J. Veeraraghavan Vs. Lalith Kumar

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Court : Chennai

Decided On : Oct-19-1994

Reported in : [1995]83CompCas853(Mad)

Judge : Janarthanam and ;Thangamani, JJ.

Acts : Negotiable Instruments Act, 1881 - Sections 138

Appeal No. : Criminal Original Petition No. 7002 of 1992

Appellant : J. Veeraraghavan

Respondent : Lalith Kumar

Advocate for Def. : A. Packiaraj, Adv.

Advocate for Pet/Ap. : S. Venkatesan, Adv.

Judgement :

Janarthanam, J.

1. T.S. Arunachalam J., while hearing the arguments in this petition under section 482 of the Code of Criminal Procedure, 1973, to quash the proceedings in C.C. No. 489 of 1992 on the file of the XVth Metropolitan Magistrate, George Town, Madras, raising the question as to whether the return by a banker of a cheque unpaid bearing an endorsement 'account closed', will fail within the scope and

ambit of the two contingencies, viz., 'insufficiency of the amount of money standing to the credit of the account of the person', or 'it exceeded the amount arranged to be paid from that account of a person by an agreement with that bank', giving rise to a cause of action for launching a prosecution by preference of a private complaint for an offence under section 138 of the Negotiable Instruments Act, 1881 (Act 26 of 1881) (for short 'the Act'), came to notice divergent views emerging from two learned judges of this court, Pratap Singh J. and Padmini Jesudurai J.

(a) In Binary Systems (P.) Ltd. v. Nobel Power (P.) Ltd. [1992] LW (Crl.) 307 (Mad), Pratap Singh J. was concerned with a cheque, which was returned with an endorsement 'stop payment'. Though, in the headnote, it is stated that 'stop payment' will not fall within the section. . . it is seen that such a categoric finding has not been recorded by the learned judge. It appears from a portion of the order quoted below that the learned judge was of the opinion that the return of the cheque should be capable of being brought under either of the two heads mentioned in section 138 of the Act. However, in that particular case, the learned judge was not inclined to quash the pending prosecution in exercise of the powers under section 482 of the Code of Criminal Procedure (for short 'the Code'), since the complaint contained allegations that there was insufficiency of funds, though the bank return was on the ground of payment having been stopped. It will be better to extract the observations of the learned judge:

'(4) Learned counsel further contended that the cheque returned with an endorsement 'stop payment' and it was not returned due to insufficiency of funds because it exceeds the amount arranged to be paid and hence the offence under section 138 of the Negotiable Instruments Act was not committed.

On the latter occasion, the cheque has been returned with the endorsement 'stop payment'. The complainant submits that the accused have acted diabolically. On both the occasions, when the cheque reached the accused's bank in Bangalore for collection, sufficient funds were not available resulting in the dishonour of the cheque.

Those are the positive allegations in the complaint to the effect that only due to the insufficiency of funds the cheque was returned, but diabolically the accused had acted and the cheque was returned with the endorsement 'stop payment'. So it is to be seen only during the course of the trial whether the cheque was returned unpaid due to the insufficiency of funds as alleged in para 4 of the complaint or otherwise and when there are positive allegations to the effect in the complaint that cheque was returned due to insufficiency of funds, those allegations cannot be ignored and the complaint quashed at the threshold. For, whether those allegations are true or not can be tested only during trial. That stage has not yet come.'

(b) In Jayalakshmi (R.) v. Rashida [1991] LW (Crl.) 602; [1992] 74 Comp Cas 841 (Mad) Pratap Singh J., while considering the argument that only in a case where the cheque was returned unpaid on the ground of insufficiency of funds or that it exceeded the amount arranged to be paid, an offence under section 138 of the Act should be held to have been made out and not when the endorsement was 'payment countermanded by the drawer'. The relevant portion of the observations of learned judge is as under (at page 844 of 74 Comp Cas):

'A plain reading of section 138 of the Act would clearly indicate that only in those two contingencies, viz., when the cheque was returned unpaid because of insufficiency of funds and/or it exceeds the amount arranged to be paid is an offence committed. In cases, where the cheque is returned unpaid with the endorsement 'refer to drawer', it has been held by this court that the endorsement 'refer to drawer' is an euphemistic way of informing the payee that the drawer of the cheque has got no amount to his credit to honour the cheque. Such is not the case here. In all the complaints, the cheques were returned unpaid with the endorsements refer to drawer' and 'payment countermanded by the drawer'. So, the reason for referring to the drawer has been pinpointed in the endorsement itself, viz., that payment was countermanded by the drawer. Such a case would not come within the ambit and scope of section 138, Negotiable Instruments Act.'
(c) In Prasanna (S.) v. Vijayalakshmi (R.) , Pratap Singh J., while deciding if a cheque returned unpaid with an endorsement 'account closed' would fall within the scope of section 138 of the Act, observed as under (at page 524 of 76 Comp Cas):

'A plain reading of section 138, Negotiable Instruments Act, would show that only if the cheque was returned by the bank unpaid because of the above two contingencies, is an offence under section 138 of the Negotiable Instruments Act made out. In the instant case, the cheque was returned unpaid with the endorsement 'account closed'. Hence, this case does not fall within the ambit of section 138 of the Negotiable Instrument Act. In this regard, learned counsel for the petitioner relied upon the ruling in Hunasikattimath (G.F.) v. State of Karnataka : ILR 1990 KAR2080 . In that case, dishonour of the cheque was on the ground 'account closed'. The learned Magistrate had dismissed the private complaint filed on such dishonour, of offence under section 138 of the Negotiable Instruments Act. Aggrieved by that order, the complainant took up the matter to the High Court under section 482 of the Criminal Procedure Code.

It was held that section 138 of the Negotiable Instruments Act, provides for punishment only in case the cheque was returned unpaid due to -

(i) insufficiency of amounts in the account of the drawer of the cheque to honour the cheque;

(ii) the amount covered by the cheque exceeded the arrangement to be paid to the account-and not on any other ground.

I am in respectful agreement with the view of the Karnataka High Court. So, on this ground, the complaint is liable to be quashed.'

However, Padmini Jesudurai J. in Manohar v. S. Mahalingam [1992] LW (Crl.) 367 was of the opinion that return of a cheque with an endorsement 'stopped payment' was not decisive of the cause of return, for, insufficiency of funds was capable of being established by the complainant by summoning the bank records. The learned judge further stated:

'When such a cheque is returned unpaid, the banker returns it with a slip giving the reason for the dishonour. There is no statutory obligation on the banker to give an answer or an objection memo-as they are commonly called-to the payee indicating the reason for the dishonour of the cheque. . . The answer 'refer to drawer' often

adopted by bankers, would mean anything from shortage of time, to death or insolvency of the drawer and could also include insufficiency of funds. It could include serving of a garnishee order and could be milder form of refusal than 'no funds' or 'no arrangements. At times it may not really reflect the financial position of the drawer and could only mean 'we are not paying, just ask the drawer why'. Unlike most other answers, which if proved to be untrue, would be libellous, the return 'refer to drawer' is not. . .

Even though the answer or the objection memo on the unpaid cheque shows a reason other than insufficiency of funds or inadequate arrangements, it would still be open to the complainant to establish, as a fact that the cheque was really returned unpaid only for want of funds or for inadequate arrangement. This the complainant could do by summoning the necessary bank records and the bank witnesses. This ingredient has to be established de hors an answer by the bank to that effect in the returned cheque or even in spite of a different answer given by the bank in the returned cheque. . .

Even if the cheque had been returned unpaid with the answer 'stopped payment', as in this case, it would be open to the complainant to establish that on the day when the cheque was presented, funds were not available to the drawer's account or that the overdraft arrangement had been exceeded. . . The proceedings, therefore, cannot be quashed, even before trial has commenced merely because of the return by the bank indicating causes other than insufficiency of funds or inadequate arrangement. The nomenclature of the return, by itself is not decisive of the cause of the return.'

2. After having said so, Padmini Jesudurai J. was of the opinion that in any event, the complaint must disclose that the petitioner did not have sufficient funds on the day when the cheque was presented for encashment and that the reason for the cheque being unpaid was really insufficiency of funds or inadequate arrangement. Unless such an allegation was made in the complaint, the complaint would not disclose an offence under section 138 of the Act.

3. Arunachalam J. would refer to the aforesaid decisions of Pratap Singh J. and Padmini Jesudurai J. and then say:

'. . . after careful thought, with due respect, I am unable to agree with the law laid down by Pratap Singh J. in its entirety and in part with that laid down by Padmini Jesudurai J. Since, in my opinion, a wider and broader construction will have to be given to section 138 of the Negotiable Instruments Act, keeping in view the scheme, object and purpose of the Act, it has become necessary that an authoritative pronouncement be rendered by a Division Bench of this court.

Though Padmini Jesudurai J. has accepted the proposition (in Manohar's case [1992] LW (Crl.) 367, I intend stating that nomenclature of the return of the cheque by itself would not be decisive, the latter part of the observation made by the learned judge about the nature of allegations, that must form part of the complaint, cannot, in my view, represent the correct legal position, for, then the object of the enactment would stand defeated. The learned judge, while upholding the causes, has refused to grant relief, which must be the logical consequence.'

4. Arunachalam J. in his quest for a solution to such a vexed question, traced the various hues of views emerging from different High Courts and expressed an opinion that since a wider and broader construction will have to be given to section 138 of the Act keeping in view the scheme, object and purpose of the Act, it has become necessary that an authoritative pronouncement be rendered by a Division Bench of this court for a quick and early decision, on the availability of which, a host of cases can stand disposed of.

(a) The said learned judge posed the question to be decided in the following manner:

'When section 138 of the Negotiable Instruments Act contemplates deemed commission of an offence under two circumstances, namely, insufficiency of the amount of money standing to the credit of the account of a person or it exceeded the amount arranged to be paid from that account by an agreement made with that bank, will a Magistrate be competent to take cognizance, on a private complaint, when the return by the bank, of the cheque, bears an endorsement 'account closed', or 'payment stopped' or 'refer to drawer''? (b) The sweep and amplitude of the question so posed had been expanded by observing thus:

'Merely because in the question posed, three further contingencies alone have been referred to, it does not mean, that these are exhaustive, for similar such contingencies with slight variations may also arise.' (c) What is further observed is reflected thus: 'While considering this question, it also appears important to decide, if specific averments will have to be made in the complaint either about insufficiency of funds in the account, or, that it exceeded the arrangement, even while the return of the cheque from the banker indicated the three other categories mentioned in the question framed or similar such contingencies?'

5. The net result is, that in pith and substance, the following two questions had been referred for an authoritative pronouncement:

(i) Will a Magistrate be competent to take cognizance of a private complaint when the return by the bank of the cheque bears an endorsement of contingencies or eventualities other than the ones mentioned in section 138 of the Negotiable Instruments Act?

(ii) Will it be permissible to invoke the inherent power under section 482 of the Code of Criminal Procedure, to put an end to the prosecution, merely because certain words in the statute had not been reproduced in the complaint notwithstanding the fact that the complaint discloses, taken in its totality, the ingredients of the offence alleged

6. In order to understand the ramifications of the questions posed in all facts, better it is, we think, to go into the objects and reasons for the re-introduction of Chapter XVII of the Act, by section 4 of the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (Act 66 of 1988), under a new nomenclature for the Chapter OF PENALTIES IN CASE OF DISHONOUR OF CERTAIN CHEQUES FOR INSUFFICIENCY OF FUNDS IN THE ACCOUNTS.

7. Negotiable instruments were devised by the mercantile community as a safe and very dependable method of discharging pecuniary liabilities and as a substitute for cash payment which would always involve an element of ample risk due to either the magnitude of the amount sought to be paid or the geographical

distance between the payer and the payee. Such instruments could also be cleverly and conveniently used by several persons to discharge their financial liabilities, inter se. However, a smooth working of the system of negotiable instruments primarily depended upon the honesty and the integrity of the parties thereto. The experience, however, of the mercantile community, particularly in India, has been far from adorable in recent times. A number of cheques dishonoured on the apparent ground of insufficiency of funds with the bankers in the accounts of the drawer, has mounted to such an alarming proportion as to create a justifiable doubt and misgiving about the good faith and bona fide intentions of the givers, i.e., the drawers of the cheques and other endorsers. A practice, it is said, has already crept into the several metropolitan markets in India to give cheques merely as a device to stall for the time being, the undesirable contingency of being prevailed upon to make the payment on the spot, thus substantially eroding the credibility of cheques as a trustworthy substitute for cash payment. There was already a big clamour in the mercantile community about the element of insincerity and lightheartedness, which has crept into the practice of issuing cheques and fairly effective, though not highly deleterious remedies had to be provided for to eradicate the evil which had incarcerated the operational anatomy of the business world. A cheque that is dishonoured may cause incalculable loss, injury or inconvenience to the payee or endorsee thereof in view of the fact that due to the latter's unexpected disappointment he has also to lick the dust while meeting his own future commitments to other persons. It is true that the Act, prior to the re-introduction of Chapter XVII by Act 66 of 1988 has not failed to provide remedy for the aggrieved party. The remedy would be merely of a civil nature and the process of seeking civil justice is notoriously dilatory. To ensure promptitude in remedy against defaulters, therefore, was the only way in which the element of credibility and dependability could be re-introduced in the practice of issuing negotiable instruments in the form of cheques. The best way to do this is to provide criminal remedy of penalty, which is just the thing that is said to be done by the amending Act.

8. Clause XI of the Objects and Reasons, Clause in the Bill*, which is relevant for the present purpose, is couched in the following terms:

'(xi) to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of funds in the accounts or for the reason that it exceeds the arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers;'.

9. Chapter XVII has five sections, which are as follows:

'138. Dishonour of cheques for insufficiency, etc., of funds in the account. - 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 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 provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless -

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

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

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation. - For the purposes of this section, 'debt or other liability' means a legally enforceable debt or other liability.

139. Presumption in favour of holder. - 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.

140. Defence which may not be allowed in any prosecution under section 138 - It shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

141. - Offence by companies. - (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purposes of this section, -

(a) 'company' means any body corporate and includes a firm or other association of individuals; and

(b) 'director' in relation to a firm, means a partner in the firm.

142. Cognizance of offences. - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138;

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try offence punishable under section 138.'

An offence contemplated by the provisions of this Chapter, shall be deemed to have taken place, if the following conditions exist:

(a) A cheque has been drawn by a person on an account maintained by him with a bank for payment of any amount of money to another persons from out of that account;

(b) the cheque must have been issued for the discharge, either in whole or in part, of any debt or other liability though, in the absence of proof to the contrary, it shall be presumed that it was issued for the same purpose;

(c) the cheque is returned by the bank unpaid:

(i) either because the amount of the money standing to the credit of that account is insufficient to honour the cheque; or

(ii) because it exceeds the amount arranged to be paid from the account by an agreement made with that bank.

10. Thus, the dishonour of the cheque by a banker under the above mentioned circumstances shall constitute an offence and the offender is liable to be punished under section 138 of the Act with imprisonment which may extend to one year or with fine which may extend to twice the amount of the cheque or with both.

11. There are two ways in which the Legislature has further helped the cause of the aggrieved party by facilitating the application of section 138 of the Act to his case:

(i) Under section 139 a presumption is created whereby it is presumed, unless the contrary is proved, that the holder of the cheque, i.e., the aggrieved party received the cheque for the discharge, in whole or in part, of any debt or liability; and

(ii) under section 140 of the Act the drawer cannot adopt the mere defence of goods faith, i.e., the defence that he had no reason to believe, when he issued the cheque, that the cheque may be dishonoured on presentation for the reasons stated in that section. However, an honest or an innocent drawer is sought to be adequately protected by this Chapter in the following manner, viz.:

(i) Under clause (a) of the proviso to section 138 of the Act, the drawer will not be liable unless the cheque is presented for payment within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. This means that he payee or the holder in due course, who has himself been guilty of what may be legally called 'contributory negligence' by his own procrastination, would not be able to reap the benefit of the penal provisions in section 138 of the Act. This provisions also indirectly suggests that the drawer of the cheque is under an obligation to keep in his account such funds as would meet the demands of the cheque only till the period of its validity or till a period of six months from the date of its issue, whichever is earlier. If the cheque is presented and dishonoured thereafter, the remedy stated in this section will not be available to the payee or the holder of the cheque.

(ii) Under clause (b) of the proviso to section 138, the payee or the holder of the cheque has to make a demand for the payment of the amount under the cheque by giving in writing a notice to the drawer of the cheque within fifteen days of the receipt of the information by him from the bank regarding the return of the cheque as unpaid. The statutory requirement of a notice in writing demanding payment of the cheque money indicates that the penal provisions of this section will not be applicable if notice is not given within the statutory period, or, in the alternative, not given at all. Of course, violation of clause (b) of the proviso to this section would

not cause the payee or the holder in due course of the cheque to forfeit his other remedies stated in this Act. However, this clause (b) of the proviso to the section along with clause (e) thereof, to be stated below, indicates that an honest and sincere drawer of a cheque is not expected to be taken unawares and is given ample opportunity of remedying the situation created by his default before he is exposed to the penal provisions of the section. And the remedy is nothing more than the liability which he had already undertaken through the modicum of the cheque. Thus if he performs his duty even after the dishonour of the cheque, his honour cannot be put at stake by the penal provisions of the Act. Therefore, the Legislature avowedly wants to treat this not as the 'immediate' but the 'ultimate' remedy, knowing fully well that applying criminal remedy in respect of every dishonour of cheque would create unprecedented pandemonium in mercantile circles, thus resulting ultimately in not encouraging the people from making payment through cheques due to a dismal or slender fear that it is likely to be dishonoured by even inadvertent calculations of his account by the drawer himself. In a number of situations the drawer of a cheque may not, either due to lack of appropriate means of communication or because of the apathy of the banker, even be able to know the exact balance in his account at the time of issuing the cheque and must, therefore, be given an opportunity of having a second chance to settle the scores before being dragged to the portals of a criminal court.

(iii) According to clause (c) of the proviso to section 138, the drawer is not liable under this section unless he fails to pay the money as aforesaid to the payee or the holder in due course within fifteen days of the receipt of such notice. This again indicates that the drawer of a cheque has been given enough time to so arrange his fiscal resources as to enable him to make the payment of the money under the cheque to the concerned person, which, by itself, would avoid all the undesirable contingencies contemplated by the provisions of the section. The section, therefore, provides ample opportunity to an honest drawer to prove his bona fide intentions through 'conduct' and saves him from the punishment. It must be added, however, that even a fraudulent and mala fide drawer may also seek exoneration from criminal liability by making likewise payment in accordance with clause (c) of the proviso to section 138 of the Act.

(iv) It may further be noted that under clause (a) of section 142 of the Act no court shall take cognizance of any offence punishable under section 138 except upon a complaint in writing made by the payee or the holder in due course. Thus, a mere dishonour of the cheque for reasons envisaged in section 138 does not ipso facto expose the drawer to the penalty stated therein. If the drawer of a cheque claims the trust and the confidence of the payee, the latter would automatically give the former an opportunity to give another cheque by way of substitute or ask for payment in cash, instead of filing a criminal complaint. And in the absence of the payee or the holder resorting to the ultimate stage of filing a criminal complaint in writing, no one else can set the wheels of criminal law in motion against the drawer of the cheque. The Legislature has, therefore, struck a fairly good balance between drawers, on the one hand, who are recklessly and irresponsibly issuing cheques, regardless of whether or not they would be dishonoured or even with a sly hope and expectation that they would be dishonoured, and honest drawers, on the other hand, whose cheques are dishonoured by some miscalculations made in good faith and who are immediately prepared to honour their commitment by making payment of money.

12. It is true that cheques are dishonoured by banks for various reasons. Some of them are:

'1. Payee's endorsement required,

(1a) Shareholder's discharge required in the place provided for.

(1b) Please certify that the amount of cheque is credited to payee's account only.

2. Payee's endorsement irregular. Will pay on bank's confirmation.

3. Payee's endorsement irregular. Prefix 'For' or 'For and behalf of' or 'Perpro' required.

4. Payee's endorsement bank's confirmation.

(4a) Shareholder's discharge irregular.

5. Payee's vernacular endorsement must be attested by a J.P. or a Magistrate under official seal.

6. Translation of vernacular writing requires bank's guarantee.

(6a) Guaranteed translation of vernacular writing required.

(6b) Collecting bank's confirmation requires clearing bank's guarantee.

(6c) Collecting bank's discharge required in your favour.

7. Post-dated

(7a) Out of date

(7b) Date doubtful

(7c) Date irregularly written

(7d) Date incomplete

(7e) Cheque without date

(7f) Dividend warrant out of date (please refer company).

(7g) Cheque mutilated requires bank's guarantee

8. Amount in words and figures differs

9. . . . . requires drawer's full signature

10. Drawer's signature differs from specimen recorded with us

11. Drawer's vernacular signature must be attested by our bank officials.

12. Drawer's signature incomplete

(12a) Drawer's signature required

(12b) Title of the account required

(12c) Cheque irregularly drawn

13. Crossed cheque must be presented through a bank

(13a) This attached cheque will be received by us for collection

(13b) This attached draft is marked payee's account only

14. Effects not cleared, please present again

15. Effects drawn against returned unpaid

16. Not provided for

(16a) Not arranged for

(16b) Exceed arrangements

17. No advice, present again

18. Full cover not received

(18a) Funds expected. Please present again

19. Refer to drawer

(19a) Insufficient funds

(19b) Account closed

20. Payment stopped by the drawer

(20a) Cheque number differs

(20b) Cheque crossed to two banks

(20c) Please present this cheque on the counter for encashment

(20d)..... stamp required to be cancelled under authenticated initials.

21. Today's clearing house stamps required.

(21a) Receipt stamp required.'

13. In analysing the reasons, as above, for the return of the cheque unpaid, Arunachalam J., in the referred order, at para 19 has expressed thus:

'It will be easily possibly to visualise that except a few of the reasons for return, most of the other reasons can be brought under the two categories mentioned din section 138 of the Act, the only need being, that the evidence of the banker must be brought on record, before the real reasons for the return can safely be concluded. In other words, merely because only two reasons have been mentioned in section 138 of the Act, it is not possible to confine prosecutions only to those two reasons, for, obviously many more reasons can also fall under these two heads, though the nomenclature of the return, may not specifically mention these two contingencies referred to in section 138 of the Act. To put it differently, the reasons for which a cheque stands returned without being honoured will have to be relegated for consideration during trial, depending upon the evidence that is sought to be brought on record and most certainly cannot furnish a ground to erase prosecution even at the threshold, simply because the nomenclature of return by the banker does not show the exact words used in section 138 of the Act.'

14. The observations of Lord Denning L.J. on the interpretation of statutes, which had been reproduced by the apex court in Jain (N.K.) v. C.K. Shah, : 1991 CriLJ1347a , may, in a profitably way, be penned down here, to fully understand the implication of section 138 of the Act, as interpreted by the superior courts of jurisdiction, which reads as follows (at page 1301):

'The English language is not an instrument of mathematical precision. Our literature would be much poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if the Acts of

Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a judge cannot simply fold his hands and blame the draftsmen. He must set to work on the constructive task of finding the intention of Parliament, and he must to this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of Legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do so as they would have done. A judgment not alter the material of which the Act is woven, but he can and should iron out the creases.'

15. Justice G.P. Singh on Principles of Statutory Interpretation (Fifth Edition), 1992, has stated, at pages 82 and 83, as follows:

'The rule which is also known as 'purposive construction' or 'mischief rule', enables consideration of four matters in construing an Act: (1) what was the law before the making of the Act, (ii) what was the mischief or defect for which the law did not provide, (iii) what is the remedy that the Act has provided, and (iv) what is the reason of the remedy'. The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. The rule was explained in Bengal Immunity Co. v. State of Bihar, : [1955]2SCR603 , by S.R. Das C.J. as follows:

'It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's case [1584] 3 Co Rep. 7 was decided that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st - What was the common law before the making of the Act,

2nd - What was the mischief and defect for which the common law did not provide.

3rd - What remedy Parliament hath resolved and appointed to cure the disease of the commonwealth, and

4th - The true reason of the remedy;

and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico'.'

16. Now, the various hues of views emerging from the different High Courts in the process of interpretation of section 138 of the Act may fail in the arena of consideration:

(i)(a) In Hunasikattimath (G.F.) v. State of Karnataka : ILR 1990 KAR3881 , the respondent/ accused issued a cheque in favour of the petitioner/complainant, which was dishonoured by the banker with the endorsement 'account closed'. The complainant followed the procedure laid down in this Chapter and filed a complaint before the Metropolitan Magistrate at Bangalore, who dismissed that complaint on the ground that dishonour of a cheque on the ground of closure of his account, did not constitute an offence under section 138 of the Act. The High Court upheld the dismissal of the complaint and dismissed the revision petition, which was filed by the complainant under section 482 of the Code.

(b) In interpreting the provisions, K. Ramachandriah J. heavily relied upon the observations of the Chief Justice of the Karnataka High Court in Telecom Employees Co-operative Housing Society Ltd. v. Scheduled Castes, Scheduled Tribes, Minority Communities and Backward Classes Improvement Centre, : ILR 1990 KAR3320 , to the following effect (at page 3388):

'The court will not extend the law beyond its meaning to take care of a broader legislative purpose. Here 'strict' means merely that the court will refrain from exercising its creative function to apply the rule announced in the statute to situations not covered by it, even though such an extension would help to advance

the manifest ulterior purpose of the statute. Here, strictness relates not to the meaning of the statute but to using the statute as a basis for judicial law making by analogy with it.' (c) K. Ramachandriah J. refused to liberally construe the provisions of section 138 of the Act so as to extend its provisions also to a situation covering dishonour of cheques on the ground of 'account closed'. To refer to the terse ratio presented cryptically by the learned judge (at page 280 of 76 Comp Cas):

'As rightly pointed out by learned counsel for the accused, section 138 of the Act provides for punishing the drawer of a cheque which is dishonoured only under two eventualities. They are (1) insufficiency of the amount in the account of the drawer of the cheque to honour the cheque, or (2) the amount covered by the cheque exceeding the amount arranged to be paid from that account by an agreement made with that bank and not on any other ground although there are several eventualities under which a cheque can be dishonoured and one such eventuality is the closure of the account of the drawer of the cheque in the particular bank on which he has drawn the cheque, subsequent to the issue of the cheque. It is well-settled that penal provisions will have to be construed strictly and not liberally.' (ii) In Abdul Samad v. Satya Narayan Mahavar the High Court was called upon to decide whether dishonour of a cheque by a bank on the ground 'payment stopped' would attract the penal provisions of section 138 of the Act. While providing an emphatic negative answer, it was observed (at page 243 of 76 Comp Cas):

'It is well known that a cheque may be returned by the bank unpaid for various reasons. One of the reasons can be that there is no adequate amount available in the account on which the cheque is drawn to enable the bank to make the payment. Parliament in its wisdom has confined the offence referred to in section 138 only to bouncing of cheques on the ground of inadequate balance in the account concerned. Where the cheque is returned unpaid on other grounds, the same has not been made an offence.' (iii) In Om Prakash v. Smt. Swati Girish Bhide [1992] 3 Crimes 306; [1992] Mah LJ 302; [1993] 78 Comp Cas 797 (Bom), Dani J. of the Bombay High Court wholeheartedly followed the ratio laid down by K. Ramachandriah J. in Hunasikattimath (G.F.) v. State of Karnataka : ILR 1990

KAR2080 and observed (at page 801 of 78 Comp Cas):

'In my view, the said ruling lays down the correct position of law. If any other eventuality than mentioned in section 138 of the said Act was also to be considered as one giving rise to a penal action, the wording of section 138 of the said Act would have been used in that way. The strict construction of the specific wording of section 138 of the said Act makes the dishonour of a cheque penal only in two contingencies, that is insufficiency of funds or exceed arrangements; and as such in no other case the dishonour of a cheque can be held to be penal under the said section. The maxim expressum facit cessare tacitum enunciates the principle that the express mention of one thing implies the exclusion of another.' However, a contrary view has been taken in the following decisions:

(i)(a) In Rakesh Nemkumar Porwal v. Narayan Dhondu Joglekar : 1994(3)BomCR355 , the petitioner-accused had issued thirteen cheques in favour of the respondent-complainant, who received those cheques back from his banker with an endorsement 'refer to drawer'. Following the procedure laid down in the chapter regarding notice of demand, the complainant filed a complaint against the accused before a Magistrate, who issued process under section 138 of the Act and section 420 of the Indian Penal Code. The accused approached the High Court in revision under section 482 of the Code and with a prayer to quash the proceedings on various grounds, one of them being inapplicability of section 138 of the Act to the facts of the case, since the cheques were not returned with the endorsement 'insufficiency of funds'. While quashing the proceedings squarely on the ground that the complainant had filed the complaint before the period of 15 days as stated in section 138(c) had lapsed, as a result of which, no court could take cognizance of the complaint since no offence whatever had occurred on the day on which the complaint was filed, Saldanha J., however, proceeded to elaborately consider the circumstances in which section 138 of the Act would be applicable. The Bench, while leading the broadest possible applicability to section 138 of the Act, treating dishonour, by reference to Black's Law Dictionary, in sum and substance, as a situation whereby 'payment is refused or cannot be obtained', proceeded to observe as follows (at pages 835, 836 of 78 Comp Cas):

'A clear reading of section 138 leaves no doubt in our mind that the circumstances under which such dishonour takes place are required to be totally ignored. In this case, the law only takes note of the fact that the payment has not been forthcoming and it matters little that any of the manifold reasons may have caused that situation. If, for instance, the closure of an account or the stoppage of payment or any other of the commonplace reasons for dishonour were to be justifiable, then, the Legislature would have set these out in the section as exceptions not constituting an offence. No such intention can be read into section 138, as none exists. The solitary exception made by the Legislature is with regard to the drawer being offered a final opportunity of paying up the amount within 15 days from the receipt of notice which, in other words, provides a last opportunity to prove one's bona fides. It is obvious, that having regard to the widespread practice of issuing cheques which are dishonoured and the many ingenious methods of avoiding payments that are practised, that the Legislature had opted for a no-nonsense situation. The possibility has not been overlooked whereby an account may inadvertently be overdrawn or a dishonour may be for technical reasons or where a genuine mistake has occurred and the grace period provided for by the Legislature after service of notice on the drawer is in order to afford an opportunity to the drawer to rectify these. Unfortunately, even when the dishonour has taken place due to the dishonesty of the depositor, the drawer is still given a last chance to act otherwise. Consequently, the reasons for dishonour even if they be very valid as was sought to be pointed out in this case, should not and cannot be taken into account by a Magistrate when such a complaint is presented.'

(b) The Division Bench, referring to the word 'etc.' appearing in the marginal note to section 138 of the Act, came to the conclusion that 'the overriding clause in section 138 revolves around the concept of inability to obtain payment, the manifold situations giving rise to that result being secondary. The Bench critically commenting on the decision of the single judge to the effect that section 138 would not be applicable to a situation wherein a cheque was dishonoured on the ground of 'closure of account' observed as under (at pp. 838, 839):

'This, to our mind, is too narrow a construction of the section and fails to take into account the Objects and Reasons behind the amendment. The wording and the

endorsement from the bank or the circumstances under which a cheque is returned are not the guiding criterion but the fact that on presentation of the cheque, the payment was not made. There could be a host of reasons for this but the bottom line of the situation is that the payment could not be made by the banker and the mechanics of the reasons apart, the irresistible conclusion that had the funds been available, the payment would have been made leads back to the position that dishonour, therefore, implies insufficiency of funds.' (c) Referring to sections 5 and 6 of the Negotiable Instruments Act for the purposes of stressing that every cheque is a bill of exchange nd that every bill of exchange is an 'unconditional order' to pay the mount stated therein, the Bench observed as follows (at p. 839):

'Reading these provisions with the Statement of Objects and Reasons of the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (66 of 1988), whereby Chapter XVII comprising sections 138 to 142 was inserted with effect from April 1, 1989, there can be little doubt that section 138 was intended to be a provision to curb instances of dishonour. It will have to be presumed that the multifarious grounds on which a cheque would be dishonoured are common place and in not having made any exception for such situations the legislative intent behind section 138 was that cases of dishonour of a cheque would constitute a criminal offence unless the payment was forthcoming within the prescribed period. The reference to the term 'insufficiency of funds' was obviously a qualifying clause which only reiterates the basic principle that an order to the bank conveyed through a cheque to make a prescribed payment would only fail in a situation where the bank could not implement that directive for want of requisite funds. The circumstances that may contribute to the situation would, therefore, be irrelevant. The presumption in section 139 heavily supports this view.' (ii) A Division Bench of the Kerala High Court in Thomas Varghese v. P. Jerome , was concerned with an endorsement by the banker that payment had been stopped by the drawer. The court observed that the complaint cannot be quashed on the ground that the endorsement was not to the effect that amount in drawer's account was insufficient or that it exceeded the amount arranged to be paid from that account by agreement with the bank, if in fact the cheque was returned for insufficiency of the amount.

(a) The further observations extracted below are very relevant (at page 384 of 76 Comp Cas):

'From the argument advanced by learned counsel representing the petitioner, it would appear that an offence under section 138 of the Act should depend on the endorsement made by the banker while returning the cheque unpaid, i.e., only when the banker makes an endorsement that the amount of money standing to the credit of the account of the drawer 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, can an offence under section 138 of the Act be made out. According to us, such an approach will defeat the very purpose of the enactment. The offence under the section cannot depend on the endorsement made by the banker while returning the cheque. Irrespective of the endorsement made by the banker, if it is established that in fact the cheque was returned unpaid either because the amount of the money standing to the credit of the account of the drawer is insufficient to honour the cheque or that if exceeds the amount arranged to be paid from that account by an agreement made with that bank, the offence will be established. The endorsement made by the banker while returning the cheque cannot be the decisive factor.' (b) The Bench, while examining the purpose of the enactment, has observed thus (at page 386 of 76 Comp Cas):

'In these circumstances, we are not in a position to hold that a complaint under section 138 of the Act should be thrown out at the threshold if the banker's endorsement while returning the cheque is anything other than that the amount of money standing to the credit of the account of the drawer 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. If the circumstances contemplated by section 138 of the Act are made out, the court has to examine whether the return of the cheque was on account of insufficiency of funds in the account of the drawer. This can be done even without reference to the endorsement made by the banker. Endorsements like 'refer to drawer', 'account closed', 'payment has been stopped' etc., made by the banker at the time of the return of the cheque have the effect of proving that the cheque has bounced. If the bouncing of the cheque was on account of insufficiency of funds in the account of the drawer, then the drawer will

be subjecting himself to proceedings under section 138 of the Act.' (iii) A single judge of the Rajasthan High Court in Peary Lal Rajendra Kumar Pvt. Ltd. v. State of Rajasthan [1993] 3 Crimes 395 has stated thus: 'It is for the complainant to make out the ingredients of section 138 of the Act and it is open to him to raise a plea that the real reasons for the return of the cheque unpaid was insufficiency of funds. When in the complaint such a plea has been raised, then at the time of taking cognizance of the offence, the Magistrate cannot be expected to go into the niceties of the case, which would be set up by the accused, without their appearance before the court. What is to be seen is whether the allegations made in the complaint prima facie disclose an offence and if so who was the person who can be said to be liable for the same, when the facts are such in the present case, it cannot but be said that only after evidence of both parties can it be determined as to what was the real reason for dishonouring the cheque, this court cannot quash the proceeding before the Magistrate, as it is only the availability of all materials on record which would have made the court take a decision in the matter.'

17. A single judge of the Kerala High Court in Bhageerathy v. V. Beena [1992] Crl. LJ 3946; [1993] 76 Comp Cas 684, has held that the dishonour of a cheque with the endorsement 'payments stopped by the drawer', will not attract an offence under section 138 of the Act, more so, when there is no averment in the complaint that the cheque stood dishonoured for want of adequate funds.

18. Another learned judge of the same High Court in Ashok (S.) v. Vasudevan Moosad , took a similar view that when a cheque stood returned with an endorsement 'stop payment' without a specific allegation made in the complaint that the cheque bounced for want of sufficiency of funds, no offence under section 138 of the Act was made out and the complaint had to be quashed as not maintainable in exercise of the powers under section 482 of the Code.

19. However, another single judge of the same High Court has held in Pappachan (T.P.) v. P.O. Joy that a complaint under section 138 of the Act, cannot be quashed on the ground that there was no averment in it, that the cheques stood dishonoured because of insufficiency of funds, as it is a matter of evidence.

According to the learned judge, the entire case of the prosecution need not verbatim enter the complaint, warp and woof. In the case of Pappachan (T.P.) , the decision in Bhageerathy's case was taken note of. Therein, reference was also made to the Division Bench decision of the same court in Thomas Varghese v. P. Jerome [1992] Crl. LJ 3080; [1993] 76 Comp Cas 380. The following observations therein appear to be relevant here (at page 489 of 79 Comp Cas):

'The decisions of a Division Bench of this court in Thomas Varghese v. P. Jerome also has to be noticed. It is difficult to say that in all cases where payment is stopped by the drawer (as in this case), the offence will not arise. In every case of insufficiency of funds, it will be open to the drawer to stop payment and keep the statute at bay. That is not intended. The matter will have to be examined, with reference to the facts of the case, and this the Magistrate will do. The tendency to move this court under section 482 of the Code of Criminal Procedure in cases under section 138 of the Negotiable Instruments Act, is so common now. It is also difficult to see why the petitioner waited far two years to approach this court.'

20. To the rigid and wooden view taken in Hunasikattimath (G.F.) v. State of Karnataka [1991] 1 Crimes 226 ; [1993] 76 Comp Cas 278 of the Karnataka High Court, implicitly followed in letter and spirit by the Punjab and Haryana High Court in the case of Abdul Samad and by a learned single judge of the Bombay High Court in the case of Om Prakash [1992] 8 Crimes 306; [1993] 78 Comp Cas 797, there is no other go for us except to agree to disagree with the view expressed therein, inasmuch as such a view, apart from suffering from a serious infirmity of erroneous interpretation of the relevant provisions of the Act, is to frustrate the very object and purpose for which the relevant provisions had been introduced by the amending Act. It is to be noted that this sort of a view is not supported by the very title of the Chapter 'OF PENALTIES IN CASE OF DISHONOUR OF CERTAIN CHEQUES FOR insufficiency of funds IN THE ACCOUNTS'. Equally important it is to note that the marginal note to section 138 of the Act states 'DISHONOUR OF CHEQUES FOR insufficiency, etc., of funds IN THE ACCOUNT'. The addition of the word, 'etc. ' found in the marginal note, cannot be considered to be an accident. Top of all, such sort of a view, if accepted and followed, the statutory provisions of Chapter XVII, introduced by the amending Act,

would become a dead letter and a non-sense situation would be created, in the sense of posing insurmountable obstacles in the free negotiability and acceptability of the cheques in the fast moving commercial transactions at the regional, national and global level, creating a calamitous situation in the commercial world. With respect, we agree fully with the view expressed by the Division Bench of the Bombay High Court in the case of Rakesh Nemkumar Porwal [1993] 78 Comp Cas 822; [1993] Crl LJ 680 of the Kerala High Court in the case of Thomas Varghese [1992] Crl LJ 3080 ; [1993] 76 Comp Cas 380 and a single judge of the Rajasthan High Court in the case of Peary Lal Rajendra Kumar Pvt. Ltd. [1993] 3 Crimes 395, inasmuch as such a view had been arrived at in interpreting the various expressions and words used in the relevant provisions in a meticulous fashion keeping in view the object and reasons for which such a provision had been introduced with the avowed purpose of achieving the object for which it was enacted.

21. Apart from any one of the 21 reasons catalogued above, that is usually given by bank in the case of return of a cheque unpaid there may be a myriad of reasons, depending upon the contingency and exigency of the situation. Insufficiency of funds in the accounts may be a situation, which may be created either innocently or unknowingly by the drawer or may be a product of mischievous gimmicks, like 'closure of account', countermanding the payment, etc., or even a situation wherein the bank dishonours the cheque since it has already instituted a suit against the drawer to recover the debt against his account. Further, insufficiency of funds may be indicated by various direct and indirect endorsements by the dishonouring bank, such as 'insufficiency of funds', 'refer to drawer', 'funds expected, present again', 'effects not cleared', etc. There may even be a Situation rather created in a mischievous or malicious fashion to see that the cheque issued by the drawer stands returned by the banker unpaid by subscription of the signature in such a way as not to tally with the specimen signature, just to purchase time to meet the demands made knowing fully well that on the date when the cheque had been drawn, there was insufficiency of funds in his account. For the outside world, it may appear that the reason for the return of the cheque unpaid, was the existence of suspicion as regards the genuineness of the cheque issued by the drawer. But the real reason is altogether different in such a situation.

The drawer in a fraudulent way does the mischief of subscribing has signature totally in a different fashion to create a doubt as to the genuineness of the cheque so issued by him. He does it with a purpose, which is rather obvious. Such a trickery device could be adopted to stall the situation of not being in a position to meet the demand, in the sense of not having adequacy of funds in the account of the drawer, and by adoption of such a device, the payee had really been hoodwinked. Manifold situations may be created by a fraudulent drawer using all sorts of ingenuity to make it appear that the reason for the return of the cheque unpaid, was neither of the two contingencies contemplated by section 138 of the Act although in the real state of affairs, the reason for the return of the cheque unpaid was either of the two contingencies contemplated therein alone. We are, therefore, of the firm view that the reasons as given by the bank for the return of the cheque may not at all reflect the reality of the situation relatable to the sufficiency or otherwise of the funds in the accounts of the drawer or whethers it exceeds the amount arranged to be paid by the drawer by agreement with the bank.

22. Once a cheque is dishonoured, whatever be the reason therefor, it behoves upon the payee or the holder in due course to issue a notice in writing to the drawer of the cheque within 15 days from the date of such return intimating, as has been provided under the sanguine provisions adumbrated under clauses (b) and (c) to the proviso to section 138 of the Act, the factum of such return and requiring him to comply with the demand within 15 days from the date of receipt of the said notice and the demand so made, if not complied with, gives rise to a cause of action for the launching of the prosecution against such drawer and the cause of action so enured, lasts for a period of one month, enabling the aggrieved payee or holder in due course to file a complaint before the competent criminal court. The existence of such factors thus prima facie constitutes an offence under section 138 of the Act, requiring the case to be taken cognizance of by the competent court, before which the complaint had been filed. Cognizance of a complaint is capable of being taken by a competent court, provided the necessary and requisite averments constituting the offence complained of are made available in the complaint and nothing further, excepting the taking of a sworn statement from the complainant.

23. In the case of prosecution for an offence under section 138 of the Act, a moot question very often raised before courts is, as to whether averments regarding sufficiency or otherwise of funds in the account of the drawer, were to be made in the complaint. Divergent views emerge on such a question from various High Court, to which we have already adverted. The rationale or reasoning for the view that there should be specific averments in the complaint as to the insufficiency of funds before ever the case is taken cognizance of, we rather feel, is not reflecting the real import, purport or the intendment of section 138 of the Act. We have already adverted to as to what is necessary and requisite for a complaint to be taken cognizance of, in respect of an alleged offence under section 138 of the Act, i.e., the factum of dishonour of the cheque, whatever be the reason, which was issued in discharge of a debt or other liability in whole or in part, after its presentation within its period of validity of six months from the date of issue, whichever is earlier, coupled with the non-compliance with the drawer of the demand made upon him and the institution of prosecution within one month from such non-compliance. Such being the case, the non-mentioning in the complaint by way of a specific averments made therein as to the insufficiency of funds in the account of the drawer, is of no consequence and the question whether there was sufficiency of funds or not in the account of the drawer on the date when the cheque had been drawn, will be relevant only during the stage of trial and such a question is capable of being decided, with ease and grace, by the court on the adduction of evidence by utilising the salient provisions adumbrated under the provisions of the Bankers' Books Evidence Act, 1891. Once it is proved in the trial that bouncing of a cheque was due to lack of balance in the account of the drawer on the date when the cheque was drawn, then it goes without saying that the act of giving a cheque resulting in the bouncing of the cheque due to lack of balance in the account was an 'absolute offence' even if it was done without any 'criminal intent', inasmuch as no mens rea has been prescribed for the commission of such an offence: The non-prescription of any mens rea therein is rather obvious. The monetary blood flow in the arteries of trade and business heart cannot be permitted to be calcified by the dishonouring of the cheque by debtors. In this view of the matter, we are of the view that there is no necessity at all to make any specific averment in the complaint as to the insufficiency of funds in the account of

the drawer on the date when the cheque was drawn, before ever such a complaint is taken cognizance of by a competent court.

24. In view of what has been stated above, we answer the two questions posed, as below:

(i) It shall be competent for a Magistrate to take cognizance of a private complaint, when the return by the bank of the cheque bears an endorsement of any of the contingencies or eventualities other than the ones mentioned in section 138 of the Negotiable Instruments Act.

(ii) Invoking the inherent power under section 482 of the Code of Criminal Procedure, is not permissible to put an end to the prosecution, merely because the averments in the complaint as relatable to insufficiency of funds, are not specifically mentioned, especially when the details as to the factum of dishonour of a cheque, whatever be its reason, issued in discharge of a debt or other liability, in whole or in part, after its presentation within its period of validity or six months from the date of such issue, whichever is earlier, coupled with the non-compliance with the drawer of the demand made on him and the institution of the prosecution within one month from such non-compliance, are all specifically mentioned in the complaint, as that alone will constitute the factors making out a prima facie case of an alleged offence under section 138 of the Act to be taken cognizance of by the competent court.

25. We are told at the Bar that countless number of petitions had been filed under section 482 of the Code to forestall the prosecution launched under section 138 of the Act, and in all those cases. interim orders of stay have been obtained preventing the trial in such prosecutions, causing untold misery and an agonishing situation to the litigant public anxiously awaiting the verdict of the court in the cases filed by them. If the instant petition under section 482 of the Code is remitted back to the learned single judge for disposal according to law in the light of the answers given by us, there is every likelihood of further delay being caused in the disposal of such petition, resulting in concomitant delay to be caused in the disposal of a countless number of such petitions already pending before this court. If this petition is disposed of, by rendering a verdict in the light of the answers we

have rendered above, there will be no handicap for the registry to collect all those pending petitions and place them before the court for disposal. Only in that view of the matter, we are desirous of disposing of the instant petition without sending it back to the learned single judge for disposal.

26. The relevant facts necessary for the disposal of this petition may now be stated. The petitioner borrowed a sum of Rs. 10,000 on April 18, 1991, from the respondent under a promissory note. In repayment of the said amount, he issued a cheque dated December 17, 1991, for Rs. 10,000 in favour of the respondent. When the cheque was presented for payment on December 18, 1991, it was returned by the bank with the endorsement 'account closed'. After receipt of the information from the bank, statutory notice was issued offering 15 days' time to the petitioner to pay off the amount and that not having been done, within the period of limitation contemplated under the Act, the impugned prosecution had been launched. The reason for the dishonour in the instant case 'account closed' can by no stretch of imagination be stated as serving as a ground for quashing the prosecution in the court below, in the light of the answers we have given to the questions. referred to us for decision, especially when there are factual foundations in the form of averments in the complaint constituting the necessary ingredients making out a prima facie case, impelling the Magistrate to take cognizance of the complaint.

27. For the said reason, this petition deserves to be dismissed and the same is accordingly dismissed.

28. Before parting with the case, we want to place on record our deep sense of gratitude for the very valuable help and assistance rendered by learned counsel, A Packiaraj, M. Karpagavinayagam, K.V. Sridharan, V. Gopinath and V. Padmanabhan, and without their held and assistance, it could not have been possible for us to decide the questions posed before us, with ease and grace, and without any difficulty whatever.