IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF SEPTEMBER, 2019

BEFORE

THE HON'BLE MR.JUSTICE B.A.PATIL

CRIMINAL REVISION PETITION NO.1407/2018

Maxworth Realty India Ltd.,

AND :

M.K.Veerendra Babu

O R D E R

This petition is filed by accused Nos.1 and 2 challenging the judgment and order dated 10.12.2018 passed by the 55th Additional City Civil and Sessions Judge, Bangalore (CCH-56) in Criminal Appeal No.318/2013 whereunder the judgment and order of conviction and sentence dated 12.6.2013 passed by the XV ACMM, Bangalore, in CC.No.31506/2011 has been confirmed.

2. I have heard the learned Senior Counsel Sri P.S.Rajagopal for the petitioners and Sri Sharath S.Gowda for the respondent-complainant.

3. Before going to consider the issue in question, it is relevant to mention here itself that during the course of arguments, a memo dated 28.8.2019 has been filed by the petitioners seeking permission to withdraw the petition as not pressed only in so far as petitioner No.1 is concerned as the trial Court has not passed any conviction order as against petitioner No.1 and by mistake the petition is filed by accused No.1. Accordingly, this Court by its order dated 28.8.2019 dismissed the petition filed by petitioner No.1-accused

No.1 as withdrawn, at the risk of the petitioners.

4. Case in brief as per the complaint is that complainant and accused were acquainted with each other. In the year 2006-07, agricultural lands of the complainant were acquired by the Karnataka Industrial Areas Development Board and he was paid the compensation for the said acquisition. As he was having intention to invest the said amount in some other converted land in and around Devanahalli Taluka, he contacted one Thippaiah who was owning the converted land bearing Sy.No.193, measuring 5 acres at Tindlu Village, Kundana Hobli, Devanahalli. He agreed to sellone acre of the land in the said Sy.No.193 and 2 acres of land in Sy.No.189 to the complainant. A registered agreement of sale was got executed on 16.7.2008, whereunder the said Thippaiah agreed to sell 3 acres of land for an amount of Rs.30 lakhs per acre. The complainant paid an advance amount of sale consideration of Rs.75 Lakhs as per the terms of the two registered agreements of sale and the balance amount of sale consideration of Rs.15 Lakhs has to be paid at the time of execution of final registered sale deed. It isfurther case of the complainant that on repeated demand, the said Thippaiah failed to execute the registered sale deed by receiving balance considerationand later he came to know that the said Thippaiah had agreed to sell the land to accused No.1 and has executed the registered sale deed and put him in

possession of the same. It is further alleged that the said Thippaiah has created a Power of Attorney alleged to have been executed by the complainant in favour of one Gopal who has put his signature as consenting party to the sale deed executed in favour of accused No.1. Actually no such person by name Gopal is residing in Buttaramaranahalli Village. After coming to know thesaid fact the complainant filed a complaint against the accused, Thippaiah and Gopal. After coming to know about filing of the complaint, they approached the complainant for settlement and after prolonged negotiation, the matter was settled between the parties. Accused agreed to pay Rs.2 Crores to the complainant and complainant has to give up his claim over the said property. A memorandum of understanding or settlement was executed between the said parties. At the time of execution of the said agreement of settlement, accused paid Rs.25 Lakhs to the complainant by way of cash and issued three cheques for a sum of Rs.25 Lakhs each and other two cheques for Rs.5 Lakhs and Rs.1 Crore. The said cheques were issued by accused No.2 as a representative of accused No.1- Company. The said cheques have been issued towards legally enforceable debt in terms of the settlement deed dated 4.6.2011.

5. When the complainant presented the said cheques for encashment through his banker, they were returned dishourned with an endorsement "funds

insufficient". The complainant issued legal demand notice dated 12.8.2011 to the accused, for which accused No.2 has sent a reply denying the liability. Since the amount has not been paid within the stipulated time, a private complaint was registered. The learned Magistrate took cognizance and after recording the sworn statement, issued summons to the accused. Accused No.2 appeared before the Court on behalf of accused No.1-Company while it is a legal entity. Thereafter plea was recorded. Accused pleaded not guilty, as such the trial was held.

6. In order to prove his case, the complainant himself got examined as PW.1 and got marked 24 documents. Thereafter the statement of the accused was recorded under Section 313 of Cr.P.C. and accused got examined two witnesses as DWs.1 and 2 and got marked one document as Ex.D1. After hearing the learned counsel appearing for the parties, the trial Court convicted accused No.2 under Section 138 of N.I. Act.

7. Being aggrieved by the said judgment and conviction, accused Nos.1 and 2 preferred the criminal appeal before the appellate Court. The appellate Court after considering the material on record has dismissed the appeal. Challenging the correctness and legality of

the said judgment, the present petition has been filed.

8. It is the specific contention of the learned Senior Counsel for the appellants-accused that as per Section 138 of the N.I. Act, a notice has to be served on the accused. In the instant case, no notice has been served on accused No.1. Notice has been served as per Ex.P17 only on accused No.2. It is his further contention that if no notice has been issued to accused No.1-Company, then under such circumstances, there is no demand being made in writing by the holder of the cheque by issuance of a notice and in that light there is no cause of action to file the complaint. The right to file complaint arises only when the accused does not pay the amount within 15 days after receipt of notice in writing to the drawer of cheque. In other words cause of action arises to file the complaint for non-compliance of the conditions stipulated under Section 138 of the N.I. Act. It is his further submission that the liability of accused No.2 is that of vicarious liability as he being the Managing Director of accused No.1-Company. When there is no cause of action as against accused No.1 for non-issuance of notice, then under such circumstances, there is no offence committed by accused No.2 also. As per Section

141 of the N.I. Act, if the person committing an offence is a Company, it has to be arrayed as an accused and vicariously the persons incharge of it are responsible for the conduct of the business of the Company. In the absence of the Company being served with notice, prosecution of accused No.2 is not maintainable, that too, when there is no demand notice against the Company which is a precondition under Section 138 of the N.I. Act. In order to substantiate his contention, he relied upon the decision in the case of *Himanshu Vs. B.Shivamurthy & another* reported in *(2019) 3 SCC 797*.

9. It is his further submission that the appellate Court heard the matter on 22.12.2017 and 30.12.2017. Thereafter the matter was posted for orders and again on 31.1.2018 the case was taken on Board and again on 17.3.2018 the arguments were heard and posted for judgment on 20.3.2018. Again the case was taken on Board at the request of the learned counsel for the accused and posted for arguments on 9.4.2018 and after hearing, it is again reserved for judgment. The judgment was pronounced on 10.12.2018 after a long gap. Delay in pronouncing the judgment and

unexplained long interval between the conclusion of the arguments and delivery of the judgment shakes the confidence of the general public. He further submitted that the intention of the Legislature regarding pronouncement of the judgment is to pronounce immediately after conclusion of the trial or within a reasonable time. As per Section 353 of Cr.P.C. delay in pronouncement is opposed to principles of law and it cannot stretch beyond that time in any case. He further submitted that in our country, the people consider the Judges only second to God. Efforts have to be made to strengthen the belief of the common man. It is his further submission that the appellate Court without following the guidelines of the Hon'ble Apex Court in the case of *Anil Rai & others Vs. State of Bihar,* reported in *(2001) 7 SCC 318* has erroneously passed the impugned judgment belatedly. He further submitted that many of the aspects urged during the course of arguments are going to be missed as the human memory is very short. Many points have not been considered by the Courts below. He further submitted that the additional documents were produced to substantiate the case of the accused, but there is no whisper about the said documents while passing the impugned judgment by

the appellate Court. He further submitted that earlier the service of notice on accused No.1-Company was not considered to be a fatal, but the recent judgment of the Hon'ble Apex Court in the case of *Himanshu Vs. B.Shivamurthy & another* (cited *supra*), is a later decision and it is well settled proposition of law that later decision has to be followed if there is any conflict in the decisions of equal Bench. He further submitted that the memorandum of settlement produced by the complainant is not the registered document and as such it can safely be held that there was no enforceable debt as on the day and on that ground also, the complaint is liable to be dismissed.

10. Alternatively, he submitted that in order to reconsider the additional documents to prove the case of the petitioner-accused the matter may be remanded back to the first appellate Court. On these grounds, he prayed to allow the petition by setting aside the impugned judgments passed by the Courts below.

11. *Per contra*, the learned counsel for the respondent-complainant vehemently argued and submitted that in Ex.P17 dated 12.8.2011 the address

mentioned therein to serve notice on accused No.2 it has been specifically mentioned the name of accused No.2 as Chairman and Managing Director of M/s.Maxworth Realty India Limited. Issuance of the notice to the Chairman and Managing Director of the Company who has signed the cheques and service of notice on him at his office address indicates that the notice was sent not only to the Managing Director, but also to the Company as it is a legal entity. In this behalf there is no infirmity. In order to substantiate his contention, he relied upon the decisions in the case of *Bilakchand Gyanchand Co. Vs. A.Chinnaswami* reported in *(1999) 5 SCC 693;* and in the case of *Rajneesh Aggarwal Vs. Amit J.Bhalla,* reported in *(2001) 1 SCC 631.* Even in the reply at Ex.P20 it has been specifically mentioned that Sri Keshava K. Chairman and Managing Director, M/s.Maxworth Realty India Limited is giving the reply, which itself shows that accused No.2 has received the notice on his individual capacity as well as the Managing Director of accused No.1-Company. It is his further submission that in the case of Himanshu Vs. B.Shivamurthy & another (cited supra), the Company was not made as a party or an accused. Under such circumstances, in the absence of the Company being arrayed as an accused, the Hon'ble Apex Court came to

the conclusion that there was no demand notice against the Company, as the case was registered in his individual capacity and the accused has also contended that the cheque has been issued in his individual capacity. In that light, it is his submission that the said decision is not applicable to the facts of the present case. By relying upon Section 94 of the N.I. Act, he further submitted that it prescribes the mode in which the notice may be given and as per the said Section it can be given to the duly authorized agent of the person to whom it is required to be given. In that light, the complainant has served the notice on the authorized agent of the person, i.e., accused No.2 and the said purpose has been served. He further submitted that the deed of settlement at Ex.P7 contains the payment of amount and the cheque numbers and as per the settlement the said amount has been paid, that itself shows that there exists a legally recoverable debt. He further submitted that the Managing Director stands in a different footing than any other Directors of the Company. He would be deemed to be aware of the transactions of the Company and he cannot deny the service of notice. He further submitted that the Court should not adopt an interpretation which helps a dishonest evader and clips an honest payee as that would defeat the very legislative measure. In order to substantiate the said contention, he relied upon the decision in the case of *V.Raja Kumari Vs. P.Subbharama Naidu and another,* reported in *2005 Crl.L.J. 127*. He further submitted that the trial Court

as well as the first appellate Court after considering the material on record have rightly come to the conclusion. The learned counsel for the petitioners has not made out any good ground to interfere with the judgments of the Courts below. If the matter is remanded back, it is going to help a dishonest evader to protract the proceedings. On these grounds, he prayed to dismiss the petition.

12. I have carefully and cautiously gone through the submissions made by the learned counsel for the parties and perused the records as well as the decisions quoted by them.

13. The first and foremost contention taken up by the learned Senior Counsel for the petitioners-accused is that notice has to be served on the accused and in the instance case no notice has been served on accused No.1-Company. Without serving notice to accused No.1-Company there is no demand, there is no cause of action and initiation of the proceedings which itself vitiate the entire proceedings. To substantiate his contention he has relied upon the decision of the Hon'ble Apex Court in the case of *Himanshu Vs. B.Shivamurthy & another* (cited *supra*), wherein at paragraphs-6, 7, 11 and 13 it has been observed as under:-

"6. The judgment of the High Court has been questioned on two grounds. The learned counsel appearing on behalf of the appellant submits that firstly, the appellant could not be prosecuted without the company being named as an accused. The cheque was issued by the company and was signed by the appellant as its Director. Secondly, it was urged that the observation of the High Court that the company can now be proceeded against in the complaint is misconceived. The learned counsel submitted that the offence under Section 138 is complete only upon the issuance of a notice of demand and the failure of payment within the prescribed period. In absence of compliance with the requirements of Section 138, it is asserted, the direction of the High Court that the company could be impleaded/arraigned at this stage is erroneous.

7. The first submission on behalf of the appellant is no longer res integra. A decision of a three-Judge Bench of this Court in Aneeta Hada v. Godfather Travels & Tours (P) Ltd. [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012)5 SCC 661: (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] governs the area of dispute. The issue which fell for consideration was

whether an authorised signatory of a company would be liable for prosecution under Section 138 of the Negotiable Instruments Act, 1881 without the company being arraigned as an accused. The three-Judge Bench held thus: (SCC p. 688, para 58)

> *"58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted."*

In similar terms, the Court further held: (SCC p. 688, para 59)

> *"59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself."*

8. xxx xxx xxx xxx

9. xxx xxx xxx xxx

10. xxx xxx xxx xxx

11. In the present case, the recordbefore the Court indicates that the cheque was drawn by the appellant for Lakshmi Cement and Ceramics Industries Ltd., as its Director. A notice of demand was served only on the appellant. The complaint was lodged only against the appellant withoutarraigning the company as an accused.

12. xxx xxx xxx xxx

13. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not

maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused."

14. But as could be seen from the notice at Ex.P17, it has been served on accused No.2 as a Chairman and Managing Director of M/S Maxworth Realty India Limited and even the reply given at Ex.P20 contains the same address. The learned counsel for the petitioners-accused has also relied upon Section 141 of the N.I. Act, which reads as under:-

"141.Offences 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:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(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."

15. On close reading of the said Section, it states that if the person committing an offence under Section 138, is a Company, every person who, at the time of the offence was committed, was incharge and responsible to the Company for the conduct of its business shall also be deemed to be guilty. The reason for creating vicarious liability is plainly that a juristic entity i.e., a Company would be run by living persons who are in charge of its affairs and who guide the action of that Company and if such juristic entity is guilty, ultimately it is the persons who are responsible for its affairs and they must be held responsible and convicted. The Hon'ble Apex Court in the case of *Krishna Texport & Capital Markets Ltd., Vs. Ila A. Agrawal and others* reported in *(2015) 8 SCC 28,* has come to the conclusion that there is no requirement of sending of individual notices to the Directors of the Company as Section 141 of the N.I. Act does not lay down any requirement that individually notice has to be served under Section 138 of the N.I. Act to such persons, as the persons who are at the helms of the affairs of the Company,

naturally be aware of the notice of demand issued to such Company. The said lapses can be rectified in this behalf. At paragraph-16 of the aforesaid decision, it has been observed as under:-

> *"16. Section 141 states that if the person committing an offence under Section 138 is a company, every Director of such company who was in charge of and responsible to that company for conduct of its business shall also be deemed to be guilty. The reason for creating vicarious liability is plainly that a juristic entity i.e. a company would be run by living persons who are in charge of its affairs and who guide the actions of that company and that if such juristic entity is guilty, those who were so responsible for its affairs and who guided actions of such juristic entity must be held responsible and ought to be proceeded against. Section 141 again does not lay down any requirement that in such eventuality the Directors must individually be issued separate notices under Section 138. The persons who are in charge of the affairs of the company and running its affairs must naturally be aware of the notice of demand under Section 138 of the Act issued to such company. It is precisely for*

this reason that no notice is additionally contemplated to be given to such Directors. The opportunity to the "drawer" company is considered good enough for those who are in charge of the affairs of such company. If it is their case that the offence was committed without their knowledge or that they had exercised due diligence to prevent such commission, it would be a matter of defence to be considered at the appropriate stage in the trial and certainly not at the stage of notice under Section 138."

16. Keeping in view the aforesaid ratio, as the Company being a legal entity, it cannot acquire knowledge as a human being, knowledge of a Company actually means, knowledge of the people who are having control over such Company. Generally it is the Chairman or Managing Director of a Company who will be having knowledge. Section 2(54) of the Companies Act, 2013 defines the Managing Director as: "Managing Director means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying

the position of Managing Director, by whatever name called..".

17. As per the definition, the Managing Director is a person who is entrusted with substantial power of the management of the affairs of the Company. Notice served on the Managing Director would thus imply that the Company is made aware of the dishonour of the cheque and of the demand for payment of the dishonoured cheque as contemplated under Section 138 of the N.I. Act. Learned Senior Counsel for the petitioners-accused has relied upon the decision of the Hon'ble Apex Court in the case of *Himanshu Vs. B.Shivamurthy & another* (cited *supra*), wherein at paragraphs-6, 7, 11 and 13, it has been observed that in the absence of notice of demand being served on the Company and without compliance with the Proviso to Section 138 of the N.I. Act, the Company could not be held liable. In that case at paragraph-4, it has been observed that the cheque was issued by a Director of Lakshmi Cement and Ceramics Industries Ltd., a public limited company and the complaint was initiated against an individual without arraying the Company as an accused. Under such circumstances, the Company was not arrayed as an accused as contemplated under Section 141 of the N.I. Act. In that light, the Hon'ble Apex Court has come to the conclusion that in the absence of notice of demand served

on the Company is held to be non-compliance of Section 138 of the N.I. Act. Hence, the said ratio laid down is not applicable to the facts of the present case.

18. In the instant case, it is not in dispute that accused No.1 is a Company and accused No.2 is the Managing Director of accused No.1. When the statutory notice is issued to the Chairman and Managing Director of the Company and when both Company and the Managing Directors are the persons who are at the helms of the affairs of the Company, Company is vicariously liable. Under such circumstances, the contention of the learned Senior Counsel that there is no cause of action as the notice has not been served, is not having any force and the same is liable to be rejected.

19. It is his further contention that there was no legally recoverable debt or liability. As could be seen from the reply Ex.P20 and the evidence of DWs.1 and 2 it is not in dispute that there was a deed of settlement entered into between DW1 and the complainant. As per the terms of the settlement deed, on the date of signing the deed, DW.1 has paid a sum of Rs.25 Lakhs by way of cash to the complainant and for the balance amount of Rs.1 Crore 75 Lakhs, DW.1 has issued three post dated

cheques drawn on Bank of Baroda. When the said fact of issuance of cheques and signature thereon has been admitted, then under such circumstances, presumption under Section 139 of the N.I. Act has to be drawn.

Section 139 of the N.I. Act mandates a presumption that there exists a legally enforceable debt or liability. This is of course in the nature of a rebuttable presumption and it is open for the accused to raise a defence and he can contest and prove that there exists no legally enforceable liability, on preponderance of probability. This proposition of law has been laid down by the Hon'ble Apex Court in the case of *Rangappa Vs. Sri Mohan* reported in *(2010)11 SCC 441,* wherein at paragraph 16 it has been observed as under:-

> *"16. All of these circumstances led the High Court to conclude that the accused had not raised a probable defence to rebut the statutory presumption. It was held that:*
>
> > *"6. Once the cheque relates to the account of the accused and he accepts and admits the signatures on the said cheque, then initial presumption as contemplated under Section 139 of the Negotiable Instruments Act has to be raised by the Court in favour of the*

complainant. The presumption referred to in Section 139 of the N.I. Act is a mandatory presumption and not a general presumption, but the accused is entitled to rebut the said presumption.

What is required to be established by the accused in order to rebut the presumption is different from each case under given circumstances. But the fact remains that a mere plausible explanation is not expected from the accused and it must be more than a plausible explanation by way of rebuttal evidence. In other words, the defence raised by way of rebuttal evidence must be probable and capable of being accepted by the Court.

The defence raised by the accused was that a blank cheque was lost by him, which was made use of by the complainant. Unless this barrier is crossed by the accused, the other defence raised by him whether the cheque was issued towards the hand loan or towards the amount spent by the complainant need not be considered "

Hence, the High Court concluded that the alleged discrepancies on part of the complainant which had been noted by the trial court were not material since the accused had failed to raise a probable defence to rebut the presumption placed on him by Section 139 of the Act. Accordingly, the High Court recorded a finding of conviction."

20. On perusal of the evidence of DWs.1 and 2 and the cross-examination of PW.1, nothing has been elicited to rebut the said presumption.

21. It is the specific contention of the accused that in pursuance of the deed of settlement at Ex.P7, the criminal case filed has to be withdrawn by the complainant as against the accused and as such he has not made any arrangements for payment of the cheque amount. On close reading of the settlement deed at Ex.P7, it is agreed to withdraw the case filed against the accused, on receipt of the said amount. Withdrawal of the case is not a condition precedent for making the payment. On the contrary it is reversed, initially, he has to pay the cheque amount and thereafter the criminal case has to be withdrawn. Though it is contended by the Senior Counsel that an application has been filed for

production of additional documents before the appellate Court, the said documents have not been considered by the appellate Court. The entire material was available before the appellate Court, but it has not explained as to why the said material has not been considered even the application has been filed to permit DW.1 to lead further defence evidence and to mark the documents. No proper reasons have also been assigned by the appellate Court.

22. If the attitude of accused No.2 is accepted, it shows that he wants to drag on the proceedings on one or the other pretext. As rightly held by the Hon'ble Apex Court in the case of *V.Raja Kumari Vs. P.Subbharama Naidu and another* (quoted *supra*), it amounts to helping the dishonest evader, and clips an honest payee as that would defeat the very legislative measure. In that light, the contention of the learned Senior Counsel that there exists no legally recoverable debt or liability and the appellate Court has not properly appreciated the additional documents and it has not whispered a single word in respect of the said documents is not acceptable. Even on re-appreciation of the said documents and the application, I feel that petitioners-accused have not made out any good grounds to accept their contention.

23. The next contention which has been raised by the learned Senior Counsel is that the trial Court has heard the matter on 22.12.2017 and subsequently time and again it has adjourned the case and passed the judgment on 10.12.2018. It is the specific contention of the learned Senior Counsel that the trial Court has not followed the guidelines issued by the Hon'ble Apex Court in the case of *Anil Rai & others Vs. State of Bihar,* (cited *supra*). I am not having any difference of opinion that immediately after the trial or hearing of the case, the judgment has to be pronounced. Even though the words used in Section 353 of Cr.P.C. "at subsequent time" also indicate that judgment has to be pronounced as early as possible and it cannot be adjourned for an indefinite period. But as could be seen from the order sheet of the first appellate Court, it indicates that the said case has been taken on Board after it is posted for judgment at the request of the respondent on 7.12.2018 and thereafter on subsequent dates, the arguments were also heard. Even on 7.4.2018, the learned counsel for the respondent was present and it was posted for arguments on 9.4.2018 and thereafter the case was posted for judgment and the judgment has been pronounced on

10.12.2018. Merely because the said judgment has not been pronounced immediately after hearing and even the guidelines issued by the Hon'ble Apex Court will be in force until an enactment dealing with a problem has been made, no doubt the conduct of the Court below in not following the mandate of the law as well as the precedent and has failed to fulfill the obligation and oath of office which has been solemnly taken and at the most it is the Hon'ble Chief Justice who has to take necessary action in this behalf for having not followed the guidelines. On that ground, it cannot be held that the judgment of the first appellate Court is perverse and illegal without there being any other substantive material to substantiate the contention of the learned Senior Counsel that deliberately in order to help the respondent-complainant, the said adjournments were given. In that light, the said contention also does not stand to any reason and the same is liable to be rejected and accordingly, it is rejected.

24. I have carefully and cautiously gone through the judgment of the trial Court as well as the judgment of the first appellate Court. The said judgments are neither perverse nor illegal and therefore they deserve to

be confirmed and accordingly, they are confirmed.

In the light of the discussions held by me above, I pass the following order:-

Petition filed by petitioner No.1-Company is *dismissed as withdrawn* in view of the memo dated 28.8.2019 filed by the learned counsel for the petitioners.

Petition filed by petitioner No.2-accused No.2, is *dismissed*.

In view of dismissal of the main petition, I.A.No.3/2019 is dismissed as it does not survive for consideration.