IN THE COURT OF MS. TISTA SHAH METROPOLITAN MAGISTRATE(CENTRAL) NI ACT, CENTRAL DISTT. THC, DELHI.

CC No. 21/16

M/s Dhanraj Shree Kishan Das
Through its partner
Vipul Goel
6665, Khari Baoli,
Delhi-110006. ….. Complainant

Vs.

1. **Royal Varsha Industries Pvt. Ltd.**
   Regd. Office at C014,
   Masood Pur Market,
   Vasant Kunj, New Delhi-110017

2. **Ashutosh Vijay**
   Director/Authoried Signatory
   Royal Varsha Industries Pvt Ltd.
   Masood Pur Market,
   Vasant Kunj,
   New Delhi-110017 ….. Accused

Date of Institution	:	16.12.2016
Offence complained of	:	138 N.I.Act
Date of Judgment	:	07.07.2020
Decision	:	Acquitted

COMPLAINT UNDER SECTION 138 NEGOTIABLE INSTRUMENTS ACT, 1881.

JUDGMENT

1. The present complaint has been filed by the complainant against the accused under section 138 Negotiable Instruments Act, 1881.

2. The brief facts as alleged by the complainant in the complaint are that the complainant is a registered partnership firm and Sh. Vipul Goel is one of the partners of the firm . The complainant is dealing in the business of dry fruits, spices, crude drugs, natural herbs, rice, pulses, pooja material and marriage goods in wholesale and retail. It is further alleged that the accused is also in the field of trading the spices and the accused had approached the complainant at the office of the complainant firm and placed an order for supply of various kinds of spices, such as Biryani Masala and other like masala in the packaging of 100 gms which was provided by the accused. As per the instructions, the complainant had supplied the spices/masala to the accused in the packaging of 100 gms and had raised a bill for a sum of Rs. 1,97,400/- including the VAT amount of Rs. 9,400/- vide Bill/Invoice No. 48 dated 06.09.2016. It is further averred that before dispatching the material, the officials or the representative of the accused company had visited the premises of the complainant and made an inspection of the packed goods and at that point of time, a cheque bearing no. 000054 dated 30.08.2016 for a sum of Rs. 1,88,000/-, drawn on Kotak Mahindra Bank, Vasant Kunj branch, New Delhi was issued in favour of the complainant firm and it was

promised that the balance amount of Rs. 9,400/- towards VAT shall be paid after the receipt of the goods.

3. When the complainant presented the cheque in question in the bank in October 2014, the same was returned unpaid by the banker of the complainant vide cheque returning memo dated 14.10.2016 with the remarks "Payment stopped by drawer". The complainant again presented the cheque in the bank on 24.10.2016 and the same was returned unpaid by the banker to the complainant with the remarks "funds insufficient". While the former bank return memo of 14.10.2016 has not been filed the bank return memo pertaining to 24.10.2016 has been filed on record.

4. The complainant thereafter issued a legal demand notice on 02.11.2016 through counsel calling upon the accused to pay the said cheque amount within a period of 15 days from the date of receipt of the notice. The said notice was duly served upon the accused but still the accused failed to pay the aforesaid dishonoured cheque amount. Hence, the present complaint u/s 138 Negotiable Instrument Act 1881 (hereinafter referred to as NI Act) was filed on 16.12.2016.

5. In order to prove his case, the complainant had examined himself as CW-1 by way of affidavit CW-1/A and relied upon the following documents:

(a) Original cheque in question bearing no. 000054 dated 30.08.2016 Ex CW1/1.

(b) Original cheque return memo dated 24.10.2016 Ex. CW-1/2.

(c) Legal demand notice Ex. CW-1/3.

(d) Postal receipt and Courier receipt Ex.CW1/4.

(e) Reply sent by the accused to the legal demand notice dated Ex.CW1/5.

(f) Photocopy of the Bill/invoice bearing no. 48 dated 06.09.2016 Ex CW1/6.

(g) Photocopy of the Challan issued by the accused Ex CW1/7

6. On finding of a prima-facie case against the accused, the accused was summoned on 03.01.2017. Accused no 1 is a company and accused no 2 has been stated to be the director of the company.

Thereafter, notice u/s 251 Cr.P.C. was framed against both the accused on 23.11.2017 to which he pleaded not guilty and claimed trial. The plea of defence of the accused was recorded where the accused had stated that "I admit my signatures on the cheque in question. I also admit that I did receive the legal notice. Cheque in question was given as security for the amount to be given against the goods to be supplied by the complainant. In case, the amount was not paid in cash then, the cheque was to be encashed otherwise the cheque was to be returned. Goods supplied by the complainant was in poor packaging. We received several complaints regarding the same after we distributed the goods amongst our distributors. We immediately returned the entire stock to the complainant. We sent

message to the complainant as well as communicated with them through e-mail regarding the same. We suffered losses due to that and for that reason, we contacted another manufacturer for our business. There is no liability of ours towards the complainant herein. Our cheque has been misused. We had sent messages to the complainant claiming the tax invoice for the goods supplied by him but same were not sent. We also stated that we should be given fresh stock against the losses suffered by us but no reply was received. We had also replied to the legal notice of the complaint".

7. After the framing of notice the on behalf of the complainant firm Mr Vipul Goel examined himself as CW-1. No other witnesses were examined by the complainant. Thereafter, complainant evidence was closed and the matter was listed for statement of the accused u/s 313 Cr.P.C.

8. Statement of the accused was recorded u/s 313 Cr.P.C. r/w Section 281 Cr.P.C on 18.07.2018 wherein all the incriminating circumstances appearing in evidence against the accused were put to him to which the accused stated that " He had provided the entire packaging material to the complainant for proper packaging thereof. When the stock was delivered to them and same was sent to market, several complaints were received due to poor packing. They immediately informed the complainant through e-mail and whatsapp and asked them to rectify the error immediately. They were forced to recall the entire stock from our distributor. They still paid an amount

of Rs. 70,000/- in cash to the complainant. Cheque in question was given as security. They suffered huge losses due to failure of complainant to do the assigned job properly. When they claimed that amount from the complainant, present matter was filed".

9. Thereafter, the matter was listed for defence evidence. In his defence, the accused no 2 examined himself as defence witness DW-1.Thereafter, defence evidence was closed and the matter was fixed for final arguments.

10. Ld.Counsel for the accused has relied upon the following judgments as follows:

(a) M/s Alliance Infrastructure Project Pvt. Ltd & Ors vs. Vinay Mittal, Crl. M.C.No.2224/2009.

11. The submissions made by the Ld. Counsel for the complainant and the accused have been heard and the record of the case has been thoroughly perused.

12. Before proceeding to the merits of the case, it is important to lay down the basic provision of law with respect to section 138 of the Negotiable Instruments Act, 1881 which is as follows:

Section 138 of Negotiable Instruments Act, 1881 makes dishonour of cheques an offence. It provides that "*where any cheque drawn by a person on an account maintained by him*

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

13. In order to ascertain whether the accused has committed an offence u/s 138 NI Act, the following ingredients constituting the offence have to be proved:

(a) The drawer of the cheque should have issued the cheque for the discharge, in whole or in part of a legally enforceable debt or other liability.

(b) The cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank.

(c) The drawer of such cheque fails to make the payment of the said amount of money within fifteen days of the

receipt of the notice from the payee or the holder in due course demanding the payment of the said amount of money.

It is only when all the above mentioned ingredients are together satisfied that the person who has drawn the cheque can be said to have committed an offence u/s 138 NI Act.

14. As far as the first ingredient constituting the offence is concerned, it is the contention of the Ld counsel for the complainant that the cheque in question was issued by the accused for the discharge of a legally recoverable liability owed to the complainant where the cheque was issued for the payment of the goods worth Rs 1,88,000/- which had been supplied to the accused and with respect to the VAT amount of Rs 9,400/-, it was assured that the same shall be paid upon receipt of the goods. The complainant had supplied the goods in the packaging provided by the accused and accordingly he had raised a total bill of Rs 1,97,400/- inclusive of the VAT amount which was dated 06/09/2016 and which is present on record as Ex Cw1/6. It is further contended that since the cheque in question, issuance of which has been admitted by the accused and which was for the discharge of the legal liability owed to the complainant, had got dishonored upon presentation, the accused no 1 company and its director who is accused no 2 are both culpable under the penal provisions of section 138 of the NI Act.

15. The factual position in the present case is that accused no 1 is a

company and accused no 2 is admittedly one of the directors of accused no 1 company. As per the statement of the accused under section 251 Cr.P.C, the signatures on the cheque in question have been admitted to be of accused no 2. The factum of the issuance of the cheque in question in favour of the complainant has also been admitted by the accused. Further, the cheque in question has been drawn from the account of accused no 1 company.

16. Considering the above factual position, it is important to reproduce the legal position as enumerated in Sec.118(a) and Sec.139 of the N.I. Act here.

Section 118(a) of the Act provides that until the contrary is proved, it shall be presumed that "that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration.*"*

Further, **Section 139** of the Act lays down that "it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

17. In the case of **K.N. Beena Vs. Muniyappan AIR 2001 SC 2000,** it was established that "In a complaint u/s 138 the court has to presume that the cheque had been issued for a debt or liability. This presumption is rebuttable, however, the burden of proving that the cheque has not been issued to the complainant by the accused for the discharge of debt

or liability, lies on the accused".

18. Keeping in view the above stated law and in view of the fact that the cheque in question has been drawn from the account of accused no 1 company which is duly signed by accused no 2, representing accused no 1 company as the authorized signatory/director, a statutory presumption is raised in favour of the complainant that the cheque in question was issued for the discharge of a legally recoverable debt or liability.

19. Relying upon the foundational facts, once the statutory presumption has been raised in favour of the complainant, the burden of proof now lies upon the accused to rebut the statutory presumption as per the reverse onus of proof that now shifts upon the accused. It is now fairly settled that the accused can displace this presumption on a scale of "preponderance of probabilities" and the lack of consideration or a legally enforceable debt or liability need not be proved beyond all reasonable doubts. The accused can either prove that the liability did not exist or make the non existence of liability so probable that a reasonable person ought under the circumstances of the case, act upon the supposition that it does not exist. This the accused can do either by leading own evidence in his defence or by bringing out such inconsistencies or contradictions in the case of the complainant which go on to simply overthrow the complainant's case.

20. The accused, in order to rebut the presumption taken in favour of

the complainant has taken a number of defences in the present case. Primarily, it is stated by the accused that on the day when the cheque was issued to the complainant and on the day of its presentation in the bank, the accused did not owe the amount as mentioned on the cheque in question since an amount of Rs 70,000/- had already been paid to the complainant towards the transaction in issue. Secondly the goods supplied by the complainant faced packaging defects due to which the accused had returned the goods back to the complainant. Thirdly, it is alleged that the cheque in question was merely issued as a security cheque upon which no liability of the accused arises. Lastly the complainant being a partnership firm , CW1 was neither competent to file the complaint in its present form nor can his testimony be relied upon. It is contended by the Ld counsel for the accused that taking into consideration the said defences, the case of the complainant is liable to dismissed.

21. First and foremost, the primary defence of the accused needs to be examined for if established the same would result in overthrowing the case of the complainant. It has been stated by the accused that prior to the issuance of the cheque in question , a sum of Rs 70,000/- had already been paid to the complainant and thus the liability of the accused, if any, did not amount to the cheque amount.

The complainant has averred in the complaint that the accused had before the dispatch of the goods to him inspected the premises of the complainant and had issued the cheque in question for the amount of Rs 1,88,000/-. The complainant had supplied the ordered goods to

the accused and had raised a bill of Rs 1,97,000/- . In support of his averment ,the complainant has filed a document Ex CW1/6 stating the same to be the invoice dated 06/09/2016 for the amount of Rs 1,97,000/-.

22. In his reply to the legal demand notice of the complainant which is present on record as Ex CW1/5, the accused has clearly stated that against the order placed with the complainant, the accused had paid to the complainant, an amount of Rs 70,000/- in cash as advance payment. The same was stated by the accused in his statement under section 313, Cr.P.C as well as in his examination in chief as DW1. In order to prove the same, the accused has placed on record Ex DW1/1 which is the original voucher dated 18.06.2016 and which bears the signature of the receiver Vipul Goel who is CW1 in the present case. A perusal of the said document Ex DW1/1 shows that the same mentions that the advance payment of Rs 70,000/-is paid to the complainant firm by the accused company. The said document Ex DW1/1 has not been disputed by the complainant and no other document has been presented in its rebuttal. Interestingly DW1 who is accused no 2 was not even cross examined on the genuinity or veracity of the said document Ex DW1/1 and no suggestions were put to the accused DW1 which would point out that the signatures present on the said document were not of CW1. Hence there is no reason to disbelieve the said document Ex DW1/1.

Moreover CW1 has in his cross examination admitted to the receiving of the amount of Rs 70,000/- from the accused. The said fact of receipt of Rs 70,000/- has however not been stated anywhere in the

complaint, legal demand notice or even in the affidavit in chief of CW1, even though the accused had at the very first instance raised the same in his reply to the legal demand notice. In his cross examination CW1 has simply stated that " it is correct I have not mentioned in my complaint about receiving an amount of Rs 70,000/- from the accused". He goes on to add voluntarily that the "same was not so mentioned as the matter was only pertaining to the cheque in question." That being the factual position, the accused has been able to prove that he had already made an advance payment of Rs 70,000/- to the complainant on 18.06.2016 towards the goods supplied by the complainant.

Although Ex CW1/6 which is stated to be the invoice dated 06/09/2016 is a mere photocopy and hence cannot be relied upon at this stage, however the said fact of the bill being raised for Rs 1,97,400/- has not been disputed by the accused. Thus even if it is said that the bill raised for the goods so ordered by the accused was of Rs 1,97,000/- yet the cheque in question which was presented in the bank was for an amount of Rs 1,88,000/-. Thus the amount of Rs 70,000/- that was already paid by the accused to the complainant was not set off by the complainant at the time of the presentation of the cheque in question which could have been done by the complainant by an indorsement to that effect on the cheque in question. Further the legal demand notice that was sent to the accused was for the entire amount of Rs 1,88,000/- and not for the reduced liability of Rs 1,27,400/- after setting off the amount of Rs 70,000/-, which was not legally permissible.

23. Ld counsel for the complainant has, at the time of addressing final

arguments in the case raised an argument that the amount of Rs 70,000/ was given by the accused for the purchase of a sample of goods from the complainant and the same is evident from the date mentioned on the invoice Ex CW1/6 which is dated 06/09/2016. It is argued that since the amount of Rs 70,000/- was paid much prior to 06/09/2016 , it cannot be said that the same was for the transaction in question. The said argument of Ld counsel for the complainant seems to be a mere afterthought, for filling in the loopholes in the case of the complainant. There is no dispute about receiving of the amount of Rs 70,000/- from the accused. The argument of it being paid for a sample and not for the transaction in question has not been stated by the complainant in his cross examination, when he was asked about the receipt of the sum of Rs 70,000/-. Moreover it has himself been stated by CW1 in his cross examination that "It is correct that the complainant company has no other claim except to the present complaint." No proof has been filed by the complainant either to rebut the document Ex DW1/1 presented by the accused or to prove that the payment of Rs 70,000/- was for a sample, totally unconnected to the present transaction in hand.

It is also to be observed that the complainant has nowhere stated the date or month as to when the agreement was first entered into between the parties for the purchase of the goods. The date on which the parties had entered into an agreement for the purchase of the goods is evident only from a perusal of Ex CW1/5 which is the reply to the legal demand notice, where it is stated that an agreement had taken place between the parties for supply of the goods on 18/06/2016. The said fact has not been disputed anywhere by the complainant and Ex DW1/1

which is the voucher evidencing payment of Rs 70,000/- is also dated 18/06/2016. Thus there remains no doubt that the amount of Rs 70,000/- was given as advance payment for the transaction in issue of Rs 1, 97,400/- .

The said argument of the Ld counsel for the complainant also does not hold force because the cheque in question is itself dated prior to the date of the invoice i.e 06/09/2016, where the complaint itself states that the goods were delivered after the cheque in question was issued. Thus it cannot be assumed that since the accused had given the amount of Rs 70,000/- prior to the date of the invoice, the same was for a sample and the same was not to be set off from Rs 197000/- which was a different transaction.

24. In a nutshell, what comes from the above discussion is that on the date when the cheque in question was presented in the bank, the accused did not owe the amount as stated on the cheque in question, since he had already paid part amount of the liability. Thus, on the date when the cheque in question was presented in the bank, there was no legal liability of the amount of the cheque in question of the accused towards the complainant.

25. Ld counsel for the accused has placed reliance on the judgement of the Hon'ble High Court of Delhi in **M/s Alliance Infrastructure Project Pvt. Ltd. and Ors. Vs. Vinay Mittal Crl. M.C. No.2224/2009** where the Hon'ble High Court had held that " The question which comes up for consideration is as to what the expression "amount of

money‟ means in a case where the admitted liability of the drawer of the cheque gets reduced, on account of part payment made by him, after issuing but before presentation of cheque in question."

In relation to the said question it was observed that "If it is held that the expression "amount of money" would necessarily mean the amount of cheque in every case, the drawer of the cheque would be required to make arrangement for more than the admitted amount payable by him to the payee of the cheque. In case he is not able to make arrangement for the whole of the amount of the cheque, he would be guilty of the offence punishable under Section 138 of Negotiable Instruments Act. Obviously this could not have been the intention of the legislature to make a person liable to punishment even if he has made arrangements necessary for payment of the amount which is actually payable by him. If the drawer of the cheque is made to pay more than the amount actually payable by him, the inevitable result would be that he will have to chase the payee of the cheque to recover the excess amount paid by him. Therefore, I find it difficult to take the view that even if the admitted liability of the drawer of the cheque has got reduced, on account of certain payments made after issue of cheque, the payee would nevertheless be entitled to present the cheque for the whole of the amount, to the banker of the drawer, for encashment and in case such a cheque is dishonoured for wants of funds, he will be guilty of offence punishable under Section 138 of Negotiable Instrument Act.

I am conscious of the implication that the drawer of a cheque may make payment of a part of the amount of the cheque only with a view to circumvent and get out of his liability under Section 138 of

Negotiable Instrument Act. But, this can easily be avoided, by payee of the cheque, either by taking the cheque of the reduced amount from the drawer or by making an endorsement on the cheque acknowledging the part payment received by him and then presenting the cheque for encashment of only the balance amount due and payable to him. In fact, Section 56 of Negotiable Instrument Act specifically provides for an endorsement on a Negotiable Instrument, in case of part-payment and the instrument can thereafter be negotiated for the balance amount. It would, therefore, be open to the payee of the cheque to present the cheque for payment of only that much amount which is due to him after giving credit for the part-payment made after issuance of cheque." " When the principal amount claimed in the notice of demand is more than the principal amount actually payable to the payee of the cheque and the notice also does not indicate the basis for demanding the excess amount, such a notice cannot be said to be a legal and valid notice envisaged in Section 138(b) of Negotiable Instrument Act. In such a case, it is not open to the complainant to take the plea that the drawer of the cheque could have escaped liability by paying the actual amount due from him to the payee of the cheque. In order to make the notice legal and valid, it must necessarily specify the principal amount payable to the payee of the cheque and the principal amount demanded from the drawer of the cheque should not be more than the actual amount payable by him though addition of some other demands in the notice by itself would not render such a notice illegal or invalid."

26. The above ratio was reiterated by the Hon'ble High Court of

Gujarat in the case of **Shree Corporation vs Anilbhai Puranbhai Bansal** R/SCR.A/3653/2012.

27. In the present case the complainant had presented the cheque in question for an amount which was more than what was actually due to him and had sent the legal demand notice for the cheque amount, which was neither the actual amount of the legal liability so due nor the amount towards part payment of the legal liability. The legal demand notice does not bear any mention of Rs 70,000/- which was received as advance payment. That being so, the very first ingredient of the offence is not made out since the cheque cannot be said to have been given in discharge of the whole or part amount of the liability owed to the complainant.

Further the legal demand notice by not referring to the amount already paid by the accused and making a demand for an amount more than actually due to the complainant, besides invalidating the legal demand notice, also goes on to discredit the credibility of the complainant. The legal demand notice which is one of the essential ingredient of the offence under section 138 of N.I.Act, being invalid, the accused cannot be made liable for the said offence.

28. As far as the other defences taken by the accused are concerned, a lot of emphasis has been made throughout the trial to the defence that the goods actually supplied by the complainant were packed in a defective packaging and the accused had received several complaints regarding packaging of the goods from the distributers of the goods.

The said defence has repeatedly been stated in the reply to the legal demand notice, the notice under section 251 Cr.P.C., the statement of the accused under section 313 Cr.P.C and in his examination in chief of DW1. Per contra, the complainant in his cross examination has stated that although the complaint regarding packaging of the goods was received from the accused yet with respect to the defect in packaging it was stated by the complainant that "the packaging part was not pertaining to us. The cartons were supplied by accused himself." It was also stated that the cardboard boxes in which the spices were to be packed were provided by the accused. Further in the complaint it has been stated that the goods were dispatched after an inspection of the packed goods had been done by the accused. Ld counsel for the complainant has also stated that the accused has himself in his statement under Section 313, Cr.P.C stated that the entire packaging material was provided to the complainant by the accused and hence it cannot be said that there was a defect in the packaging of the goods on account of the complainant.

29. It has also been stated by the accused in his statement under section 313, Cr.P.C and in his examination in chief as DW1 that the goods were returned back to the complainant. The same has however not been stated by the accused in his statement under section 251 Cr.P.C and in the reply to the legal demand notice. In the reply to the legal demand notice it was stated that the complainant should take back the goods from the premises of the accused company. Further no date has been stated by the accused as to when the goods were actually returned

to the complainant. Reliance has been placed upon Ex DW1/2 which is stated to be the office copy of the challan for returning the goods to the complainant. Even though the complainant has not filed any document in rebuttal of the same yet whether or not there was actually a defect in packaging and if yes whether the said defect was due to the conduct of the complainant or the accused and resultantly whether there was a breach in the terms of the agreement are questions which can be agitated between the parties in a civil action. In the facts of the present case, criminal liability cannot be fastened when the requirement as to the 'existing legal liability' does not stand satisfied.

30. As far the defence of the accused that the cheque was given as a security cheque in advance, is concerned the law with regard to cheques given in advance is laid out in **Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Limited, criminal APPEAL NO. 867 OF 2016 wherein the Hon'ble Apex Court had in relation to such cheques held that"** If on the date of the cheque, liability or debt exists or the amount has become legally recoverable, the Section is attracted and not otherwise." Therefore on account of the said law as well, no offence under section 138 NI Act is attracted since on the date of the cheque, liability of the amount of the cheque was not actually due to the complainant.

31. The accused has also stated that CW1 was not competent to file the complaint and depose as no authority or power of attorney has been filed to prove the competence of CW1. It is a well settled law that a

partner has the authority to file a complaint under section 138 NI Act if the payee is a partnership firm. The present case has been filed by the complainant firm through the partner. In his cross examination, CW1 has stated that he is the partner of the complainant firm. The same has been stated in the complaint as well. A perusal of the document Ex DW1/1 relied upon by the accused himself bears the name of CW1 Mr Vipul Goel on behalf of the firm as the receiver and his signatures. There is no legal requirement of filing of a formal power of attorney or an authority letter in case of a partner who is legally authorized to file a complaint on behalf of the firm. Ld counsel for the accused has also raised an argument that there is no proof of the registration of the partnership that has been filed and hence an unregistered partnership firm could not have filed a complaint under section 138 NI Act. In this regard, the argument of the ld counsel for the accused is misconceived since the bar to section 69(2) of the Indian Partnership Act does not apply to the proceedings under section 138 NI Act. Therefore whether the complainant firm was a registered or unregistered partnership firm is immaterial for deciding the dispute in hand.

32. In light of the foregoing reasons, since in the present case the cheque having not been issued for an existing debt or liability on account of the part payment already made and the legal demand notice being an invalid notice, the ingredients of offence u/s 138 of the NI Act are not fulfilled, resultantly both the **Accused No. 1 company namely Royal Varsha Industries Pvt. Ltd and Accused No 2 namely**

Ashutosh Vijay are acquitted for offence u/s 138 of the N.I.Act.

Announced by way of proceedings
conducted through video conferencing.

Dated 07.07.2020.

TISTA SHAH
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Date: 2020.07.07 13:13:15 +05'30'

(Tista Shah)
MM-06/NI Act/Central District
Tis Hazari Court/Delhi.

M/s Dhanraj Shree Kishan Das v. Royal Varsha Industries Pvt. Ltd. & ors.

CC No. 21/16

07.07.2020

Matter taken up today through video conferencing.

Present:- Complainant in person with Ld. Counsel Sh. Nitin Bansal.

Accused no. 1 is a company.

Accused no. 2 Ashutosh Vijay in person with Ld. Counsel Sh. Manoj Kumar.

The present matter was listed for judgment. However, on the fixed date, due to suspension of the court work by the Hon'ble High Court of Delhi on account of the ongoing pandemic of Covid-19 and the consequent lockdown ordered by the Government of India, the present matter was adjourned.

Now, the present matter is being taken up in terms of order no. 16/DHC/2020 dated 13.06.2020 passed by the Hon'ble High Court of Delhi communicated to this court through order no. 11598-11728/DJ/Central/Lockdown Covid-19/AD & SJ Duty & Arrangements/2020 dated 14.06.2020 passed by learned District and Sessions Judge (HQ) Delhi. The matter is accordingly preponed and fixed for today. The reader of the court was directed to contact the respective counsels of the parties telephonically on the numbers provided on the respective vakalatnamas informing them that the proceedings in the present case shall take place through video conferencing. Both the parties as well as their counsels had communicated to the Reader their consensus on participation through video conferencing. Accordingly, the present matter is taken up today for pronouncement of judgment in the present case.

Vide separate judgment of even date, accused no. 1 company Royal Varsha Industries Pvt. Ltd. And accused no. 2 Ashutosh Vijay are acquitted of the offence punishable under Section 138 NI Act.

The accused has submitted that the bail bonds already furnished on record be accepted for the purposes of Section 437A Cr.P.C. The same has not been

opposed. Considering the above and in view of the prevailing circumstances of

(2)

Covid-19, the bail bonds already on record are extended as accepted for the purpose of Section 437 A Cr.P.C.

File be consigned to record room after due compliance.

(Announced by way of proceedings conducted through video conferencing).

TISTA SHAH

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(Tista Shah)

MM-06, NI Act, THC, Central

Delhi, 07.07.2020