IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 561 OF 2018

T.A.N.Moorthy .. Appellant (Original Complainant)

Versus

C.K.Narayan and Anr .. Respondents

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- Mr. Vijay Kurle a/w. Ms. Priyal Gupta and Mr. Pratik Sarkar, Advocates for Appellant.
- Mr. Vishal V. Kale a/w. Mr. Ganesh M. Misal, and Mr. Sunil S. Dude, Advocates for Respondent No.1.
- Ms. Sangita E. Phad, APP for Respondent No.2 – State

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 02, 2025

JUDGMENT:

1. Heard Mr. Kurle, learned Advocate for Appellant, Mr. Kale learned Advocate for Respondent No.1 and Ms. Phad, learned APP for State.

2. The present Appeal challenges judgment of acquittal dated 01.10.2015 passed by the Metropolitan Magistrate Court, 27th Court, Mulund in CC No. 274/SS/1996. Appellant – T.A.N. Moorthy is original Complainant, private Respondent No.1 Mr. C.K. Narayan is original Accused and State is Respondent No.2.

3. Parties shall be referred to as “Complainant” (Appellant) and “Accused” (Respondent No.1) for convenience.

4. Prior to passing of impugned judgment dated 01.10.2015, Trial Court by judgment dated 08.03.2010 had convicted Accused for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short **"the said Act"**) and sentenced him to suffer S.I. for 1 year and imposed fine of Rs.87,46,713/- and in default to suffer S.I for 3 months. Accused being aggrieved filed Criminal Appeal No.177 of 2010 before Sessions Court. By judgment dated 14.05.2015, his Appeal was allowed and judgment dated 08.03.2010 was quashed and set aside and the case was remanded back to Trial Court for reconsideration and rehearing with a direction to decide facts in issue about the existence of legal liability or legally enforceable debt against the Accused at the time of issuing the cheques.

5. Case on remand was heard by Trial Court and by judgment dated 01.10.2015 Accused is acquitted of the offence punishable under Section 138 of said Act.

6. This judgment of acquittal is under challenge in the present Appeal.

7. At the outset, it would be worthwhile to note the scope of Appeal against Acquittal and the law with regard to scope of interference by Appellate Court in an Appeal against acquittal. A recent decision of the Division Bench of this Court while deciding

Criminal Appeal No.555 of 2024 against Acquittal in the case of ***ABC, Through Police Station, Chhavani, Nashik Vs. The State of Maharashtra and Anr.***[1], has after analysing the settled law on the above issue laid down the scope for interference in Appeal against Acquittal. The Division Bench states that the law on this issue is no longer *res integra.* Paragraph Nos. 11 to 18 of the above decision are relevant and it is seen that several landmark decisions of the SC on the above issue are quoted with approval therein. Paragraphs Nos. 11 to 18 read thus:-

> ***"11.*** *In Sheo Swarup v.King Emperor, one of the earliest case dealing with the scope of the Appellate Court against an order of acquittal, the Privy Council held as under on page 404:*
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> *"Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this however is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice."*
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> ***12.*** *The Supreme Court in M.G. Agarwal v. State of Maharashtra, in paras 16 and 17 has observed as under:*
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> *"16. Section 423(1) prescribes the powers of the appellate court in disposing of appeals preferred before it and clauses (a) and (b) deal with appeals against acquittals and*

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appeals against convictions respectively. There is no doubt that the power conferred by clause (a) which deals with an appeal against an order of acquittal is as wide as the power conferred by clause (b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction. That is one aspect of the question. The other aspect of the question centres round the approach which the High Court adopts in dealing with appeals against orders of acquittal. In dealing with such appeals, the High Court naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial court and so, the fact that the accused person is entitled for the benefit of a reasonable doubts will always be present in the mind of the High Court when its deals with the merits of the case. As an appellate court the High Court is generally slow in disturbing the finding of fact recorded by the trial court particularly when the said finding is based on an appreciation of oral evidence because the trial court has the advantage of watching the demeanour of the witnesses who have given evidence. Thus, though the powers of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence. Sometimes, the width of the power is emphasised, while on other occasions, the necessity to adopt a cautious approach in dealing with appeals against acquittals is emphasised, and the emphasis is expressed in different words or phrases used from time to time. But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused. This position has been clarified by the Privy Council in Sheo Swarup v. King Emperor (1933-34) 61 IA 398 and Nur Mohammad v. Emperor AIR 1945 PC 151.

17. In some of the earlier decisions of this Court, however, in emphasising the importance of adopting a cautious approach in dealing with appeals against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so, "the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons" : videSurajpal Singh v. State 1951 SCC 1207: 1952 SCR 193 at p. 201. Similarly in Ajmer Singh v. State of Punjab,(1952) 2 SCC 709 : 1953 SCR 418 it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are "very substantial and compelling

reasons to do so". In some other decisions, it has been stated that an order of acquittal can be reversed only for "good and sufficiently cogent reasons" or for "strong reasons". In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in clause (a) of Section 423(1) of the Code. All that the said observations are intended to emphasise is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in the case of Sheo Swarup, the presumption of innocence in favour of the accused "is not certainly weakened by the fact that he has been acquitted at his trial". Therefore, the test suggested by the expression "substantial and compelling reasons" should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in Sanwat Singh v. State of Rajasthan AIR 1961 SC 715 and Harbans Singh v. State of Punjab AIR 1962 SC 439 and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse. Therefore, the question which we have to ask ourselves in the present appeals is whether on the material produced by the prosecution, the High Court was justified in reaching the conclusion that the prosecution case against the appellants had been proved beyond a reasonable doubt, and that the contrary view taken by the trial court was erroneous. In answering this question, we would, no doubt, consider the salient and broad features of the evidence in order to appreciate the grievance made by the appellants against the conclusions of the High Court. But under Article 136 we would ordinarily be reluctant to interfere with the findings of fact recorded by the High Court particularly where the said findings are based on appreciation of oral evidence."

13. *In Chandrappa v. State of Karnataka, the Apex Court reiterated the legal position as under:*

*"**42.** From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:*

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

14. *In Ghurey Lal v. State of U.P., the Apex Court after reviewing the previous decisions, laid down the correct approach that an Appellate Court should adopt in dealing with such cases. Para 70 of the said judgment is as under:*

"70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive.

2. The appellate court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused."

(emphasis supplied)

15. *Similarly in Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi), the Apex Court in para 27 has laid down the principles to be borne in mind by the Appellate Court while dealing with appeals, in particular, against the orders of acquittal. Para 27 reads thus:*

"27. The following principles have to be kept in mind by the appellate court while dealing with appeals, particularly against an order of acquittal:

(i) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded.

(iii) The appellate court can also review the trial court's conclusion with respect to both facts and law.

(iv) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons set aside the judgment of acquittal.

(v) An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.

(vi) While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities, it can reappraise the evidence to arrive at its own conclusion.

(vii) When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts, etc. the appellate

court is competent to reverse the decision of the trial court depending on the materials placed."

(emphasis supplied)

16. *In para 303(1), the Apex Court has held that the Appellate Court has all necessary powers to re-evaluate the evidence led before the trial Court as well as the conclusions arrived at and that it is the duty of the Court to specify the compelling and substantial reasons for reversing the order of acquittal passed by the trial Court. The reasons or reversal have to be cogent and adequate.*

17. *Thus, the law on the issue i.e. scope for interference in an appeal against acquittal can very broadly be summarized as follows; that in exceptional cases where there are compelling and substantial reasons; and where the judgment under appeal is found to be perverse, clearly unreasonable, manifestly erroneous, contrary to the evidence on record, or contrary to law, and the findings have been arrived at, by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material or is 'against the weight of evidence' or if the finding so outrageously defies logic as to suffer from the vice of irrationality, the Appellate Court can interfere with the order of acquittal. However, whilst doing so, the Court has to bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence; and that interference in a routine manner, only because another view is possible should be avoided.*

18. *Infact, while dealing with the judgment of acquittal, the Appellate Court has to consider the entire evidence on record, so as to arrive at a finding as to whether the view of the trial Court was perverse or otherwise unsustainable, warranting interference.*

8. Considering the aforesaid principles laid down and scope of an Appeal against Acquittal, I have heard Mr. Kurle and Mr. Kale, learned Advocates for the respective parties at length on 14.11.2024, 05.12.2024, 16.12.2024 and 19.12.2024 and with their able assistance perused the record.

9. Before I advert to submissions made by Mr. Kurle, it would be pertinent to note the relevant facts which are in a narrow

compass. Case of Complainant is that in discharge of liability towards him, Accused issued two cheques bearing No.008034 for Rs.32,74,990 and cheque No.008035 for Rs.17,08,846, both dated 18.07.1996 and drawn on Lakshmi Vilas Bank Limited, Fort Mumbai- 400 023 to him. Complainant deposited these two cheques in his bank account for encashment, but they were dishonored on presentation with remark "Insufficient funds". Complainant received memo of dishonour from his bank on 23.07.1996. Complainant issued statutory notice through his Advocate dated 30.07.1996, the notice was replied to by Advocate for Accused vide reply dated 09.08.1996 rejecting the claim of Complainant on the ground of committing a fraud. Complainant addressed rejoinder dated 20.09.1996 to the aforesaid reply. Complainant thereafter filed Complaint under Section 138 of the said Act on 10.09.1996. Accused pleaded not guilty in the Trial. Complainant led evidence of eight (8) prosecution witnesses, whereas Accused examined eight (8) defence witnesses in his defence.

10. Complainant examined himself as PW-1, Narendra Kuche (PW-2), C. Satish (PW-3), Vonifas D'souza (PW-4), K. Ramlingam (PW-5), T.A. Ramaswami (PW-6), Praful Shah (PW-7), and T.A. Radhakrishnan (PW-8). Whereas in defence, Accused examined himself as DW-1, Chetan Shah (DW-5), T.A. Ramanathan (DW-6), B.L. Gada (DW-7), and Sudhakar Salian (DW-8). Complainant relied on 46

documents in support of his case, prominent amongst which for the purpose of deciding the present challenge are documents exhibited as Exhibits – “P2 to P4” being handwritten note books maintained by Complainant in his own handwriting and Exhibit “P11” to Exhibit “P13” being computer printouts prepared by Complainant.

11. Correspondence of Complainant namely Notice dated 30.07.1996 is below Exhibit – “P6”, reply thereto dated 09.08.1996 is below Exhibit- “P8”, rejoinder dated 20.09.1996 is below Exhibit- “P10”, Computer statements prepared by Complainant are below Exhibit- “P11”, “P12”, and “P13” and list of borrowers prepared by Complainant below Exhibit- “P14”. These 6 are the main exhibits which are referred to and relied upon by Mr. Kurle while making his submissions, to persuade me to appreciate the same in favour of Complainant’s case. Accused in his defence has relied upon the documents/exhibits submitted by Complainant and in addition thereto five (5) further documents are placed on record by him. In short, the Trial Court has accepted the defence of Accused that there is no evidence about the probability that Accused might have raised loan through Complainant from third parties and therefore held that the twin cheques were not issued towards any legally enforceable debt or liability.

12. In the present case, defense of Accused is that he had signed the two cheques but they did not bear the name of drawer. His case is that he kept blank signed cheques in the cheque-book in the custody of Complainant who was his accountant / employee for issuance of cheques in urgent situation but Complainant misused and misappropriated his position by inserting the amounts and his name as drawer on the subject two cheques surreptitiously. Thus case of Complainant is countered and objected to by Accused on the above ground of fraud and criminal breach of trust.

13. Mr. Kurle, learned Advocate appearing for Complainant before me would submit that impugned judgment does not appreciate substantial evidence placed on record by Complainant for proving the existence of legal liability and legally enforceable debt against Accused and deserves to be quashed and set aside. He would submit that Trial Court while passing the previous judgment dated 08.03.2010 had correctly appreciated the evidence while coming to the conclusion that Accused was liable to pay the amounts stated in the twin cheques towards the outstanding claim of Complainant as on 30.06.1996.

14. Mr. Kurle vehemently argued in his opening statement that under Section 139 of the said Act, there is a presumption that once the cheques are signed / issued by Accused and there is an admission by him that he signed the cheques, then Section 139 of the

said Act, creates a presumption in favour of the holder. It provides that it shall be presumed, unless the contrary is proved, that the holder of the cheque received the cheque, of the nature referred to in Section 138, for the discharge, in whole or in part, for any debt or other liability. In the present case this argument will not be available to the Complainant because of the remand order dated 14.05.2015 which specifically framed the issue to be decided by the Trial Court about existenceof legal liability or legally enforceable debt against the Accused.

14.1. He would submit that as opposed to the previous judgment dated 08.03.2010, the impugned judgment dated 01.10.2015 is erroneous in appreciating the substantial evidence placed on record by Complainant to prove existence of the legal liability and legally enforceable debt against Accused. Though initially Mr. Kurle drew my attention to the judgment dated 08.03.2010 and also attempted to read it, I have impressed upon him to understand the fact that the said judgment stands quashed and set aside by Sessions Court in Appeal by judgment dated 14.05.2015 with a direction to remand the matter back for reconsideration by Trial Court and to determine and decide the facts in issue about existence of the legal liability or legally enforceable debt against Accused at the time of issuing the twin cheques. Complainant has also led fresh additional

evidence in the form of Exhibit "P52" thereafter. I therefore asked Mr. Kurle to take me through the impugned judgment dated 01.10.2015 passed by the Trial Court after the above remand and argue his case *qua* the evidence placed on record and make submissions for challenging and setting aside of the same. I state this because the order of remand dated 14.05.2015 passed by Sessions Court in Criminal Appeal No.177 of 2010 had not only set aside the judgment dated 08.03.2010 but also framed a specific issue to be decided by the Trial Court as delineated hereinabove. Hence in my opinion, it would be inappropriate to consider the previous judgement dated 08.03.2010 of the Trial Court while deciding this appeal.

14.2. He would submit that Complainant was employed by Accused in his firm Meera Investments, a 'sub-brokerage' business partly owned by Accused from the year 1987 to 1998 as an Accountant on a salary of Rs.3,000/- per month alongwith an additional sum amounting to 0.5 % of the annual turnover of the business. He would submit that Complainant would regularly introduce new clients into the business of Accused and manage all bank related work of the firm. He would submit that Complainant introduced about 200 clients into the business of Accused between 1987 and 1996.

14.3. He would submit that whenever Accused suffered losses in business Complainant would arrange loans from his acquaintances

and relatives to bail out the Accused from such situations of financial crunch. He would submit that Complainant arranged loans from his acquaintances to safeguard the interest of clients introduced by him into the business of Accused and Complainant guaranteed repayment of the principal amount as well interest to such creditors. He would submit that loans arranged by Complainant were arranged in cash and sometimes by cheques which were either issued in the name of the business of Accused or in the name of Complainant himself.

14.4. He would submit that regardless of the manner and name in which loans were arranged, proceeds of the same were used to repay creditors as well as to pay interest on the amounts borrowed. He would submit that he did not obtain receipts or ask for the same or maintain or have any proof of transactions as the same used to be carried out on mutual trust.

14.5. He would submit that failure on part of Accused to pay interest led to demand by Complainant's acquaintances who had invested with Accused on his assurances. He would submit that Complainant with prior intimation to Accused disposed of his flat and liquidated his life insurance policy to discharge such loans of his acquaintances which were given as investments to Accused. He would submit that Complainant prepared a detailed Statement of claim and

demanded that the amount be paid to him upon which Accused issued the subject two cheques to him towards his legally enforceable liability.

14.6. He would submit that along with the Statement of claim, Complainant used to maintain a notebook of day-to-day transactions in which he used to make entries of daily transactions/ investments made which were produced by him in evidence as Exhibits “P-2” to “P-4”.

14.7. He would submit that apart from the above notebooks produced in Court Complainant did not maintain any other record of the transactions.

14.8. He would submit that based on oral and documentary evidence on record, Complainant has proven his case beyond all reasonable doubts and has established a legally enforceable debt and liability under the following eleven (11) heads as stated in Exhibit – “P13”, which is the Statement of claim prepared by him. Exhibit “P14” is the list of persons who invested with the Accused at the behest of Complainant. He would submit that Exhibit – “P13” refers to 13 heads of payment. He would submit that the first claim of Complainant is for the is amount of Rs.8,63,800/- paid by Complainant to several parties as repayment of loan which was arranged by him from such third parties. He would submit that names of such 18 third parties is stated

in the list at Exhibit – "P11". He would submit that this claim is prepared on the basis of ledger account maintained by Complainant in his personal notebooks which are placed on record in evidence as Exhibits -"P2", "P3" and "P4". He would submit that out of eighteen (18) persons Accused has examined two persons as defence witnesses who have supported Complainant's case.

14.9. The second claim of Complainant is for amount of Rs.9,86,020/- paid by Complainant to the 18 persons in Exhibit "P11" towards interest. He would submit that Complainant arranged finance / loan for Accused from various persons to whom he paid interest from his own account without recourse to Accused.

14.10. The third claim is for amount of Rs.3,33,643/- towards outstanding ledger paid by Complainant to fourteen (14) persons who were introduced by him to Accused for making investment in shares.

14.11. The fourth claim is for amount of Rs.1,18,377/- in respect of shares which were deliverable by Accused for Complainant's clients for which Accused had received payment but he did not deliver the shares to his clients. There were eight (8) persons to whom such shares were not delivered by Accused and Complainant paid the above amount to them in cash.

14.12. The fifth claim is for amount of Rs.13,34,000/- shown under the heading 'outstanding loan'. Complainant has provided a list of thirteen (13) persons who paid loan to Accused through him with him as guarantor. Hence he was forced to pay the amounts to those persons which was due and payable by Accused. He would submit that out of those 13 persons Complainant has examined 5 persons as prosecution witnesses.

14.13. The sixth claim is for amount of Rs.3,33,450/- shown towards outstanding interest due and payable to eight (8) persons who were required to be paid the interest amount at the time of settlement. Accused did not pay the amount, hence Complainant was forced to pay the same.

14.14. The seventh claim is of Rs.5,00,000/- shown under the heading 'Difference in value of Flat'. Complainant was forced to sell his flat at Rs.6,80,000/- in order to pay and return the aforesaid amounts invested by his relatives, friends and acquaintances whom he had introduced to the Accused, since Accused stopped paying interest to them on their investments.

14.15. The eighth claim is of Rs.1,62,000/- under the heading of 'Outstanding Salary'. Complainant was drawing salary of Rs.3,000/- per month and his claim is that his salary was not paid from

01.04.1992 to 30.06.1996 as well as his bonus of three years equated to three month's salary all of which remained outstanding.

14.16. The ninth claim is of Rs.1,76,571/- towards outstanding amount of sub-brokerage payable to Complainant as he was entitled to 0.5 percent of the total annual turnover of the business of Accused.

14.17. The tenth claim is of Rs.8,275/- for out of pocket expenses that Accused had incurred.

14.18. The eleventh claim is of Rs.1,67,700/- which is under the heading of 'Interest Claim' and is towards interest for funds arranged by Complainant from persons enlisted in Exhibit "P11"

14.19. He would submit that Exhibit "P13" is prepared by Complainant as per settlement arrived between him and Accused pursuant to which the subject 2 cheques were given to him by Accused for satisfaction of the above liabilities. He would submit that the evidence adduced by Complainant if appreciated would entitle him to the above claim in its entirety.

14.20. He would submit that the learned Trial Court has not assigned any reasons in the order regarding legally enforceable debt and liability of Accused not having being proved by Complainant. He would submit that merely by stating that entries in Exhibits: "P2", "P3" and "P4" are not legible and are scored of, the Trial Court has not

appreciated the said entries which clearly match with the list prepared by Complainant below Exhibit-P11.

14.21. He would submit that finding of Trial Court that Complainant did not pay the amount to creditors in paragraphs nos. 2 and 16 of the impugned judgement is incorrect since Complainant made an earnest effort to pay the liabilities of creditors as and when amounts became available with him.

14.22. On the ground of evidence he would submit that Complainant has led oral evidence of himself and given the sources of funds and hence on the ground of non production of documentary evidence regarding sale proceeds of the flat sold and the creditors being paid has to be believed by the court. He would therefore challenge the finding returned in paragraph No.17 as incorrect and urges Court to believe his oral evidence.

14.23. He would submit that both Complainant and Accused regularly paid back loan amount to various parties intermittently as and when such payment was available as it was a legally enforceable debt and therefore none of the claim amount paid by Complainant to various third parties on behalf of Accused can be deemed to be barred by limitation. He would submit that the Trial Court ought to have appreciated that the twin cheques dishonored in the present case were

given by Accused to Complainant towards satisfaction of the aforestated liability from his personal account and even if the notebook entries reflected scoring of or cancellation, the liability of the amount stated in the two cheques cannot be treated as cancelled.

14.24. He would submit that the subject twin cheques issued from the personal account of the Accused cannot be said to be the cheques meant for Mr. K.P. Vishweshwaran as no cheques can be issued to a client from the personal account of a person when the said client has dealt with the company itself.

14.25. He would submit that case of Complainant for two liabilities namely for sub-brokerage and towards salary as concluded in Paragraph nos. 27 and 28 are granted in favor of Complainant and therefore on similar ground this court should consider the supporting evidence below Exhibit “P25” (letter of admission by Accused accepted in 313 statement at appeal paperbook page No.183), Exhibit “P26” to Exhibit ‘P28’ (similar admissions by Accused in 313 statements), Exhibit “P29” to Exhibit “P33’ (Securities cheque and balance sheet), Exhibit “P34” to Exhibit “P37” (admission by Accused regarding securities cheque in 313 statement at appeal paperbook 185) and Exhibit “P38” to Exhibit “P40” (securities cheque and LIC policy surrender receipt), and after examining the same in its proper perspective should have been allowed. He would submit that evidence

of defence witnesses namely DW-6 and DW-7 who are two parties who dealt with the Complainant clearly supports Complainant's case and is against the defence raised by Accused.

14.26. He would submit that while passing the impugned judgement the Trial Court has completely disregarded the evidence and liability of PW-4 to PW-8 in its entirety as these persons dealt with the Accused through the Complainant. He would therefore urge the Court to hold that Complainant has proved his case beyond reasonable doubt and Accused deserves to be punished in the peculiar facts of this case and evidence for the liability and legally enforceable debt due and payable by Accused to Complainant stands proved. Hence he would pray for setting aside of the impugned judgement of the Trial Court dated 01.10.2015 and allowing the Complainant's claim under all eleven (11) heads of payment as proved by the Complainant.

14.27. In support of his submissions, Mr. Kurle has referred to and relied upon following decisions of the Supreme Court and the Privy Council. He would submit that the provisions of Section 139 of the said Act include a presumption that there exist a legally enforceable debt or liability. He would however fairly argue that such presumption is rebuttable. He would submit that in such a case Accused is not expected to discharge an unduly high standard of proof and is only required to establish a probable defence or case. He would

submit that the word of accused on basis of the Dairy Entries below Exhibit Nos. “P2” to “P4” should therefore be accepted by the Court and the fact that Accused had to pay any third party investors should be accepted as a fact in question towards enforcement of a legal debt by the Accused.

14.28. He would submit that the aforesaid propositions have been well settled in the following cases decided by the Supreme Court namely ***(i) Rangappa Vs. Sri. Mohan (2010) 11 SCC 441; (ii) C. Keshavamurthy Vs. H.K. Abdul Zabar (Criminal Appeal No. 1026 of 2013) SC; (iii) Tedhi Singh Vs. Narayan Da Mahant (2022) 6 SCC 735; (iv) Kundan Lal Rallaram v. Custodian, Evacuee Property, 1961 SCC OnLine SC 10; (v) Musammat Bilas Kunwar v. Desraj Ranjit Singh, AIR 1915 PC 96(vi) Basalingappa v. Mudibasappa, (2019) 5 SCC 418; (vii) Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197; (viii) Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd., (2008) 2 SCC 305; (ix) Bachhaj Nahar v. Nilima Mandal, (2008) 17 SCC 491; (x) K.N. Beena vs Muniyappan And Anr. (2002) 37 SCL 583 (SC); (xi) Hiralal v. Badkulal, (1953) 1 SCC 400*** and ***Ajay Kumar D. Amin Vs. Air France, (2016) 12 SCC 566***

15. ***PER CONTRA***, Mr. Kale, learned Advocate for the Accused at the outset would choose to address on the fraud committed by the Complainant. He would submit that Mr. K.P. Vishweshwaran was father

of one of the client of Accused named Mr. Girichandran Iyer who resided in the Gulf country and his transactions were looked after by him. He would submit that Mr. K.P. Vishweshwaran used to buy and sell shares through the firm of Accused. He would submit that two cheques below Exhibit "P-1" were to be issued to Mr. K.P. Vishweshwaran against the outstanding amount of about Rs.40,00,000/-. However Exhibit "P1" (both cheques) did not bear the name of Mr. K.P. Vishweshwaran or Mr. Girichandran Iyer as the amount was to be split up. He would submit that the details of the name of drawee was also not inserted in Exhibit "P1", as the client was supposed to provide the same. Since the said details were not provided, Exhibit "P1" i.e. two signed cheques remained in custody of Complainant who was managing all office affairs. He would submit that Complainant misused the trust reposed in him, since he was handling the entire work of investment and banking of the firm of Accused for several years and fraudulently inserted his name on the two cheques and claimed them towards his outstanding liability. He would submit that never once did the Complainant demand any of the alleged claim from Accused when he was in service of the Accused.

16. He would submit that in the remand order by the Sessions Judge Complainant was required to prove existence of legal liability or legally enforceable debt. A finding was categorically returned therein

that there may be some more evidence which may be available on this issue. He would submit that in addition to the evidence already available on record, all the that Complainant placed before the Court as additional evidence is the document below Exhibit “P52”. He would submit that this is a document prepared by the Complainant himself showing liability of the Accused towards sub-brokerage payable by the Accused to him at 0.5 % of the business brought by him. This document is not signed by the Accused rather it is prepared by the Complainant himself much subsequently only at the time of fresh trial after remand. He would submit that with respect to claim of sub-brokerage there is no documentary evidence or agreement between parties on record. He would submit that neither the prosecution evidence at Exhibit “P3” to Exhibit “P4” nor the list of parties below Exhibit “P11” bear the signature of Accused. He has drawn my attention to the said exhibits and would submit that the names of parties in certain places stated therein are not legible or readable. I have seen the same. The names are indeed not legible and they are incoherent. He would submit that despite substantive cross examination of the Complainant on this aspect nothing has been placed on record by him to substantiate the claim of the Complainant. He would submit that in such a case without any evidence on record the Complainant has failed to prove that this is a legally enforceable

debt against the Accused with respect to the amounts stated in the two cheques. He would submit that Complainant ought to have proved his case under the eleven (11) heads of claim on the basis of cogent documentary evidence as his mere oral evidence cannot be accepted by the Court. He would submit that the learned Trial Court has therefore rejected the Complainant's case. He would submit that the Complainant is also guilty of suppression since he filed Summary Suit No.5974 of 19999 for recovery of the aforesaid amount under the twin cheques of Rs.49,83,336/- along with 18 % interest per annum and claimed a sum of Rs.76,57,663.80/- thereunder. He would submit that this suit was filed in this court itself as a summary suit. He would place a copy of the suit plaint before the court wherein cause of action is stated to be a statement of claim dated 30.06.1996 prepared pursuant to mutual settlement between parties. He would submit that the said suit is dismissed by this court for non-prosecution. He would submit that therefore Complainant has evaded to prove his case for claiming the outstanding amount to be a legally enforceable debt. He would submit that all exhibits in the form of lists exhibited by the Plaintiff in evidence are prepared by him and none of the said lists had been proved in evidence and therefore the findings returned by the learned Trial Court deserve to be accepted as the burden was on the Complainant to prove that the amount stated in the two cheques was

in respect of a legally enforceable debt due and payable by the Accused to the Complainant. He has drawn by specific attention to the cross examination of the Complainant which was conducted on 24.07.2015. This was the concluding part of his cross examination. It is appended at page nos. 4 and 8 of the paperbook He would submit that Complainant has admitted the fact that Exhibit “P52” does not add up to Rs.49,83,836/-. He would submit that apart from Exhibit “P-52” another document namely Exhibit “P13” is the only other document which is a ledger extract printed by the Complainant for the claim stated therein for the two cheque amount. However, thereafter he has immediately admitted the fact that Exhibit “P13” is an extract printed by him during the trial and it did not exist prior to the trial. He has also admitted the fact that Exhibit “P13” is not signed by the Accused nor there is any document to prove that Accused admitted the document below Exhibit “P13”. He would submit that in his further cross examination when Complainant is called upon to examine Exhibit “D-4” at page No.100 of the Appeal paperbook which is the counterfoil of the chequebook from which the subject cheques were issued, he has identified the same to be in his own handwriting. He would submit that in his cross examination Complainant has accepted and admitted the fact that except his bare words he hid not have any

document to show and prove the alleged settlement of accounts between him and Accused.

17. Mr. Kale has thereafter pointed out the clinching admission of the Complainant in his cross examination that the cheque amount on the two cheques includes the interest amount between 2% to 4% per month and would vehemently submit that if this is true according to Complainant's own admission then his entire case under the eleven (11) heads of payment has to be treated as a false and concocted case. He would submit that if the claim under eleven (11) heads of payment as claimed are added it comes precisely to the figure of Rs.49,36,368/- which is the principle claim amount then it would be much more then the said amount. Hence, there is no provision for interest. Hence, according to Mr. Kale Complainant has not only committed a fraud by his own actions but has come to the court with unclean hands.

18. He would next draw my attention to the admission of the Complainant that he has confessed that there is no agreement between him and the persons whose names are appearing in paragraph No.13 of his Affidavit of evidence. He would further point out the admission of the Complainant that none of the third parties issued any notice to the Complainant so as to entitle the Complainant to claim their outstanding amount from the Accused. He would therefore submit that

the learned Trial Court has rightly dismissed the suit and claim of Complainant on the ground of preponderance of probabilities and failure of Complainant to prove that the two cheques were issued to him by Accused towards any legally enforceable debt and liability. Due to this failure he would submit that considering the scope of an appeal against acquittal the reasons stated in the impugned judgement being cogent and relevant, the judgement deserves to be upheld and would therefore urge the court to dismiss the Appeal.

19. Mr. Kale, in support of his above submissions, has referred to and relied upon two decisions of the Supreme Court in the case of ***(i) Alamelu & Anr Vs. State represented by Inspector of Police (Criminal Appeal No. 1053 of 2009)*** and ***(ii) Krishna Janardhan Bhat Vs. Dattatraya G. Hegde (2008) 4 SCC 54***. He would submit that argument of the Complainant relating to presumption to be regarded under Section 139 of the said Act cannot be accepted in view of the fact that the said presumption is rebuttable and has been adequately rebutted.

20. He would submit that presumption of innocence as a human right and the doctrine of reverse burden introduced by Section 139 of the said Act should be considered in view of the evidence placed before the Court. He would submit that this is not a case where the Accused has not stepped into the witness box or evaded

answering his defence. He would submit that Accused in the present case has raised the defence of fraud right at the inception stage while denying the contents of Complainant's legal Notice issued under Section 138 of the said Act.

21. He would submit that substantial, cogent and pointed evidence has been led by the Accused to discharge his burden under Section 139 of the said Act. He would submit that if it was Complainant's case that under eleven (11) heads of payment / claim there was a liability of Accused, none of the said third parties have ever raised their claim against the Accused. He would submit that this is primarily because even according to Complainant's own case, all third parties who invested monies with the Accused received substantial returns and interest for several years. Hence, he would submit that entire evidence of the Complainant is wholly unreliable, false, concocted and unbelievable on the face of record.

22. I have heard Mr. Kurle, learned Advocate for Complainant; Mr. Kale, learned Advocate for Accused and Ms. Phad, learned APP for the State and with their able assistance perused the record of the case. Submissions made by the learned Advocates have received due consideration of the Court.

23. After hearing the Learned Advocates and perusing the records it is seen that Complainant has filed Summary Suit No.5974 of 1999 in this Court for recovery of the same amount under the two cheques from the Accused for reference the caused of action stated in the said suit assumes importance. This is because the trial before the trial court on remand by the session court was specifically required to determine the existence of a legally enforceable debt. In the Suit plaint Complainant has stated that the claim arises out of a mutually agreed settlement between parties as on 30.06.1996 after accounts between the Plaintiff and the Defendants that is Complainant and Accused were worked out mutually between them and the said statement of claim was prepared. If this statement of cause of action is true then Exhibit-A appended to the Suit plaint ought to have been signed and acknowledged by both the parties. However it doesn't bear signature of either parties. It is merely prepared by the Complainant on his own. There is no evidence or fact stated about how and whether the mutual settlement occurred or took place. Same cause of Action is pleaded by Complainant in the present case also when he is called upon to prove his legally enforceable debt or liability of the Accused towards him.

24. In the above context the evidence before the Trial Court in the present case therefore needs to be thoroughly analysed to prove existence of the legally enforceable debt against the Accused. The Civil

Suit has been dismissed by this Court on 13.10.1999 for non-prosecution. It may not have bearing on determination of the present case. The above fact is stated only to show the conduct of the Complainant.

25. The present appeal is dependent upon the strength of the evidence of the Complainant to prove the legally enforceable debt. In the present case it is seen that substantial witness action is led by both sides. What is crucial to be noted is the fact that claim of Complainant is for a substantial tenure of time on the ground that he brought good amount of business to the Accused and was to get 0.5 percent of the total turnover in addition to Rs.3,000/- per month as salary. Complainant was employee of Accused and his firm, Meera Investments is an admitted fact. The most important clinching issue is that there is no evidence / agreement between the parties i.e. Complainant and Accused nor Complainant and the third parties who invested their monies with the Accused which were been brought / invested at the behest of Complainant. In this background the Complainant's case cannot be believed on the basis of his mere oral evidence. He was offered two chances in the trial. He has not placed any cogent material on record so as to believe his case. Complainant has in his cross-examination agreed that several third parties invested with the Accused through him and also received returns from the

Accused and only when they demanded their principal amount back from the Accused the Complainant was forced to pay the same to them. The question as to why did the Complainant choose to pay the third parties is left clearly unanswered. This goes to the root of the matter to prove legally enforceable debt, if any from the Accused. The Complainant admittedly was not the agent of the Accused so as to foist the liability on Accused. Complainant in his deposition claimed to be a guarantor but once again his claim is a bald claim without any deed of guarantee between the parties. Complainant did not choose to make the Accused aware even once that he was guarantor / surety for the investors over the years. Hence his case is unbelievable.

26. Complainant's entire case is based on handwriting entries maintained by him in his personal notebook Exhibit "P2" to Exhibit "P4" on a day to day basis between 1987 and 1994. If these outstanding entries are held to be a legally enforceable debt then from the year 1987 onwards until the year 1996, Complainant has not produced a single document evidencing his legally enforceable debt or claim raised by any third party on him. Hence, Complainant has failed to discharge his burden of proving that there was a legally enforceable liability.

27. Complainant led evidence of PW-2 and PW-3 who are bank officers and his bankers; their evidence is of absolutely no

relevance. They cannot give evidence on whether the amounts stated in the cheques were a legally enforceable debt PW-4 is a third party who invested Rs.1,00,000/- with the Accused in 1991 allegedly through the Complainant. He was promised 25 % interest plus share in the profit every year and since he did not receive any return or interest, it is Complainant's case that he had to pay the amount of investment to PW-2 from his own pocket. The claim of PW-2 that action of Complainant is not supported by any documentary evidence so as to entitle Complainant to claim the repayment made by him to PW-2 from the Accused Exhibit "P25" which is the letter given by the Accused to PW-4 is in the normal course of business given by a firm to any investor who parks his funds. That letter has no nexus with the Complainant. The Complainant does not get any right to assume the role of a recovery agent on behalf of PW-2 or PW-4 in the absence of any agreement between the Complainant, Accused and the third parties.

28. Next it is seen that PW-5 K. Ramalingam is the relative of the Complainant who invested Rs.50,000/- through Complainant with the Accused on 24.12.1990. Admittedly he received interest at the rate of 3 percent on his investment up to February 1995 for five years. This is Complainant's case. Similarly PW-6 T. Ramaswami, Complainant's younger brother, invested Rs.1,50,000/- in cash with Accused at the

behest of the Complainant in 1989. He also received returns in the form of interest at the rate of 2 to 2.5 percent for several years. In the case of PW5 and PW6, Complainant has alleged to have paid them their investment amount with the Accused when they demanded it from him. Once again it is seen that there is no cause of action for the Complainant to pay the said amount to PW5 and PW6 on behalf of the Accused without intimating the Accused. Accused had never endorsed the decision of Complainant to pay the said amounts. Accused is not privy to Complainant's dealings with the third parties. Complainant has stated that he had to borrow Rs.50,000 from his Mother's bank account and from his two other brothers Ramanathan and Krishnan who had also invested with the Accused. The Complainant categorically admits that these persons received interest in cash up to 1994 however this does not prove the fact that Complainant was authorised to return their invested amount with the Accused. This is so because Accused was running a business in share trading in the name and style as Meera Investments. There is no agreement between Meera Investments and Complainant requiring Complainant to repay the amount to the investors. Nothing is produced on record to believe the case of Complainant as to how and when did he pay the alleged amounts to the third parties. It is seen that Complainant himself has prepared the list on his own which is exhibited as Exhibit "P11". It is

seen that Complainant joined the firm Meera Investments in the year 1986 and his job was to handle the account of the firm with the bank along with payment to and from the clients of the firm. It is seen that the firm was having its bank account with Laxmi Vilas Bank, Fort branch and Complainant used to handle all banking transactions of the firm. It is seen that Accused has never authorised the Complainant to repay the investments made by third parties or his relatives with the firm. Complainant has also not produced any evidence to that effect on record.

29. The evidence of Defence witnesses namely DW-2, DW-3 and DW-4 clearly show that Accused never asked the Complainant to repay the amount of third parties / investors.

30. On the issue of the two amounts in the two cheques the evidence on record shows that both the aforesaid amounts were in respect of repayment to be made to one of the client of the Accused namely K.P. Vishweshwaran. It is seen that these two cheques were canceled and the fact that they were canceled is clearly mentioned in the counterfoil of the chequebook and the notebook which is placed on record as Exhibit “DW2” by the Accused. This clearly shows malafides of the Complainant’s case. It is further seen that when the Complainant is confronted with the same in his cross examination he has admitted the same in his deposition. It is clearly discernible that

there is no positive evidence proved by the Complainant in support of his case of any legally enforceable debt under any of the eleven (11) heads.

31. It is seen that the entire case of the Complainant is based on Exhibit “P11” to Exhibit “P13” which are the computer statements prepared by the Complainant himself. These statements are clearly prepared by the Complainant after filing of the complaint during the course of Trial. According to Complainant, these entries are based on the diary entries made by him in Exhibit “P2” to Exhibit “P4”. The said exhibits namely Exhibit “P11” to Exhibit “P13” are electronic evidence of printouts from the computer which are not proved in evidence under Sections 65A and 65B of the Indian Evidence Act which lay down proof of evidence of electronic record. Thus, case of the Complainant cannot be accepted due to this one more reason which corroborates the evidence on record.

32. It is seen that Complainant issued the legal notice under Section 138 in the year 1996 raising the demand of Rs.49,83,836/- under the two cheques. It is seen that immediately thereafter in the reply to the said notice Accused raises his defense of the issue of the two cheques by fraudulent means. Complainant thereafter issued a rejoinder. In the notice and the rejoinder Complainant does not state the cause of action namely the details of the eleven (11) heads under

which the twin cheques were issued by the Accused to him. He does not state or refer to the mutual settlement and statement of account arrived at between the parties for payment of Rs.49,83,836/- Complainant merely rests his case on the twin cheques issued to him for the above amount and nothing more. Further it is shocking to see that in the complaint that is filed before the Trial Court under Section 138 it is once again completely silent on how the claim has arisen. Complainant chooses not to speak a word about the debt or claim. Even in the evidence all that the Complainant has stated before the Trial Court is that Exhibit “P11” to Exhibit “P13” are computer generated entries of the various heads under which the liability arises.

33. There is admittedly no evidence produced to arrive at the said statements and liability. Hence, if it is Complainant’s case that the cheques were issued for a legally enforceable debt, it was his duty to prove the same. There is nothing on record placed by the Complainant to show that the amounts stated in Exhibit “P11” to Exhibit “P13” are arrived at pursuant to a legally enforceable debt. Exhibit “P11” to Exhibit: P-13 do not prove the case of the Complainant. Mere exhibition of the said Computer statement prepared by the Complainant do not prove the contents of the said document.

34. The Complainant has failed to prove the existence of any legally enforceable debt and on the contrary. Accused in his defence by leading cogent evidence has clearly rebutted the Complainant's case.

35. In the present case Exhibit "P2" to Exhibit "P4" which are the handwritten notebooks of the Complainant are not ledger account books which are regularly maintained by him in the normal course of business. If entries in Exhibit "P2" to Exhibit "P4" are seen, it reveals that many of the entries are scored off and canceled by the Complainant himself and if they are juxtaposed with Exhibit "P13" that is the list prepared by the Complainant, they do not match with each other.

36. According to the Complainant there was mutual settlement between the parties but the manner in which the settlement has taken place in discharge of a legally enforceable debt is not proved by him at all despite he been given an opportunity. The evidence led by Complainant merely identifies eleven (11) heads of payment. When the remand was specifically made by the Sessions judge, the only additional evidence led by the Complainant to prove the legally enforceable debt is Exhibit "P52" pertaining to outstanding of the amount of Rs.1,76,571/- towards sub-brokerage and nothing more. Even the statement on the face of it cannot be accepted without evidence as it is prepared by him subsequently.

37. There is no evidence whatsoever led by the Complainant to prove the outstanding liability under the alleged eleven (11) heads of payment and once this is the case, it cannot be said that Complainant has proved his case beyond reasonable doubt.

38. In view of the above observations and findings, I am in complete agreement with the findings returned by the learned Trial Court in paragraphs Nos.28, 30 and 31 of the judgement of the Trial Court. On the basis of material on record, it cannot be said that Complainant has proved his case beyond all reasonable doubts. The burden on the Accused to prove his case only to the extent of preponderance of probability is clearly proved in the present case even though there may be a probability that Complainant brought business to the Accused or the Accused received loans from third parties. Admittedly there is no documentary evidence placed on record to that effect by Complainant. That apart Complainant had no right whatsoever to recover the amounts given by him on his own volition to third parties from the Accused. Complainant was neither guarantor nor surety for these amounts. Accused has clearly set and proved the probability that the Complainant through his nexus/ employment with the firm of the Accused obtained the two cheques signed by the Accused which is believable and therefore the onus of proving that the two cheques were issued towards a legally enforceable debt and

liability was on the Complainant. The Complainant has failed to discharge this burden. Therefore the case of the Complainant-Appellant before me fails miserably.

39. The Judgement dated 01.10.2015 stands upheld.

40. Criminal appeal is dismissed.

H.H. Sawant

[MILIND N. JADHAV, J.]

HARSHADA HANUMANT SAWANT

Digitally signed by HARSHADA HANUMANT SAWANT
Date: 2025.01.02 12:17:34 +0530