to the issuance of the cheques by him in favour of the complainant. He has stated that the cheques in question bear his signatures and that the particulars in the cheques have been filled either in his handwriting or his staff. With these admissions i.e. the cheques in question belong to the accused and the signatures on the cheques are also of accused, a presumption of the cheques having been issued in discharge of a legally sustainable liability and drawn for good consideration, arises by virtue of Section 118 (a) and Section 139 of the Negotiable Instruments Act. Once Section 139 of NI Act comes into picture, the court presumes that the cheques were issued in discharge, in whole or in part, of any debt or other liability. At this stage, owing to the presumption under Section 139 of the Act, the case of the complainant stands proved.

13. When the presumption is raised in favor of the complainant, the burden shifts upon the accused to disprove the case of the complainant by rebutting the presumption raised in favour of the complainant. Being the rule of reverse onus, it is the duty of the accused to prove that he does not owe any liability towards the complainant. The accused can displace this presumption on the scale of preponderance of probabilities and the lack of consideration or a legally enforceable debt need not be

proved beyond all reasonable doubts. The accused has to make out a fairly plausible defence which is acceptable to the court. This the accused can do either by leading own evidence in his defence or by raising doubt on the material/evidence brought on the record by the complainant.

DEFENCES RAISE BY THE ACCUSED.

14. The accused has raised the defence that he has no liability towards the complainant as the cheques in question were issued in advance and some of the material supplied to him was defective which was returned by him to the complainant after entering into a settlement with the complainant in Decemeber 2014. The accused has also paid an amount of Rs. 40,00,000/- to the complainant through Friends and Paper from 19.12.2014 to 20.01.2015 and therefore there is no outstanding debt or liability. The Ld. Counsel for the accused has also raised legal defences that the accused did not receive the legal notice u/s 138 NI Act. That, the son of the complainant was not duly authorized by the complainant to depose before the court and his testimony cannot be relied upon. That, the cheques in question were returned unpaid for the reason 'account blocked' and therefore the present case does not fall within the purview of section 138 NI Act. The

defences raised by the accused are discussed under the following heads. The legal defences are dealt with first.

Defence that the accused did not receive legal demand notice

15. The accused has stated that he did not receive the legal demand notice Ex CW1/35 dated 11.12.2014. In his examination he stated that the office and the residential address mentioned on the legal notice is correct. But his office address is closed since September 2014 and he shifted his residential address on 01.12.2014, therefore he never received the notice. The complainant has placed on record postal receipts Ex CW1/36 and the returned postal envelopes Ex CW 1/42 with the remarks of '*bar bar jane par tala band*' on residential address and 'party refused' on the office address. The accused has placed on record rent deed dated 21.12.2014 Ex DW1/6 to show that he had shifted his residential address on 01.12.2014. In his cross examination, the accused has stated that he cannot produce any document to substantiate his defence that he had closed his office since September 2014 and he does not run his business from any other address except the address mentioned on the legal notice. He also stated that he never informed his bank, the complainant or the Paper Merchant Association about the change in his address.

16. The accused has put in appearance before the court on 14.07.2015. Where the payee has dispatched the notice by registered post with correct address of the drawer of the cheque, the principle incorporated in Section 27 of the General Clauses Act would be attracted and with this, the mandatory requirement of issue of notice in terms of clause (b) of proviso to Section 138 of N.I.Act stands complied with. Further in light of the judgment **C.C. Alavi Haji Vs Palapetty Muhammed & Anr on 18.05.2007** passed by Hon'ble Apex court, the defence of not receiving the notice is not maintainable if the accused does not pay amount of the cheque to the complainant within 15 days of receiving the summons from the court. The complainant has sent the legal notice on the correct address of the accused and therefore, the accused is deemed to be served under section 138 N.I. Act.

Defence that Power of Attorney (PoA) holder could not depose on behalf of the complainant

17. It has been argued on behalf of the Ld. Counsel for the accused that the PoA holder i.e. Sh. Ankur Jain could not depose on behalf of the complainant. She has pointed out that the PoA filed on record is undated and that there are contradictions about the reason for executing PoA. Perusal of the record shows that PoA has been attested by the notary public on 23.01.2015 and it is stated therein that as the

executant is unable to stand for long time in courts being of advanced age, therefore he cannot attend the court proceedings on regular basis. The Ld. Counsel for the accused has pointed out that during the cross examination of Sh. Ankur Jain, he stated that his father is under severe depression and psychiatric treatment and the doctor has advised him not to take any stress, therefore he cannot testify before the court. The Ld. Counsel for the accused has argued that there is a contradiction in the case of the complainant with respect to reason for execution of PoA.

18. In the PoA Ex. CW1/1, the complainant has authorized Sh. Ankur Jain to file complaint as well as to depose on his behalf before the court. The honourable Supreme Court of India in the case of **A.C. Narayanan v. State of Maharashtra, 13.09.2013** has elucidated on whether the PoA holder can file complaint and depose on behalf of the complainant. It has been held, *“In the light of the discussion, we are of the view that the power of attorney holder may be allowed to file, appear and depose for the purpose of issue of process for the offence punishable under Section 138 of the N.I. Act. An exception to the above is when the power of attorney holder of the complainant does not have a personal knowledge about the transactions then he cannot be examined. However, where the attorney holder of the complainant is in*

charge of the business of the complainant-payee and the attorney holder alone is personally aware of the transactions, there is no reason why the attorney holder cannot depose as a witness. Nevertheless, an explicit assertion as to the knowledge of the Power of Attorney holder about the transaction in question must be specified in the complaint.”

19. In the instant case, in the complaint it is stated that Sh. Ankur Jain is the son of the complainant and assists him in his business and is well conversant with the facts of the case. The Ld. Counsel for the accused has cross examined Sh. Ankur Jain at length and from the cross examination it cannot be said that he does not have personal knowledge of the facts of the case and the transaction therein. The contradictions regarding the reason for executing PoA are insignificant. As per the PoA, as well as the CW1, the reason for execution of PoA is ill health of the complainant. In view of the discussion above, CW1, Sh. Ankur Jain has been duly authorized to file the present complaint and also depose on behalf of the complainant. The defence of the accused has no merit in it.

Defence that the present complaint is not maintainable as the reason for return of the cheques is ‘account blocked’

20. The cheques in question were firstly returned unpaid for the reason funds insufficient vide memos dated 20.09.14, Ex. CW1/17 to

Ex. CW1/25. Thereafter, they were presented again and they were again dishonoured, but for reason Account blocked vide memos dated 17.01.2015, Ex. CW1/26 to Ex. CW1/34. Legal demand notice under section 138 NI Act, Ex. CW1/35 was sent on 11.12.2014. The accused has placed on record the notice u/s 91 CrPC dated 09.10.14 issued by the Police Station Jama Masjid to the Bank Manager directing stoppage of transactions regarding debit of amount from the account of Sh. Rajesh Jain i.e. accused and letter of the bank to the accused dated 14.10.2014 wherein, the accused was informed about the freezing of the account.

21. The Ld. Counsel for the accused has argued that since the cheques have been dishonoured for the reason “account blocked”, it was beyond the control of the accused to honour them, therefore the complaint u/s 138 N.I. Act is not maintainable. Reliance has been placed on **Vijay Chaudhary v. Gyan Chand Jain** 151 (2008) DELHI LAW TIMES 237, **Prem Chand Gupta v. State and anr.** I (2010) DLT (CRL.) 800, **Onkar Nath Goenka v. Gujrat Lease Finance Ltd.**, IV (2008) BC 514, **Ceasefire Industries Ltd. v. State and ors.**, III (2017) DLT (CRL.) 951.

22. In the case of **Vijay Chaudhary** supra, the accused therein had issued a post dated cheque, but before its presentation the operation of

the account on which the cheque was issued was stopped on account of an attachment order/court order in relation to an FIR registered against the accused. On presentation, the cheque was returned unpaid with remarks 'funds insufficient' and 'payment stopped by attachment order/court order.' The hon'ble High Court observed, "*The attachment by an order of the Court in this case was after the alleged issuance of the cheque, but prior to its presentation for encashment. The attachment of the bank account of the petitioner had the effect of disabling the petitioner from operating or maintaining the said account. The petitioner could not exercise his right either to deposit into or withdraw from the said account. Even if it were to be assumed for the sake of argument, that the cheque was in fact issued in discharge of the petitioner's liability owed to the respondent, and that at the time of issuance of the cheque, he did not have sufficient balance in the account, or an arrangement with his banker, in case the bank account had not been attached under the orders of a Court, nothing prevented the petitioner from either depositing money in his account or entering into an agreement with his bank to arrange for sufficient funds in the account, to be able to honour the cheque in question by the date when the said cheque could have been presented for payment at the earliest. This is so because there was sufficient time gap i.e. of nearly one year*

and eight months between the date of alleged issue of cheque and the date of its presentation.”

23. It was further held that, *“For an account to be maintained by an account holder, it is essential that he is in a position to operate the said account by either depositing monies therein or by withdrawing money therefrom. He should be in a position to give effective instructions to his banker with whom the account is maintained. However, in the present case, once the account has been attached by an order of the Court, the said account could not be operated by the petitioner. He could not have issued any binding instructions to his banker, and the banker was not obliged to honour any of his instructions in relation to the said account, so long as the attachment under the Court orders continued.”* In view thereof, the Court held that no offence u/s 138 NI Act, could be said to have committed.

24. The cases of ***Prem Chand Gupta supra*** and ***Onkar Nath Goenka supra*** are with respect to offences by companies wherein there was a ban order by BIFR directing that the company or any other party involved could not dispose of/alienate the assets of the company. In both the cases reliance has been placed on the judgment of Hon'ble Supreme Court of India in the case of ***Kusum Ingots v. Pennar Piterson Securities Ltd., 84 (2000) DLT 229*** and it has been held that

if a person is prohibited on account of an order passed by BIFR from making payment on the date the statutory period of 15 days expires, nonpayment being beyond his control, no offence under Section 138 of Negotiable Instruments Act would be made out against him. In the case of **Ceasefire Industries Ltd. supra**, the Hon'ble High Court of Delhi held that when the cheque is returned unpaid for the reason that the account is blocked and the complainant was also aware of the same, the reason of the return of the cheque unpaid is not what is envisaged in section 138 of the N.I. Act and therefore the complaint is not maintainable.

25. On the other hand, the Ld. Counsel for the complainant has argued that offence under section 138 N.I. Act is complete only when the accused is unable to make payment before the expiry of 15 days' notice period. He contends that there was nothing to stop the accused from making payment of the cheque amount to the complainant after receiving the notice under section 138 N.I. Act. There was no balance in the bank account of the accused, as it is clear from the cheque return memos dated 20.09.2014 Ex CW1/17 to Ex CW1/25. It is argued that the accused had no intention to make payment towards the cheques and he should not be allowed to wriggle out of his liability just because his account was also blocked by the police on registration of an FIR

against him. The Ld. Counsel for the complainant has stressed upon the legislative intent behind the provisions under N.I. Act. He emphasized that Chapter XVII containing Sections 138 to 142 was introduced in the Act by Act 66 of 1988 with the the object of inculcating faith in the efficacy of banking operations and giving credibility to negotiable instruments in business transactions. He argued that in the instant case, the accused is only trying to evade liability towards the cheques by taking a technical defence.

26. In in the instant case, it is important to discern whether the accused was not able to honour his cheques because he could not operate his account or because he did not really intend to honour them. In his reply to legal notice under section 251 CrPC, the accused stated that the cheques were dishonoured as the material for supplied by the complainant for which the cheques in question were given was defective. In his examination in chief dated 25.10.2017, the accused stated, *“The defective material was worth Rs. 36,54,885/- inclusive of VAT. The material was not lifted back till September, 2014, therefore, I made payment of Rs. 5,00,000/- through RTGS to the complainant and requested him to first resolve the matter with respect to the defective material lying in my godown.”* Perusal of the testimonies of the accused shows that he intentionally dishonoured the cheques due to his alleged

dispute with respect to supply of defective material. It is not his case that the he could not honour the cheques as his account was blocked by the police and he could not operate the same. The blocking of the account is merely incidental to his intention to not honour the cheques.

27. The judgments relied upon by the Ld. Counsel for the accused are based on different fact situations and are not applicable to the facts in this case. Judgments in the cases of ***Prem Chand Gupta supra*** and ***Onkar Nath Goenka supra*** are dealing with a situation wherein a company has been stopped from alienating its assets and the directors of the company are being prosecuted. In such a scenario, the liability of the directors being separate from that of the company, the court held that directors cannot be held liable because of a banning order on the disposal of assets of the company. In the instant case, the accused's firm is a proprietorship and the accused is personally liable for the same.

28. The facts in the case of ***Vijay Chaudhary supra*** are also distinguishable. In that case, there was a gap of about one year and eight months between the date of alleged issue of cheque and the date of its presentation. The attachment of the account prevented the accused from depositing money in his account or entering into an agreement with his bank to arrange for sufficient funds in the account,

to be able to honour the cheque in question by the date when the said cheque could have been presented for payment at the earliest. Such is not the situation in the present case. As per the accused, he had issued the cheques in question to the complainant in July-August 2014 for materials supplied to him from 01.04.2014 to 31.07.2014 and all the cheques are of the month August or September. The bank account of the accused was blocked in October, 2014. Thus, when the cheques could have been presented by the complainant, the bank account of the accused was not blocked. He could have arranged funds in his bank account and honour the cheques. In this case, the cheques in question were earlier returned unpaid for the reason 'funds insufficient' vide returning memos dated 20.09.2014, Ex. CW1/17 to Ex. CW1/25. This clearly shows that the accused never had the intention of honouring the cheques in the first place.

29. Secondly, even if his account was blocked and the cheques were returned unpaid for this reason, the accused could have made payment to the complainant after receiving the legal notice under section 138 N.I. Act. The offence u/s 138 N.I. Act is complete only when the accused fails to make payment before the expiry of 15 days' notice period. The accused had no funds in his bank account and he could not have made payment to the complainant by operating his bank account. Therefore,

the blocking of the bank account did not really disable the accused from honouring his liability towards the complainant. When the accused got to know about blocking of bank account, he could have taken steps to inform the complainant, request for return of his cheques and make payments otherwise, but he did not do any such thing. The accused had no intention to honour its cheques. Keeping in view the legislative intent, the accused cannot be allowed to evade his liability just because his bank account was also blocked by the police. Therefore, in my considered view, there is no merit in this defence raised by the Ld. Counsel for the accused.

Defence that the accused has no debt or liability towards the complainant

30. The accused in reply to legal notice under section 251 CrPC has stated that the cheques in question were issued as advance to the complainant in July – August 2014. In his examination in chief, he has stated that the complainant supplied him paper and board worth Rs. 2,48,96,027/- from 01.04.2014 to 31.07.2014 however no bills were handed over to him. He used to make payment through cheques as well as RTGS and the payment used to vary from 30 to 120 days. His case is that in the month of June and July 2014, the material supplied by the complainant was defective and he informed about the same to

the complainant orally. The defect was with respect to GSM and shade variation as it was not as per the specifications. He has stated that the complainant gave him an assurance that in case the defective material is not consumed/used, he shall get the material lifted. The defective material was worth Rs. 36,54,885/- inclusive of VAT. He stated that the complainant failed to get the material lifted till September, 2014 and therefore he made payment of Rs. 5,00,000/- to the complainant through RTGS and asked him to lift the defective material first.

31. It is contended that in December 2014, a settlement was arrived at between the parties wherein they agreed that the accused shall pay an amount of Rs. 40,00,000/- towards full and final settlement to the complainant and the complainant shall get the defective material lifted. He has stated that the complainant got the defective material lifted from his godown on 10.12.2014, 13.12.2014 and 15.12.2014 and Friends Paper transferred an amount of Rs. 40,00,000/- through RTGS as well as cheques on behalf of the accused to the account of the complainant from 19.12.2014 to 20.01.2015. Thus, the accused cleared all his dues towards the complainant and asked him to return his cheques but the complainant did not return the cheques to him. It is argued that the cheques amount in question is Rs. 29,75,000/- and a payment of Rs. 40,00,000/- has been made to the complainant on behalf of the

accused after the issuance of the alleged legal notice on 11.12.2014 and therefore, the accused has no debt or liability towards the complainant. It is to be examined whether the accused is able to prove his defence on the basis of preponderance of probabilities.

32. Firstly, it is to be seen whether the accused is able to prove that the materials supplied by the complainant were defective and the accused had returned the defective paper to the complainant. To prove this, the accused has relied upon Ex DW1/2, annexure 2 C of D- VAT to show that the goods were returned to the complainant and Ex. DW1/3, goods returned challan bearing receiving of the transporter of the complainant. The document Ex. DW1/2 is only a form filled in by the accused before the tax authorities. Nothing can be conclusively said about the actual return of the goods from Ex. DW1/2. Goods return challan Ex. DW1/3 are dated 10.12.2014, 13.12.2014 and 15.12.2014. They only state that certain quantity of paper in kgs is being returned by the accused to the complainant through the transporter of the complainant Pawan. The complainant on the other hand has denied the suggestion that the material supplied to the accused was defective and he stated that he had never received any complaint regarding defective material from the accused. He stated that stock register for the

materials and the purchase bills from the end suppliers are maintained by him.

33. When the accused was cross examined by the Ld. Counsel for the complainant about the return of the defective material he stated, *“My documents Ex. DW1/3 do not mention any rate or amounts therein. It also does not mention the GSM or shade (Vol.). There is no need to mention rate, GSM or shade in goods return challan because I had given a prior information to the complainant regarding the defect, that is, GSM and shade. My documents EX. DW-1/3 do not mention anything about alleged prior information by me to the complainant. My documents EX DW-1/3 also do not reflect as to which entry pertains, which of the purchase nor does it reflect the date of respective purchase. By seeing these documents, I myself cannot tell as to which item was purchased by me on which date. These documents EX. DW-1/3 do not bear any rubber stamp of the complainant nor does it bear any date from the complainant”*.

34. The accused has claimed that the defective material was worth Rs. 36,54,885/- inclusive of VAT. But, from the cross examination of the accused it is clear that he is not able to explain how this figure was arrived at, when were the defective goods received by him, under which bill, when did he inform the complainant about the same. The goods

return challan do not bear any receiving by the complainant. The accused has not examined the alleged transporter of the complainant namely Pawan in support of his defence. No questions have been put to the complainant regarding lifting of materials of the materials through a person named Pawan. The accused has stated that there was a settlement in December 2014 regarding return of defective goods. These talks were held in the presence of one Mr. Abhay Jain of Friends Paper. Nothing has been brought on record to prove the settlement or that there was an agreement regarding return of defective goods. In his cross examination the accused stated, *"I cannot produce any written document to substantiate my deposition in my examination in chief regarding assurance of complainant to get any defective material lifted. Vol. The practice followed in our line of business is that all the communications are made orally"*.

35. It is to be noted that the transaction in question involves crores of money and as per the accused there was already a dispute between the parties regarding supply of defective goods. As per the accused, he had also issued advance security cheques for supply of the materials. In these circumstances, one cannot expect a reasonable man to not take any receiving of the goods returned or have anything recorded of the settlement. The accused did not even examine Mr. Abhay Jain in

whose presence the talks for settlement took place to substantiate his case. In light of the testimonies of the parties and the materials placed on record, the entire defence of the accused regarding supply of defective goods, appears to be a cock and bull story just to evade liability. In view of the discussion above, I am of the view that the accused has not been able to prove that the material supplied to him was defective and that he had returned material worth Rs. 36,54,885/- inclusive of VAT to the complainant.

36. Secondly, it is to be seen that whether the accused is able to prove that he paid Rs. 40,00,000/- to the complainant as full and final payment, clearing all outstanding debts and liabilities. It has been argued that after the payment of Rs. 40,00,000/- the cheques amount stands paid and the accused is no more liable. It is to be noted that there was a running account between the parties. Perusal of the ledgers of both the parties, Ex CW1/5 and Ex DW1/1 shows that there were no bill to bill payments and some round amount was being paid by the accused to the complainant on account. The accused has argued that the cheques in questions were given as advance to the complainant for supply of materials. The supply of materials is not denied by the accused. The accused has admitted that he has received materials worth Rs. 2,48,96,027/-. The defence of the accused about

return of defective material worth Rs. 36,54,885/- inclusive of VAT has not been accepted by this court. The payment of Rs. 40,00,000/- by Friends Paper on behalf of the accused has not been denied by the complainant. Now it is to be seen, whether after payment of Rs. 40,00,000/-, was there any other outstanding liability of the accused towards the complainant. Because even after the payment of Rs. 40,00,000/- unless it has been specifically stated so, if there any outstanding debt, the accused would still be liable with respect to the cheques in question.

37. Both the parties have placed on record their ledgers. I have carefully gone through documents Ex. CW1/5 colly and Ex. DW1/1. The accused in his cross examination has stated that no purchase was made after 31.07.2014 and entry dated 09.12.2014 in his ledger Ex DW1/1 shows an outstanding amount of Rs. 76,57,398/- payable by him to the complainant. Thereafter, there are entries dated 10.12.2014, 13.12.2014 and 15.12.2014 for amounts Rs. 15,95,343/-, 13,30,808/- and 7,28,734/- respectively. These entries are with respect to the alleged return of the defective material by the accused to the complainant for a total amount of Rs. 36,54,885/- inclusive of VAT. As discussed above, the accused has not been able to prove this return of

materials worth Rs. 36,54,885/-. If these entries are disregarded, the accused was still liable to pay Rs. 76,57,398/- to the complainant.

38. Thereafter, payments of Rs. 10,00,000/-, 10,00,000/-, 5,00,000/-, 10,00,000/-, 5,00,000, dated 19.12.2014, 01.01.2015, 19.01.2015, 19.01.2015 and 20.01.2015 respectively are shown in the ledger. These payments have been admitted by the complainant. After accounting these payments, the accused was still liable to pay Rs. 36,57,398/- to the complainant. The accused has contended that goods worth this amount were returned to the complainant but this contention of the accused has not been proved on record. Thus, when the cheques in question were given by the accused in advance or security and there is outstanding liability as per the ledger, it cannot be said that the accused has no liability towards the cheques in question. The accused has time and again argued that there was a settlement between the parties in December 2014 as per which Rs. 40,00,000/- were paid full and final and there was no outstanding liability left. The accused has not brought on record anything to show that there was any such settlement between the parties. If there was such settlement, why didn't the accused take back the cheques from the complainant when he paid Rs. 40,00,000/- to the complainant.

39. The accused has placed on record Ex. CW1/D1, letter from Friends Paper dated 31.01.2015 addressed to the accused about payment of Rs. 40,00,000/- to the complainant. This document has been admitted to by the complainant. But this document does not show that the payment was made full and final and all outstanding debt was cleared. The accused has alleged that the settlement took in presence of Mr. Abhay Jain, partner of Friends Paper. The accused could have brought him into the witness box to prove his case that there was a full and final settlement, clearing the account of the accused. The accused has not brought on record anything to prove such settlement.

40. The law is settled on the point of security or advance cheques. The Hon'ble High Court of Delhi in the case of **Suresh Chandra Goyal Vs. Amit Singhal** has held that section 138 NI Act covers any cheque drawn on an account maintained by the drawer with the bank in favour of another person for the discharge of any debt or other liability. The expression 'any debt or other liability' is unqualified in section 138 NI Act and it includes any future debt or liability which may arise after the issuance of the cheque. It was observed that section 138 NI Act does not distinguish between a cheque issued by the debtor in discharge of an existing debt or other liability, or a cheque issued as a security cheque on the premise that on the due future date the debt which shall

have crystallized by then, shall be paid. So long as there is a debt existing, in respect whereof the cheque in question is issued, the same would attract Section 138 of NI Act in case of its dishonour. Thus, mere defence that the cheque in question was issued as a security cheque or as an advance cheque is not sufficient. The accused would still be liable if there is an outstanding liability of the accused towards the complainant at the time of presentation of the cheque. In the instant case, even after payment of Rs. 40,00,000/- there was still outstanding liability of Rs. 36,57,398/- left towards the complainant. The accused could not prove that there was no outstanding debt or liability towards the complainant on the scale of preponderance of probabilities and he failed to rebut the presumption in favour of the complainant. Therefore, the accused is liable towards the cheques in question.

41. Since the accused has failed to rebut the presumption raised under section 139 of the NI Act, there is no need to go into complainant's evidence. The complainant did not have to prove the said legal liability by leading any evidence. There is nothing coming out in the cross examination of the complainant which would probalilise the defence raised by the accused or falsify the case of the complainant. Therefore, the complainant has been able to prove his case beyond reasonable doubt.

42. The complainant has been able to prove that the cheques in question i.e. cheques bearing no.001932 dated 16.08.2014 for Rs. 4,25,000/-, bearing no. 001889 dated 25.08.2014 for Rs. 3,00,000/-, bearing no. 001920 dated 02.09.2014 for Rs.2,00,000/-, bearing no. 001925 dated 04.09.2014 for Rs. 3,00,000/-, bearing no. 001786 dated 08.09.2014 for Rs. 3,00,000/-, bearing no.1771 dated 11.09.2014 for Rs. 5,00,000/-, bearing no.001817 dated 16.09.2014 for Rs.4,00,000, bearing no. 001827 dated 19.09.2014 for Rs.3,00,000/- and bearing no. 001849 dated 26.09.2014 for Rs. 2,50,000/- drawn on DCB Bank Ltd. Chandni Chowk, Delhi-110006, Delhi as EX CW 1/8 to EX CW1/16 were issued in discharge of legally recoverable liability owed to the complainant by the accused. Therefore, the accused (1) M/s Pioneer Paper Agency and (2) Mr. Rajesh Jain are convicted for the offence punishable u/s 138 Negotiable Instruments Act.

**Announced in the Open
Court on 28.05.2020**

**(NAINA)
MM(N.I Act-07)/THC/ND**