Before Vikas Bahl, J.

SULTAN SINGH—*Petitioner*

versus

TEJ PARTAP—*Respondent*

CRM-M No.39414 of 2021

September 21, 2021

Code of Criminal Procedure, 1973 – S. 482 – Negotiable Instruments Act, 1881 – S. 6, 13, 118, 138 and 142 – Indian Penal Code, 1860 – S. 420 – Indian Contract Act, 1872 – Sections 2, 10, 23, 25 to 30 – Limitation Act, 1963 – S. 18 and 29 – Petition u/s 482 Cr.P.C. filed for quashing criminal complaint u/s 138 /148 of Negotiable Instruments Act, 1881 read with 420 IPC – Petitioner contended that money was borrowed on 04.08.2015 whereas cheque was issued on 02.08.2019 – On the date of issuance of cheque there was no legally enforceable debt – Held – A debt which has become time barred can be enforced in case ingredients of section 25(3) of Contract Act are fulfilled - A cheque in writing signed by the person issuing it would come squarely within the ambit of Section 25(3) of the Contract Act as to make the debt legally enforceable on the date on which cheque is drawn – Further held – Section 18 of the Limitation Act does not have non-obstante clause – Rather Section 29(1) of the Limitation Act specifically provides that nothing in Limitation Act shall affect section 25 of the Contract Act – Petition dismissed.

Held that, a conjoint reading of Sections 2, 10, 23 and 25 to 30 of the Contract Act would clearly bring out that when a proposal is accepted, it becomes a promise, and the promise to do something would be an agreement, and an agreement enforceable in law is a contract and the one which ceases to be enforceable would become void. Under the Contract Act, there are several categories of void agreements. Under section 23 of the Contract Act, if the consideration or object of an agreement is forbidden by law or is immoral, then the agreement is void on that account. Under section 26 of the Contract Act, every agreement in restrain of the marriage of any person, other than a minor, is void. Section 27 of the Contract Act deals with agreement in restraint of trade and the circumstances under which they would be void. Section 29 of the Contract Act deals with agreements void for uncertainty. Section 25(3) of the Contract Act specifically provides an

exception with respect to the bar on the enforcement of a time barred debt. The said Section 25(3) clearly provides that a promise which is made in writing and signed by the person to be charged therewith, to pay a debt, either wholly or in part, which on account of law of limitation could not have been enforced, may be enforced. Thus, by virtue of the said provision, a debt which has become time barred can be enforced in case the ingredients of section 25(3) of the Contract Act are fulfilled. In the case of a cheque, the drawer of a cheque in fact, makes a promise to the person in whose favour the cheque is drawn that on presentation, the same would be honoured and the person in whose favour the cheque is issued, would get the benefit of the cash amount which has been mentioned in the cheque. Thus, a cheque in writing, which is signed by the person issuing it, would come squarely within the ambit of Section 25(3) of the Contract Act so as to make the debt legally enforceable on the date on which the cheque is drawn. Thus, even in case the date on which the cheque has been drawn, is subsequent to the date when the debt has become time barred, in view of the provisions of Section 25(3) of the Contract Act, the said cheque would, by itself, create a promise which would become a legally enforceable contract and it cannot be then said that the cheque is drawn in discharge of a debt or liability, which is not legally enforceable.

(Para 25)

Further held that, an acknowledgement under Section 18 of the Limitation Act to be valid, must be made before the expiry of the period of limitation, whereas, a promise under section 25(3) of the Contract Act, to pay a debt, may be made after the debt has become time barred.

(Para 26)

Further held that, even a perusal of Section 18 of the Limitation Act would show that neither there is a non-obstante clause in the same, nor there is any negative terminology used so as to oust the provision of the Section 25(3) of the Contract Act. Rather Section 29(1) of the Limitation Act specifically provides that nothing in the Limitation Act shall affect Section 25 of the Contract Act.

(Para 27)

Further held that, to hold in favour of a person who has consciously issued a cheque after the debt has become time barred, would amount to doing injustice to the person in whose favour the cheque has been issued and would also defeat / frustrate the intent and object of the provisions of the Negotiable Instruments Act and the

Contract Act. After a debt has become time barred, any person issuing a cheque subsequent to that, makes a promise to the person in whose favour the cheque is issued, that the said cheque would be honoured. On dishonour, the person to whom the cheque has been issued, would then have the right to pursue the remedy under Section 138 of the Negotiable Instruments Act. By the time, the summoning order etc. would be issued and the matter would be agitated by the accused person, considerable time would have elapsed. In such a situation, in case the proposition is held in favour of the accused person and the proceedings under section 138 of the Negotiable Instruments Act are quashed, only on account of the plea of limitation, then the person who has a cheque issued in his favour, would be left high and dry. Moreover, in case the proceedings under section 138 of the Negotiable Instruments Act are quashed, then the same would result in undue enrichment of the accused person who has manged to linger on the matter on a false promise by issuing the said cheque.

(Para 30)

Further held that, this Court conclusively holds that the issuance of a cheque in repayment of a time barred debt amounts to a written promise to pay the said debt within the meaning of Section 25(3) of the Contract Act and the said promise by itself would create a legally enforceable debt or liability, as contemplated by Section 138 of the Negotiable Instruments Act.

(Para 31)

M.S.Kathuria, Advocate, *for the petitioner.*

VIKAS BAHL, J. (ORAL)

(1) This is a petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of criminal complaint under Sections 138/142 of the Negotiable Instruments Act, 1881 (in short 'the Negotiable Instruments Act') read with Section 420 IPC titled as "Tej Partap vs. SultanSingh" pending in the Court of Judicial Magistrate Ist Class, Kurukshetra, as well as the summoning order dated 06.09.2019 passed by the Judicial Magistrate Ist Class, Kurukshetra and all the subsequent proceedings arising therefrom.

(2) Brief facts of the case are that respondent Tej Partap had filed the abovesaid complaint against the present petitioner on account of dishonour of cheque bearing No.811255 dated 02.08.2019 for an amount ofRs.4 lacs drawn on Oriental Bank of Commerce, Village Umri, District Kurukshetra. After the said complaint was filed, the

complainant appeared before the Court and examined himself as CW-1 and tendered in evidence his affidavit Ex.CW1/A and documents Ex.C1 to C6. After considering the same, vide order dated 06.09.2019, Judicial Magistrate Ist Class, Kurukshetra passed the impugned summoning order. Aggrieved against the same, the present petition has been filed.

(3) Learned counsel for the petitioner has primarily raised two arguments to challenge the summoning order and the complaint.

(4) The first argument of learned counsel for the petitioner is that in the present case, there was no "legally enforceable debt" on the date of the issuance of the cheque, inasmuch as the cheque in question was issued on 02.08.2019, whereas the said amount was borrowed on 04.08.2015. It is argued that the recovery of the amount was barred by the law of limitation and thus, issuance of the cheque after the expiry of the period of limitation, would not extend/renew the period of limitation. Thus, on the date of issuance of the cheque, there was no "legally enforceable debt". In support of the said contention, learned counsel for the petitioner has relied upon the judgment of Andhra Pradesh High Court, dated 20.01.1997, passed in ***Girdhari Lal Rathi*** versus ***P.T.V. Ramanujachari and Anr.***[1], judgments of the High Court of Bombay at Goa in Criminal Appeal no.29 of 1998 dated 05.02.1999 titled as ***Smt. Ashwini Satish Bhat*** *versus* ***Shri Jeevan Divakar and another*** and Criminal Revision Application no.3 of 2006 decided on 20.04.2006 titled as ***Mr. Narendra Kanekar*** *versus* ***The Bardez-Taluka Co-op. Housing Mortgage Society Ltd. and another.***

(5) The second argument raised by learned counsel for the petitioner is that the legal notice under Section 138 of the Negotiable Instruments Act had not been duly served upon the petitioner and for the same, reference has been made to Annexure P-3, which is stated to be Ex.C5. Learned counsel for the petitioner has relied upon the judgment of High Court of Delhi in Criminal Revision Petition No.438 of 2017 dated 01.07.2019 titled as ***R.L.Verma& sons (HUF)*** *versus* ***P C Sharma***.

(6) This Court has heard learned counsel for the petitioner and gone through the file.

(7) The first argument of learned counsel for the petitioner is

[1] 1997(1) ALT Cri 509

that since there was no "legally enforceable debt" on the date of the issuance of the cheque, thus this petition under section 482 CrPC for quashing the complaint and the summoning order should be allowed. To answer the said argument, the following issues would arise and would require to be considered by this Court:

> **i) Whether issuance of a cheque for repayment of a time barred debt would amount to a written promise to pay the said debt within the meaning of Section 25(3) of the Indian Contract Act, 1872?**
>
> **ii) In case, answer to the first question is in favour of the person in whose favour the cheque has been issued, then would the said promise, by itself, create** any "legally enforceable debt", as stated in Section 138 of the Negotiable Instruments Act, 1881?
>
> **iii) Whether in the facts and circumstances of the present case, the present petition under Section 482 CrPC would be maintainable?**
>
> **iv) Whether in the present case, the petitioner has been able to prove as to what would be the starting point of the period of limitation, so as to establish that the cheque was issued after the expiry of the period of limitation?**

<u>Consideration of issues no. (i) & (ii):</u>

(8) The issues no. (i) and (ii) are issues of great importance and are involved in a large number of cases and are thus being dealt with in detail. Several provisions of the Indian Contract Act, 1872 (for short, "the Contract Act"), the Negotiable Instruments Act, 1881 (for short, "The Negotiable Instruments Act") and the Limitation Act, 1963 (for short, "The Limitation Act") would be relevant for a comprehensive consideration of the first two issues.

(9) Section 2 and section 25 of the Contract Act are reproduced hereinbelow: -

> **"2. Interpretation clause. - In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :-**
>
> **(a) When one person signifies to another his willingness todo or to abstain from doing anything, with a view to obtaining the assent of that other to such act**

or abstinence, he is said to make a proposal;

(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. Aproposal, when accepted, becomes a promise;

(c) The person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee";

(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

(e) Every promise and every set of promises, forming the consideration for each other, is an agreement;

(f) Promises which form the consideration or part of the consideration for each other, are called reciprocal promises;

(g) An agreement not enforceable by law is said to be void;

(h) An agreement enforceable by law is a contract;

(i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of theother or others, is a voidable contract;

(j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable."

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"25. Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law. - An agreement made without consideration isvoid, unless –

(1) **it is expressed in writing and registered under the law for the time being in force for registration of [documents], and ismade on account of natural love and affection between parties standing in a near relation to each other; or unless**

(2) **it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless**

(3) **it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or speciallyauthorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.**

In any of these cases, such an agreement is a contract."

(10) Sections 6, 13, 118, 138 and 139 of the Negotiable Instruments Act are reproduced hereinbelow:-

"6. "Cheque". - A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Explanation I. - For the purposes of this section, the expressions - (a) "a cheque in the electronic form" means a cheque drawn in electronic form by using any computer resource and signed in a secure system with digital signature (with or without biometrics signature) and asymmetric crypto system or with electronic signature, as the case may be;

(b) "a truncated cheque" means a cheque which is truncatedduring the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

Explanation II. - For the purposes of this section, the expression "clearing house" means the clearing house managed by the Reserve Bank of India or a clearing houserecognised as such by the Reserve Bank of India.

[Explanation III. - For the purposes of this section, the expressions "asymmetric crypto system", "computer resource", "digital signature", "electronic form" and

“electronic signature” shall have the same meanings respectively assigned to them in the Information Technology Act, 2000 (21 of 2000).]"

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"13. "Negotiable instrument". - [(1) A "negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Explanation (i) - A promissory note, bill of exchange or cheque is payable toorder which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words, prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation (ii) - A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

Explanation (iii) - Where a promissory note, bill of exchange or cheque, either originally or by indorsement, is expressedto be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.]

[(2) A negotiable instrument may be made payable to two ormore payees jointly, or it may be made payable in thealternative to one of two, or one or some of several payees]."

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"118. Presumptions as to negotiable instruments. - Until the contrary is proved, the following presumptions shall be made:

a) of consideration: that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) as to date: that every negotiable instrument bearing a datewas made or drawn on such date;

(c) as to time of acceptance: that every accepted bill of exchange was accepted within a reasonable time after its dateand before its maturity;

(d) as to time of transfer: that every transfer of negotiable instrument was made before its maturity;

(e) as to order of indorsements: that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamp: that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course: that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, bymeans of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

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"138. Dishonour of cheque for insufficiency, etc., of funds in the account. - Where any cheque drawn by a person on an account maintained by him with a banker for payment of anyamount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two ***years], or with fine which may extend to twice the amount of the cheque, or with both :Provided that nothing contained in this section shall apply unless –***

(a) the cheque has been presented to the bank within a

period of six months from the date on which it is drawn or withinthe period of its validity, whichever is earlier;

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

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

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

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"139. Presumption in favour of holder. - It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debtor other liability."'

(11) Section 18 of the Limitation Act is reproduced hereinbelow:

"18. Effect of acknowledgment in writing. —

(1) Where, before the expiration of the prescribed period fora suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its

contents shall notbe received.

Explanation. —For the purposes of this section, —

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shallnot be deemed to be an application in respect of any property or right."

(12) The above-mentioned provisions of law have been considered in several judgments. In some judgments, a comprehensive view of all the said provisions has not been taken and thus, there is some divergence of opinion among different Courts with respect to the first two issues. The Division Bench of the Bombay High Court in the case titled as ***Dinesh B. Chokshi*** *versus* ***Rahul Vasudeo Bhat*,**[2] decided on 19.10.12 has considered the relevant provisions in detail and after considering the said provisions, has opined in favour of the person in whose favour the cheque is issued. After considering the provisions of Section 2 of the Contract Act, it was observed that a joint reading of Section 2(a) and 2(b) of the Contract Act, would show that if a proposal is accepted, it becomes a promise and in view of Clause (e) of Section 2 of the Contract Act, a promise or a set of promises, forming consideration for each other, would be an agreement. Further, by virtue of Clauses (g) and (h) of Section 2 of the Contract Act, an agreement which is not enforceable by law would be void and the agreement which is enforceable by law is termed as a contract. Clause (j) of Section 2 of the Contract Act provides that where a contract is no more enforceable by law then the same becomes void when it ceases to be enforceable. It has been further observed that whenever there is a promise to pay and a breach thereof is committed, asuit for recovery is to be filed within the limitation period,

[2] 2013(5) RCR (Civil) 598

as prescribed under the law of limitation. Section 10 of the Contract Act also provides that all agreements are contracts if they are made by free consent of the competent parties, for a lawful consideration with a lawful object and which are not expressly declared to be void. The Contract Act, more so, Sections 23 and 26 to 30 thereof, provide various kinds of agreements which are void. Thus, apart from the agreements which cease to be enforceable by reason of the bar of limitation, there are other categories of agreements which are void and thus, not enforceable. The provisions of Section 25 of the Contract Act were considered in detail in the said judgment. It was observed that Section 25(3) of the Contract Act is an exception to the general rule that an agreement made without consideration is void. A promise covered under sub-section 3 of Section 25 of theContract Act would become an enforceable agreement even in case the same was a promise to pay a debt which is already barred by law of limitation. Thus, Section 25(3) of the Contract Act would apply to apromise made in writing, which is signed by a person to pay a debt, which cannot be recovered by the reason of expiry of the period of limitation for filing a suit for recovery. Thus, if a debtor after expiry of the period of limitation makes a promise in writing, which is signed by him, to pay the debt, wholly or in part, the said promise becomes an agreement, which is enforceable in law. Section 25(3) of the Contract Act would make a time barred debt enforceable in case the ingredients mentioned in the same are fulfilled. The said sub-section would not apply to the other categories of debts which are not enforceable in law and only apply to a debt which isnot recoverable in law on the ground that the same is barred by the law of limitation. To exemplify, if under a promise, an amount is advanced for immoral purposes, then the same would be hit by Section 23 of the Contract Act and would not be covered by the provisions of Section 25(3). In the said judgment, the provisions of the Negotiable Instruments Actwere also considered in detail. It was observed that a cheque, which is a legal instrument as per Section 13 of the Negotiable Instruments Act, is defined in Section 6 of the Negotiable Instruments Act, as per which, a cheque is a bill of exchange which is drawn on a specified banker and not expressed to be payable otherwise than on demand. Reference was made to a judgment of the Hon'ble Apex Court in the case titled as ***National Insurance Company Limited*** *versus* ***Seema Malhotra and others***[3] to hold that drawer of a cheque promises to the person in whose favour

[3] 2001(3) SCC 151

the cheque is drawn, that the cheque, on presentation, would yield the amount in cash, as mentioned in the cheque and thus, whenthe said cheque is returned dishonoured, the person issuing the cheque has failed to perform his promise. Section 13 of the Negotiable Instruments Act, which defines a Negotiable Instrument, was also considered and it was observed that the Negotiable Instruments also include a cheque within their ambit. After considering all of these in conjunction, it was held that a cheque is a promise within the meaning of Section 25(3) of the Contract Act. Such a promise is an agreement and is an exception to the general rule that an agreement without consideration is void. Thus, although, on the date of making such a promise by issuing a cheque, the debt which is promised to be paid, may already be time barred, but keeping in view the provisions of Section 25(3) of the Contract Act, the promise/agreement will be valid and would be enforceable. It was, thus, held that issuance of a cheque in repayment of time barred debt would amount to a written promise to pay the said debt within the meaning of Section 25(3) of the Contract Act.

(13) Further, with respect to the question as to whether the said promise made by issuing a cheque would by itself create a legally enforceable debt, the Division bench carefully perused the provisions of Sections 118, 138 and 139 of the Negotiable Instruments Act. On reading Sections 118 and 139 conjointly, it was observed that under Section 118, there is a rebuttable presumption that every negotiable instrument is made or drawn for consideration and Section 139 creates a rebuttable presumption in favour of the holder of the cheque and the said presumptionis that the cheque has been received by the holder for discharge of any debt or liability, in whole or in part. It was observed that there are several categories of debts or liabilities which are not legally enforceable and the debt which has become time barred cannot be said to be a legally enforceable debt. But in view of Section 25(3) of the Contract Act, once it has been established that a cheque has been drawn for discharge of a time barred debt, it creates a promise which becomes enforceable. It, then,cannot be said that the cheque is drawn in discharge of a debt or liability which is not legally enforceable. The relevant portions of the said judgment i.e. in the case of ***Dinesh B. Chokshi***'s *case (Supra)* are reproduced hereinbelow: -

> "On the basis of Judgment and Order dated 23rd December, 2008 passed by learned Single Judge, the Hon'ble the Chief Justice passed an order on the Administrative Side directing

that these matters should be placed before a Division Bench. Accordingly, these Applications have been placed before this Court.

2. The reference to Division Bench is for deciding the two questions formulated by the learned Single Judge under his Judgment and Order dated 23rd December, 2008. The said two questions are:-

"(i) Does the issuance of a cheque in repayment of a time barred debt amounts to a written promise to pay the said debt within the meaning of section 25(3) of the Indian Contract Act,1872?

(ii) If it amounts to such a promise, does such a promise, by itself, create any legally enforceable debt or other liability as contemplated by Section 138 of the Negotiable Instruments Act, 1881?"

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"9. Thus, Sub-section (3) of Section 25 of the Contract Act is an exception to the general rule that an agreement made without consideration is void. Sub-section (3) of Section 25 of the Contract Act applies to a case where there is a promise made in writing and signed by a person to be charged therewith to pay wholly or in part a debt which is barred by law of limitation. A promise covered by Sub-section (3) becomes enforceable agreement notwithstanding the fact that it is a promise to pay a debt which is already barred by limitation. Thus, Sub-section (3) of Section 25 of the Contract Act applies to a promise made in writing which is signed by a person to pay a debt which cannot be recovered by reason of expiry of period of limitation for filing a suit for recovery. Therefore, if a debtor after expiry of the period of limitation provided for recovery of debt makes a promise in writing signed by him to pay the debt wholly or in part, the said promise being governed by Subsection (3) of Section 25 of the Contract Act becomes an agreement which is enforceable in law. By virtue of the promise governed by Sub-section (3) of Section 25 of the Contract Act, the time barred debt becomes enforceable. The Sub-section (3) of Section 25 of the Contract Act does not apply to promise to pay all

categories of debts which are not enforceable in law. It applies only to a debt which is not recoverable in law only on the ground of bar created by the law of limitation. Thus, the promise under Sub- section (3) of Section 25 of the Contract Act will not validate a debt which is not enforceable on a ground other than the ground of bar of limitation. For example, if there is a promise to pay an amount advanced for immoral purposes which is hit by Section 23 of the Contract Act, it will not attract Sub-section (3) of Section 25 of the Contract Act and the said provision will be attracted only when a promise is made in writing and signed by the promisor to pay a debt which is barred by limitation.

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"15. On plain reading of Section 13 of the said Act of 1881, a negotiable instrument does contain a promise to pay the amount mentioned therein. The promise is given by the drawer. Under Section 6 of the said Act of 1881, a cheque is a bill of exchange drawn on a specified banker. The drawer of a cheque promises to the person in whose name the cheque is drawn or to whom the cheque is endorsed, that the cheque on its presentation, would yield the amount specified therein. Hence, it will have to be held that a cheque is a promise within the meaning of Sub-section (3) of Section 25 of the Contract Act. What follows is that when a cheque is drawn to pay wholly or in part, a debt which is not enforceable only by reason of bar of limitation, the cheque amounts to a promise governed by the Sub-section (3) of Section 25 of the Contract Act. Such promise which is an agreement becomes exception to the general rule that an agreement without consideration is void. Though on the date of making such promise by issuing a cheque, the debt which is promised to be paid may be already time barred, in view of Sub-section(3) of Section 25 of the Contract Act, the promise/agreement is valid and, therefore, the same is enforceable. The promise to pay time barred debt becomes a valid contract as held by the Apex Court in the case of A.V. Moorthy (supra). Therefore, the first question will have to be answered in the affirmative."

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"18. Under Section 118, there is a rebuttable presumption that every negotiable instrument was made or drawn for consideration. Section 139 creates a rebuttable presumption in favour of a holder of a cheque. The presumption is that the holder of a cheque received the cheque of the nature referred to in Section 138 for discharge, in whole or in part of any debt or liability. Thus, under the aforesaid two Sections, there are rebuttable presumptions which extend to the existence of consideration and to the fact that the cheque was for the discharge of any debt or liability."

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"20. While recording our answer to the first Question, we have already held that a cheque issued for discharge of a debt which is barred by law of limitation is itself a promise within the meaning of Sub-section (3) of Section 25 of the Contract Act. A promise is an agreement and such promise which is covered by Section 25(3) of the Contract Act becomes enforceable contract provided that the same is not otherwise void under the Contract Act.

21. Therefore, while answering second Question, we are specifically dealing with a case of promise created by a cheque issued for discharge of a time barred debt or liability. Once it is held that a cheque drawn for discharge of a time barred debt creates a promise which becomes enforceable contract, it cannot be said that the cheque is drawn in discharge of debt or liability which is not legally enforceable. The promise in the form of a cheque drawn in discharge of a time barred debt or liability becomes enforceable by virtue of Sub-section (3) of Section 25 of the Contract Act. Thus, such cheque becomes a cheque drawn in discharge of a legally enforceable debt as contemplated by the explanation to Section 138 of the said Act of 1881. Therefore, even the second question will have to be answered in the affirmative.

22. Therefore, we answer both the questions in the affirmative. We direct that these Applications/Petitions shall be placed before the appropriate Court for disposal in accordance with law. Reference answered."

(14) To similar effect is the Division Bench judgment of Kerala High Court in the case of ***Ramakrishnan*** *versus* ***Parthasardhy***[4], decided on 5.03.2003. The relevant portion of the said judgment is reproduced hereinbelow: -

> "1. Is the plea of limitation available to the accused in acase under Section 138 of the Negotiable InstrumentsAct, 1881? This is the short question that arises forconsideration in this Revision Petition, which has been referred to a Division Bench. A few facts may be noticed.
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> 5. The matter was posted before a learned single Judge. It was contended that on the date of issue of the cheque, the accused was not under a "legally enforceable debt or liability." Even if there was any claim for recovery of money it was barred by limitation. Thus, he could not have been found guilty of an offence punishable under Section 138 of the Act. In support of this contention, reliance was placed on a single Bench decision of this Court in Joseph v. Devassia 2000(4)RCR (Criminal) 686 (Kerala); (2000 (3) KLT 533).
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> 13. Mr. Benny Gervacis was at pains to point out that a cheque is drawn only when it is written and signed. Ifthe claim is barred by limitation even before the cheque is actually drawn, it cannot amount to an acknowledgement of a debt or liability. This contention cannot be accepted. It is, undoubtedly, true that 'to draw' means to write and sign. However, even if the claim is barred by limitation on the date of the drawing of the cheque, on delivery to the other person, it becomes a valid consideration for another agreement. The drawal of the cheque evidences such an agreement. This acknowledgement is enforceable. The drawing and delivery of a cheque create a legally enforceable liability. Thus, we are of the opinion that when a person writes, signs and delivers a cheque to another it is an acknowledgment of a legally enforceable liability. Thereafter, if the cheque is dishonoured on account of

[4] 2003(3) RCR (Crl.) 711

insufficiency of funds such a person shall not be entitled to plead that at the time of his writing the cheque the claim had become barred by limitation and, thus, he is not liable to be punished under Section 138.

14. Mr. Benny Gervacis contended that under Section 18 of the Limitation Act the acknowledgement has to be made before the expiry of the period of limitation. In the present case, the cheque was executed after the limitation had already expired. Thus, it cannot amountto an extension of limitation.

15. For the purpose of the present case, it does not appear to be necessary to go into this matter in detail. Itmay, however, be mentioned that under Section 25(3), a promise can be made even in a case where the limitationfor recovery of the amount has already expired. Such a promise has to be in writing. It can be in the form of a cheque. When a cheque is delivered to the payee, the person is entitled to present the cheque to the bank and seek payment. In such an event, if the cheque is dishonoured, the liability under Section 138 would arise. It would not be permissible for the accused to contend that the liability was not legally enforceable.

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18. Learned counsel for the petitioner pointed out that the courts have consistently taken the view that the plea of limitation is available as a valid defence to the accused. Learned counsel referred to the decisions in GirdhariLalRathi v. P.T.V Ramanujachari and Anr. (1997 (2) Crimes 658), Smt. AshwiniSatishBhat v. Shri.JeevanDivakar, 2001(1) RCR (Criminal) 829 (Bombay); (1999 DCR 470) and Joseph v. Devassia 2000(4) RCR (Criminal) 686 (Kerala);(2000 (3) KLT 533).

19. We have examined these decisions. Regretfully, though respectfully, we are unable to concur with the view taken by the Andhra Pradesh and the Bombay High Courts. The decision of the learned single Judge of this Court basically rests upon the view of the Andhra Pradesh High Court. We find that the relevant provisions like Section 25(3) of the Contract Act and Section 46 of the Negotiable Instruments

Act, were not brought to the notice of the learned single Judge.

20. In this context, it deserves mention that Section 138 was incorporated into the statute book primarily with the object of enhancing "the acceptability of cheque in settlement of liabilities." It was with this object inview that the drawer of a cheque was said to be made liable "for penalties in case of bouncing of cheque due to insufficiency of funds in the accounts......" If this object of the statute is kept in view the explanation cannot be liberally construed. It would only mean that the liability or debt should not arise out of a transaction which is illegal. It should be not a cheque to meet a liability under a wagering contract which shall not be legally enforceable. Otherwise, the object with which Section 138 was enacted shall be defeated.

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22. The matter appears to have been considered by their Lordships of the Supreme Court in A.V. Murthy v. B.S. Nagabasavanna (2002 (2) SCC 642). On a perusal ofthe judgment, we find that the matter was considered by the Supreme Court in the context of the provisions contained in the Negotiable Instruments Act as well as those of the Contract Act. However, the issue oflimitation was left open. But what deserves mention is that even though the learned Sessions Judge had quashed the proceedings as the limitation in recovering the money had expired and the order had been upheld by the Karnataka High Court, yet, their Lordships had reversed the decision. This is indicative of the fact that the accused was not entitled to escape liability to suffer penalty merely on account of the fact that the limitation for recovery of the amount had expired before the dateof the issue of the cheque.

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25. In view of the above, the question as posed at the outset is answered in the negative. It is held that:

(1) When a person issues a cheque, he acknowledges his liability to pay. In the event of the cheque being dishonoured on account of insufficiency of funds he will not

be entitled to claim that the debt had become barred by limitation and that the liability was not thus legally enforceable. He would be liable for penalty in case the charge is proved against him.

(2) The view taken by this Court in Joseph's case cannot be sustained as laying down the correct principle of law. It is consequently overruled."

(15) A coordinate Bench of this Court in the case of ***Saroop Singh*** *versus* ***Rattan Singh (dead) through LRs***[5], decided on 02.09.2015, has also relied upon the Division Bench judgment of the Bombay High Court in ***Dinesh B. Chokshi****'s case* (*supra*). Although the said case arose from civil proceedings, but the proposition of law, as propounded in ***Dinesh B. Chokshi****'s case* (*supra*) was reiterated. The relevant portion of the said judgment is reproduced hereinbelow: -

"It is the contention of the counsel for the appellant-defendant that the suit of the respondent-plaintiff was barred by limitation as according to the admitted facts, the amount was handed over to the appellant-defendant in January, 2001 by the respondent-plaintiff on the assertion that he was a Travel Agent and had promised to send the plaintiff's son abroad which he failed and thereafter, to discharge his debt, the appellant-defendant had issued cheque of 8,00,000/- bearing No.279096, dated 17.10.2007, from his Account No. SB-7325, drawn on Bank of Punjab, Branch Nawanshahar. He contends that since the amount has been given to the appellant-defendant in the year 2001, the suit could have been filed within a period of three years as per Section 18 of the Limitation Act. The suit has been filed on 16.11.2009 which is barred by time, could not have been entertained and should have been dismissed as barred by limitation."

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"It is correct that as per the assertion of the respondent-plaintiff, the amount was handed over to the appellant-defendant in January, 2001 but the fact remains that as per the case of the respondent-plaintiff, as the appellant-

[5] 2015(4) RCR 825

defendant failed to send his son abroad, he, in acknowledgment of his debt, has issued a cheque on 17.10.2007. As per the provision of Section 25 (3) of the Indian Contract Act, the suit which has been filed, cannot be said to be barred by limitation. The law in this regard has rightly been appreciated by the Courts below and applied. Reliance in this regard placed on the conclusions and observations recorded in para 15 of the judgment of Bombay High Court in ***Dinesh B. Chokshi*** versus ***Rahul Vasudeo Bhatt & another***2013 (2) Civil Court Cases 017 (Bombay), as has been reproduced, cannot be faulted with. Counsel for the appellant has placed reliance upon the judgment of **A.V. Murthy Vs. B.S. Nagabasavanna**, 2002 (1) RCR (Criminal) 745 to assert that the suit would be barred by limitation and Section 25 (3) of the Indian Contract Act, would not be attracted, is misplaced. This judgment rather goes against him as is apparent from the observations made on this aspect in para 5 thereof, where, in fact, the Hon'ble Supreme Court has referred to sub-Section 3 of Section 25 of the Indian Contract Act, 1872 and has accepted that the time barred debts also can be enforceable in the light of the subsequent acceptance/acknowledgment of liability. It is not disputed that from the date of issue of the cheque on 17.10.2007, the suit has been filed within limitation. The findings, thus, recordedby the Courts below with regard to the suit being within the limitation cannot be faulted with."

(16) The Hon'ble Supreme Court in the case of ***A.V. Murthy*** *versus* ***B.S. Nagabasavanna***[6], decided on8.02.2002, has observed that under Section 118 of the Negotiable Instruments Act, there is a presumption that unless the contrary is proved, every negotiable instrument is drawn for consideration. The relevant portion of the said judgment reads as under: -

"5...... Under Section 118 of the Act, there is a presumption that until the contrary is proved, every negotiable instrument was drawn for consideration. Even under Section 139 of the Act, it is specifically stated that it shall be presumed, unless the contrary is proved, that the holder of a cheque

[6] 2002(1) RCR (Crl.) 745

> received the cheque of the nature referred to in Section 138 for discharge, in whole or in part, of any debt or other liability. It is also pertinent to note that under sub-section (3) of Section 25 of the Indian Contract Act, 1872, a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits, is valid contract"

(17) Further, with respect to the proposition that the drawer of a cheque promises the holder of the cheque that on presentation, the said cheque would yield the amount in cash, reference can be made to the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited*** *(supra)*. Paragraph 17 of the said judgment is reproduced hereinbelow: -

> "17. In a contract of insurance when the insured gives a cheque towards payment of premium or part of the premium, such a contract consists of reciprocal promise. The drawer of the cheque promises the insurer that the cheque, on presentation, would yield the amount in cash. It cannot be forgotten that a cheque is a bill of exchange drawn on a specified banker. A bill of exchange is an instrument in writing containing an unconditional order directing a certain person to pay a certain sum of money to a certain person. It involves a promise that such money would be paid."

(18) Bombay High Court (Nagpur Bench), in the case of ***Vijay Ganesh Gondhlekar*** *versus* ***Indranil Jairaj Damale***[7], decided on 4.10.2007, while considering the provisions of Section 25(3) of the Contract Act and also Section 18 of the Limitation Act had held as under:-

> "7. Assuming for the sake of argument that there was no acknowledgment before the expiry of period of limitation and the cheque is issued after a period of expiry of limitation, still whether there is an enforceable liability or not will have to be considered. I have already observed above that the cheque is issued under the signature of the debtor after putting the sum payable. The cheque directs the

[7] 2008(1) RCR (Crl.) 530

bank to pay the bearer sum mentioned in the cheque. As such it becomes the promise in favour of the payee within the meaning of Section 25(3) of the Indian Contract Act. Once it becomes a fresh promise, fresh period of limitation of 3 years would begin to run from the date of cheque. Hence the liability would certainly be a legally enforceable liability."

(19) Even a Division Bench of Madras High Court in the case titled as ***N. Ethirajulu Naidu*** *versus* ***K. R. Chinnikrishnan Chettiar***[8], decided on 02.08.1974, while considering both, Section 18 of the Limitation Act, 1963 and Section 25(3) of the Contract Act, has observed as under:-

> "The distinction between an acknowledgment under Section 18 of the Limitation Act 1963 and a promise within the meaning of Section 25(3) of the Contract Act is of great importance. Both have the effect of creating a fresh starting point of limitation, if they are in writing signed by the party or his authorised agent. But while an acknowledgment under the Limitation Act in order to be valid, must be made before the expiry of the period of limitation, a promise under Section 25, Sub-section (3) of the Contract Act, to pay adebt may be made after the debt has become barred by limitation."

(20) Although the above said case was not pertaining to a case withrespect to issuance of a cheque, but the provisions of Section 18 of the Limitation Act and 25(3) of the Contract Act were considered and a distinction between them was drawn which is highlighted in the abovesaid reproduction.

(21) Before this Court gives its final opinion as to the first two issues, it would be relevant to take note of the judgments cited by learned counsel for the petitioner.

(22) With respect to the first judgment relied upon by the learned counsel for the petitioner, that is the judgment of Andhra Pradesh High Court passed in ***Girdhari Lal Rathi***'s case *(supra),* it would be relevant totake note that the same was considered by the Division Bench of Kerala High Court in ***Ramakrishnan's*** case (*supra*) and did not agree with the view taken therein. Moreover, in the said judgment,

[8] 1975 AIR (Madras) 333

neither the provisions of Section 25(3), nor other relevant provisions of the Contract Act were considered. Thus, the said judgment cannot be considered to be an authority on the proposition in question, as the relevant provisions have not been considered in the same. The other aspects of the said judgment which also make the said judgment irrelevant for the purpose of determination of the present petition filed under Section 482 CrPC, also need to be takennote of. A perusal of the aforementioned case would show that the said judgment was passed by the High Court in an appeal against acquittal and thus the entire trial had already been completed. As is apparent from para 4 of the said judgment, the trial Court in the said case had found that the appellant had failed to establish that the accused had issued the cheque in question in the discharge of his liability to pay any amount to the appellant and the cheque which was alleged to have been issued, was issued at the time when the accused had already closed his bank account. Even the observations in para 7 in respect of the debt being barred by limitation werenot in affirmative terms in as much as it had been stated that "*the debt appears to have been barred by limitation*". Moreover, it is reiterated that the said issue was not in a case of quashing under Section 482 Cr.P.C. but one in an appeal filed against an acquittal ordered by the trial Court.

(23) With respect to the judgment of learned Single Judge of the High Court of Bombay at Goa in ***Smt. Ashwini Satish Bhat****'s* case (*supra*), relied upon by the learned counsel for the petitioner, it would be relevant tomention that the said judgment was also considered by the Division Bench of Kerala High Court in ***Ramakrishnan****'s case* (*supra*) and the Division Bench had not concurred with the view taken therein. Further the Division Bench of the same court, that is, the Bombay High Court, in ***Dinesh B Chokshi****'s case* (*supra*), had taken a view contrary to the view taken in ***Smt. Ashwini Satish Bhat****'s case* (*supra*). Moreover, the judgment of the Division Bench was of the year 2012, which was subsequent to the judgment in ***Smt. Ashwini Satish Bhat****'s* case (*supra*), which was of the year 1999.Further, the provisions of Sections 25(3) of the Contract Act and other relevant provisions were not even remotely considered in the said case, with respect to the issue at hand. Thus, the said judgment can not be stated to be laying down any authoritative proposition of law. It would be relevant to note some other factors in the said judgment to highlight thefact that the same does not further the case of the present petitioner. The said case was a case arising from an appeal filed against acquittal after the entire trial was over. A perusal of the said judgment would show that in the said

case, the Magistrate had come to the conclusion that the appellant had failed to establish that the cheque in question was in respect of a legally enforceable debt and also found that there was a doubt raised as to whether the cheque in question was written by accused and thus, giving the benefit of doubt, the accused had been acquitted. Further, more importantly, in the said case, although the sum was paid under the agreement dated 13.06.1991 but the time bar of one year had been stipulated, within which the amount had to be repaid. Thus, the starting point of limitation was clear in the said case. Moreover, the said case was not a case under Section 482 Cr.P.C.

(24) With respect to the judgment of the Single Bench of Bombay High Court at Goa in ***Narendra*** *versus* ***Kanekar's*** *case* (*supra*), relied upon by the learned counsel of the petitioner, it would be relevant to note that a subsequent Division Bench of the Bombay High Court in ***Dinesh B. Chokshi****'s case* (*supra*) after considering the relevant provisions, took a view contrary to the view taken in ***Narendra*** *versus* ***Kanekar's*** *case* (*supra*). In the said judgment, although the provisions of Section 25(3) of the Contract Act have been considered but the other relevant provisions of the Contract Act and the Negotiable Instruments Act have not been considered and the consideration with respect to Section 25(3) is neither in detail nor in the right perspective. The other factors to show that the present judgmentwould not further the case of the present petitioner also need to be taken note of. Even the said case was not a petition arising under Section 482 CrPC, but was a case where against the order of conviction and sentence, the petitioner therein had approached the High Court. A perusal of the said judgment would show that in the said case, trial had already taken place and the fact that the cheques in question were issued beyond the date of limitation was not in dispute. The relevant part of judgment in ***Narendra V.Kanekar's*** *case* (*supra*) is reproduced hereinbelow: -

> "6. Reference to illustrations (e) would not be out of context. It reads as follows:-
>
> (e) A owes B Rs.1000/-, but the debt is barred by the Limitation Act. A signs a written promise to play B Rs.500/- on account of the debt. This is a contract.
>
> 7. Shri Padiyar, the learned counsel on behalf of the petitioner / accused has submitted that the cheques in question were issued beyond the period of limitation and there was otherwise no acknowledgment of debt in writing given prior to the expiry of the period of limitation"

(25) This Court has considered the abovesaid provisions as well as the judgments on the point. A conjoint reading of Sections 2, 10, 23 and 25 to 30 of the Contract Act would clearly bring out that when a proposal is accepted, it becomes a promise, and the promise to do something would be an agreement, and an agreement enforceable in law is a contract and the one which ceases to be enforceable would become void. Under the Contract Act, there are several categories of void agreements. Under Section 23 of the Contract Act, if the consideration or object of an agreement is forbidden by law or is immoral, then the agreement is void on that account. Under section 26 of the Contract Act, every agreement in restraint of the marriage of any person, other than a minor, is void. Section 27 of the Contract Act deals with agreements in restraint of trade and the circumstances under which they would be void. Section 29 of the Contract Act deals with agreements void for uncertainty. Section 25(3) of the Contract Act specifically provides an exception with respect to the bar on the enforcement of a time barred debt. The said Section 25(3) clearly provides that a promise which is made in writing and signed by the person to be charged therewith, to pay a debt, either wholly or in part, which on account of law of limitation could not have been enforced, may be enforced. Thus, by virtue of the said provision, a debt which has become time barred can be enforced in case the ingredients of Section 25(3) of the Contract Act are fulfilled. In the case of a cheque, the drawer of a cheque in fact, makes a promise to the person in whose favour the cheque is drawn that on presentation, the same would be honoured and the person in whose favour the cheque is issued, would get the benefit of the cash amount which has been mentioned in the cheque. Thus, a cheque in writing, which is signed by the person issuing it, would come squarely within the ambit of Section 25(3) of the Contract Act so as to make the debt legally enforceable on the date on which the cheque is drawn. Thus, even in case the date on which the cheque has been drawn, is subsequent to the date when the debt has become time barred, in view of the provisions of Section 25(3) of the Contract Act, the said cheque would, by itself, create a promise which would become a legally enforceable contract and it cannot be then said that the cheque is drawn in discharge of a debt or liability, which is not legally enforceable. Reference in this regard may be made to the view taken by the Division Bench of the Bombay High Court in ***Dinesh B Chokshi's*** *case* (*supra*) as well as of the Division Bench of the Kerala High Court in ***Ramakrishnan's*** *case* (*supra*), with which this Court fully concurs.

(26) With respect to the distinction between an **acknowledgement** under Section 18 of the Limitation Act and a **promise** within the meaning of Section 25(3) of the Contract Act, this Court concurs with the observations made by the Division Bench of the Madras High Court in ***N. Ethirajulu Naidu***'s *case* (*supra*) and that of the Bombay High Court (Nagpur Bench) in the case of ***Vijay Ganesh Gondhlekar*** (*supra*) reproduced hereinabove and holds that both the provisions have the effect of creating a fresh starting point of limitation, if they are in writing and signed by the party or his authorized agent. An acknowledgement under Section 18 of the Limitation Act to be valid, must be made before theexpiry of the period of limitation, whereas, a promise under Section 25(3) of the Contract Act, to pay a debt, may be made after the debt has become time barred. On the said aspect even the judgement in ***Narendra V. Kanekar's*** case (*supra*), relied upon by the learned counsel for the petitioner, reinforces the view taken by this Court. The relevant portion of the said judgment is reproduced hereinbelow:

> "……There is no doubt that in terms of the Indian Limitation Act, 1963, a signed acknowledgement of liability made in writing before the expiration of period of limitation, is enough to start a fresh period of limitation. Likewise, when a debt has become barred by limitation, there is also Section 25(3) of the Contract Act, by which, a written promise to pay, furnishes a fresh cause of action. In other words, what Clause (3) of Section 25 of the Indian Contract Act in substance does is not to revive a dead right, for the right is never dead at any time, but to resuscitate the remedy to enforce payment by suit, and if the payment could be enforced by a suit, it means that it still has the character of legally enforceable debt as contemplated by the explanation below Section 138 of the Act…."

(27) Even a perusal of Section 18 of the Limitation Act would show that neither there is a *non obstante* clause in the same, nor there isany negative terminology used so as to oust the provision of the Section 25(3) of the Contract Act. Rather Section 29(1) of the Limitation Actspecifically provides that nothing in the Limitation Act shall affect Section 25 of the Contract Act. Section 29(1) of the Limitation Act is reproduced hereinbelow:

> **"29. Savings. —(1) Nothing in this Act shall affect section25 of the Indian Contract Act, 1872 (9 of 1872)."**

(28) The provisions of the Negotiable Instruments Act, more so, Sections 118 and 139, raise a presumption, though rebuttable, in favour of the Negotiable Instrument itself, as to several factors, including the factor of consideration etc. and also the fact that the holder of the cheque is a holder in due course and holds the cheque for the discharge of any debt or other liability, in whole or in part. It would further be relevant to note that the provisions of the Negotiable Instruments Act have been amended and Sections 143A and 148 have been added. The said provisions have been reproduced hereinbelow:

> **"143A. Power to direct interim compensation.--(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant—**
>
> **(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and**
>
> **(b) in any other case, upon framing of charge.**
>
> **(2) The interim compensation under sub-section (1) shall notexceed twenty per cent of the amount of the cheque.**
>
> **(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque..**
>
> **(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.**
>
> **(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of theCode of Criminal Procedure, 1973 (2 of 1974).**

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interimcompensation under this section."

xx xx xx xx xx

"148. Power of Appellate Court to order payment pending appeal against conviction. - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such *sum which* shall be a minimum of twenty per cent. of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

(3) The Appellate Court may direct the release of the amountdeposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.''

(29) A perusal of the above mentioned provisions would show that as per Section 143A of the Negotiable Instruments Act, the Court can require the accused to deposit an interim compensation even before the accused has been convicted and in case of Section 148, even before

the appeal is decided. Thus, the intent of the Legislature is very clear, which is to instil confidence in a person who has a cheque issued in his favour, that the person who has issued the said cheque, would not be able to avoid/evade his liability. Thus, while considering issue no. (i) and (ii), the whole object of the Negotiable Instruments Act, including the amendments made therein, have to be kept in mind and the interpretation which subserves the object of the Act, needs to be given.

(30) To hold in favour of a person who has consciously issued a cheque after the debt has become time barred, would amount to doing injustice to the person in whose favour the cheque has been issued and would also defeat/frustrate the intent and object of the provisions of the Negotiable Instruments Act and the Contract Act. After a debt has become time barred, any person issuing a cheque subsequent to that, makes a promise to the person in whose favour the cheque is issued, that the said cheque would be honoured. On dishonor, the person to whom the cheque has been issued, would then have the right to pursue the remedy under Section 138 of the Negotiable Instruments Act. By the time, the summoning order etc. would be issued and the matter would be agitated by the accused person, considerable time would have elapsed. In such a situation, in case the proposition is held in favour of the accused person and the proceedings under Section 138 of the Negotiable Instruments Act are quashed, only on account of the plea of limitation, then the person who has a cheque issued in his favour, would be left high and dry. Moreover, in case the proceedings under Sections 138 of the Negotiable Instruments Act are quashed, then the same would result in undue enrichment of the accused person who has managed to linger on the matter on a false promise by issuing the said cheque.

(31) Thus, after considering the relevant provisions as well as the judgments of various Courts on issue no. (i) and (ii), this Court conclusively holds that the issuance of a cheque in repayment of a time barred debt amounts to a written promise to pay the said debt within the meaning of Section 25(3) of the Contract Act and the said promise by itself would create a legally enforceable debt or liability, as contemplated by Section 138 of the Negotiable Instruments Act. Thus, issue no. (i) and (ii) are hereby answered in favour of the person in whose favour the cheque has been issued. Thus, on the said finding alone, the first argument of the learned counsel for the petitioner stands rejected.

Consideration of issue no. (iii):

(32) Issue no. (iii) framed hereinabove reads as under:

Whether in the facts and circumstances of the present case, the present petition under Section 482 CrPC wouldbe maintainable?

(33) The Hon'ble Supreme Court in "***S. Natarajan*** *versus* ***Sama Dharman and Anr.***[9] decided on 25.07.2012 and a co-ordinate bench of this Court in judgment[10] titled as ***Som Nath*** *versus* ***Mukesh Kumar*** decided on 11.09.2015 have held that whether a debt was time barred ornot can only be decided after the evidence is adduced since it is a mixedquestion of law and fact. Thus, even in case, issue no. (i) and (ii) were to beheld in favour of the petitioner, then also, the present petition under section 482 CrPC, with respect to the first argument, would be dismissed on account of the proposition of law propounded in the above said two judgments. The relevant portion of the judgment of the Hon'ble Supreme Court in ***S. Natarajan's*** *case* (*supra*) is reproduced hereinbelow:

> "1. Leave granted. The appellant is the complainant in C.C. No.250 of 2011. It is his case that on 6/5/2006, the respondents/accused had received a sum of Rs. 49,000/- from him. On 4/7/2006, they have received a further sum of Rs. 1,00,000/-. On the same day, they received another sum of Rs. 1,00,000/-. It is further the case of the appellant that on 11/1/2007, the accused have received Rs.50,000/- and subsequently they have received Rs. 1,000/-. Thus, according to the complainant, a total sum of Rs. 3,00,000/- has been received by the accused. According to the appellant, to discharge the said debt, accused No.1 gave a cheque dated 1/2/2011. The appellant presented the said cheque forpayment through his bank on 2/2/2011. The said cheque was dishonoured on the ground that the accused did not have sufficient funds in their account. A copy of the Memorandum dated 12/2/2011 issued by the Karur Vysya Bank Limited is onrecord at Annexure P-1."
>
> xx xx xx xx xx
>
> 6........ The High Court then observed that since at the time

[9] 2015(2) RCR (Crl.) 854
[10] 2015(8) RCR (Crl.) 599

of issuance of cheque i.e., on 1/2/2011, the alleged debt of the accused had become time barred, the proceedings deserve to be quashed.

7. In our opinion, the High Court erred in quashing the complaint on the ground that the debt or liability was barred by limitation and, therefore, there was no legally enforceable debt or liability against the accused. The case before the High Court was not of such a nature which could have persuaded the High Court to draw such a definite conclusion at this stage. Whether the debt was time barred or not can be decided only after the evidence is adduced, it being a mixed question of law and fact."

xx xx xx xx xx

10. In our opinion, therefore, the High Court could not have quashed the proceedings on the ground that at the time of issuance of cheque, the debt had become time-barred and therefore, the complaint was not maintainable. The High Court, therefore, fell into a grave error in quashing the proceedings.

11. In the result, the impugned order dated 25.7.2012 is set aside. The trial Court shall proceed with the case.

12. The appeal is allowed in the aforestated terms."

(34) A perusal of the above-mentioned judgment would show that although the High Court had quashed the proceedings on the ground that the debt was time barred, but the Hon'ble Supreme Court had set aside the said Order.

(35) The relevant portion of the judgment of the coordinate Bench in ***Somnath's*** *case* (*supra*), is reproduced hereinbelow:

"6. Complainant in support of his case, led his preliminary evidence and the petitioner has been summoned to face the trial by the Trial court. It is not the case of the petitioner that the cheque in question was not signed/issued by him. The fact that the cheque in question was issued by the petitioner leads to a presumption that there exists a legally enforceable debt or liability. However, the said presumption is rebuttable and the same can be rebutted by the petitioner by leading evidence. At this stage, without there being any evidence on record, it cannot be held that the cheque drawn

by the petitioner was in respect of a debt orliability which was not legally enforceable. The plearaised by the petitioner that the cheque in question was issued on account of a time barred debt can be gone into by the Trial Court after the parties lead their evidence with regard to their respective pleas. However, at this stage, it would not be just and expedient to quash the criminal proceedings at the very threshold by presumingthat the cheque in question had been issued qua a time barred debt. Complainant is yet to lead his evidence in support of his case. In case the complainant fails toestablish his case, petitioner will be acquitted by the Trial Court but it would not be in the interest of justiceto scuttle the criminal proceedings at the very threshold.

7. Hon'ble Apex Court in ***S. Natarajan*** versus ***Sama Dharman*** 2015(2) R.C.R. (Crl.) 854, has held as under:-

7. In our opinion, the High Court erred in quashing the complaint on the ground that thedebt or liability was barred by limitation and, therefore, there was no legally enforceable debt or liability against the accused. The case before the High Court was not of such a nature which could have persuaded the High Court to draw such a definite conclusion at this stage. Whether the debt was time barred or not can be decided only after the evidence is adduced, it being a mixed question of law and fact.

xx xx xx xx xx

10. In our opinion, therefore, the High Court could not have quashed the proceedings on the ground that at the time of issuance of cheque, the debt had become time barred and therefore, the complaint was not maintainable. The High Court, therefore, fell into a grave error in quashing the proceedings.

11. In the result, the impugned order dated 25/7/2012 is set aside. The trial court shall proceed with the case."

8. In view of the decision of the Apex Court in S.Natarajan's case (supra), the judgments relied upon bythe learned counsel for the petitioner fail to advance the case of the petitioner.

9. No ground for interference by this Court is made out."

(36) A perusal of the above mentioned judgment would show that the plea of time barred debt can only be gone into by the trial Court after the parties have led their evidence with regard to their respective pleas. No judgment has been cited by learned counsel for the petitioner in the present case, in which on the basis of said plea of time barred debt, a petition under Section 482 Cr.P.C. has been entertained, much less allowed. Thus, issue no. (iii) is also decided against the petitioner.

Consideration of issue no. (iv):

Issue no. (iv) framed hereinabove reads as under:

> **"Whether in the present case, the petitioner has been able to prove as to what would be the starting point of theperiod of limitation, so as to establish that the cheque was issued after the expiry of the period of limitation?"**

(37) In the present case, learned counsel for the petitioner has not been able to state as to what would be the starting point of the period of limitation. No meaningful argument has been raised by the learned counsel for the petitioner and even as per his argument, it is not clear as to what was the last date of repayment. Moreover, since issue no (i), (ii) and (iii) have been decided against the petitioner, this Court need not delve in detail with respect to issue no. (iv).

(38) With respect to the second plea of learned counsel for the petitioner regarding non-service of legal notice to the petitioner under Section 138 of the Act, it is relevant to mention that a perusal of the summoning order would show that documents Ex.C1 to Ex.C6 were produced by the complainant / respondent in addition to his affidavit Ex.CW1/A. All the said documents have not been produced on record. Even the legal notice which is stated to be Ex.C3 has not been produced on record. In fact, on a specific query raised by this Court, learned counsel for the petitioner was not able to state as to what Ex.C6 is. Even the affidavit of the complainant has not been produced on record. In the absence of the entire material which had been produced by the complainant, having not been produced by the petitioner before this Court, it is not possible for this Court to hold that the petitioner was never served with the notice under Section 138 of the Negotiable Instruments Act. The legal notice Ex.C3 would have been very relevant in order to ascertain as to what address had been mentioned in the same. However, a perusal of the complaint would show that the address mentioned in the complaint is the same as that

mentioned in the present petition. For the sake of reference, the address mentioned in the complaint is reproduced hereinbelow: -

> "Sultan Singh s/o Sh. Dayal Singh, R/o VPO Umri, Tehsil Thanesar, District Kurukshetra."

(39) The address mentioned in the present petition is reproduced hereinbelow: -

> "Sultan Singh aged about 46 years son of Shri Dayal Singh resident of VPO Umri, Tehsil Thanesar, District Kurukshetra, Haryana."

(40) A perusal of the complaint would show that in paragraph 5 and 6 of the same, it has been specifically alleged by the complainant that after the dishonour of the cheque, the complainant contacted the accused and told him about dishonouring of the cheque and requested him to make the payment but the petitioner had flatly refused to make the payment of the cheque without any reasonable cause and excuse. It has been specifically alleged that the legal notice dated 18.08.2019 through Sh. M.K.Sharma, Advocate, was served upon the accused / petitioner and despitethe same, the payment was not made.

(41) Learned counsel for the petitioner has not sought to dispute the issuance of the cheque or the signature on the same. Moreover, the fact as to whether the legal notice under Section 138 of the Act was served upon the petitioner or not, is a disputed question of fact, which can only be gone into during the trial, after the witnesses have been examined and cross-examined and the documents have been put to the said witnesses. Even from the document Annexure P-3, it cannot be made out with any certainty that the petitioner was not served. No judgment has been cited by learned counsel for the petitioner to show that petition under Section 482 Cr.P.C. can be entertained for quashing of the proceedings when disputed questions of facts are involved. Once the cheque has been issued, in due course, there is a presumption of the same being issued for the discharge of a debt and the same is to be rebutted during trial. Even the judgment of the High Court of Delhi in ***R.L.Verma's*** *case* (*supra*) cited by the learned counsel for the petitioner on the said proposition does not even remotely further the case of the petitioner.

(42) The relevant portion of the said judgment is reproduced hereinbelow: -

> "1. Petitioner impugns judgment dated 31.05.2017 whereby

the Appellate Court has dismissed the appeal of the petitioner impugning order on conviction dated 10.03.2017 and order on sentence dated 20.03.2017 convicting the petitioner of an offence under Section 138 of the Negotiable Instruments Act.

2. Petitioner who appears in person inter-alia contends that from the record it is clear that the statutory notice under Section 138 of the Negotiable Instruments Act was neither addressed to the correct address nor served to the petitioner.

3. It is submitted that the complainant had relied on an alleged acknowledgement of debt as on 31.03.2009 by an undated letter which was exhibited as Exh.CW1/2. It is submitted that in the said acknowledgement it was clearly mentioned that the correspondence address was A-123, Friends Colony (East), New Delhi.

4. He submits that the statutory notice exhibit CW-1/5 was not addressed to the correspondence address mentioned in the said alleged acknowledgement (Exh.CW1/2) but was sent to Dr. Gopal Das Building, 28, Barakhamba Road, New Delhi. He submits that the said building was a building promoted by the family of the petitioner, however, as on the date of the statutory notice there was no space occupied by the petitioners in the said building.

5. He further submits that the notices which were sent through registered post were delivered back unserved and this was acknowledged by the complainant and the returned envelope was exhibited as exhibit CW-1/8 which had an endorsement "Left".

xx xx xx xx xx

8. Petitioner further submits that in his cross examination the complainant has categorically admitted that he had never met the petitioner or corresponded with the petitioner at the Barakhamba Road address. Further it is contended that in the complaint filed by the complainant the correspondence address mentioned in the alleged acknowledgement has been mentioned as the second address of the petitioner and the petitioner was served with the summons only at the second address.

9. He further submits that the Trial Court erred in placing reliance on the judgment of the Supreme Court in C.C. Alavi Haji vsPalapettyMuhammed&Anr., AIR 2007 SC (Suppl) 705. He submits that the said judgment would apply only in the case notice was correctly addressed. Admittedly in the present case notice wassent to an incorrect address at which the petitioner was not present.

10. He relies on the judgment in M/s. Ajeet Seeds Ltd. v. K. Gopala Krishnaiah, (2014) 12 SCC 685 wherein ithas been held that presumption of service of notice would arise only in case the notice is correctlyaddressed.

xx xx xx xx xx

12. The statutory legal notice is addressed to the petitioner as follows:-

"R.L. Verma& Sons (HUF)
Through its authorized signatory
Mr. DhruvVerma
Dr. Gopal Dass Building
28 Barakhamba Road
New Delhi - 110065"

13. Subject complaint has been filed stating the address of the petitioner as under:

1. R.L. Verma& Sons (HUF)
Through its authorized signatory
Mr. Dhruv Verma
Dr. Gopal Dass Building28
Barakhamba Road
New Delhi - 110001
2. Also at :-
A-123, New Friends Colony (East)
New Delhi - 110065.

14. It is an admitted position that the summons were served on the petitioner only at the second address mentioned in the complaint i.e. at A-123, New Friends Colony, New Delhi."

xx xx xx xx xx

20......Even in his cross-examination, the respondent

/complainant had categorically stated that he had not met the accused at the address mentioned in the legal notice nor had he corresponded with him at the said address.

21. Perusal of the record clearly shows that the complainant even in the complaint had stated that the statutory notice was not delivered and had accordingly annexed with the complaint the returned envelope containing the statutory notice.

22. Legal presumption of service of notice can only arise in case the notice is correctly addressed. If the notice is incorrectly addressed no legal presumption can arise. In the present case, the complainant had annexed the letterhead of the petitioner containing the address mentioned in the statutory notice but specifically mentioning there in the correspondence address as that of New Friends Colony.

23. It is not the case of the complainant that the petitioner was having an office or was ever found at Barakhamba Road, the address mentioned in the statutory notice.

xx xx xx xx xx

25. As noted above, in the present case there was admittedly no service of statutory notice and the presumption of service of the statutory notice also does not arise in the facts of the present case as the notice was not correctly addressed."

(43) A perusal of said judgment would show that in fact the said judgment is more against the petitioner than in his favour. The said judgment was delivered in a case where the Appellate Court had dismissed the appeal of the petitioner therein, impugning the order of conviction and sentence and thus, the said judgment had been delivered after the trial had been completed and evidence had been recorded. In the said judgment, it was specifically observed that the address mentioned in the statutory notice under Section 138 of the Act was not correct inasmuch as in the acknowledgment relied upon by the complainant therein, the correspondence address had been specifically mentioned and the statutory notice was not issued on the said address. Even in the cross-examination, the petitioner therein had stated that he had not met the accused at the address where the notice had been issued. In this judgment, reference had been made to the judgment of the Hon'ble Supreme Court in ***M/s Ajeet Seeds Ltd.*** *versus* ***K.***

GopalaKrishnaiah[11] wherein it had been held that the presumption of service of notice would arise only in a case where the notice is correctly addressed. It is in the said background that this judgment was passed by the Delhi High Court. In the present case, the legal notice and the other relevant documents have not even been produced on record. The Hon'ble Supreme Court as well as Delhi High Court have observed that the presumption of service of notice would arise when address mentioned in the statutory notice is correct. It is not even argued by learned counsel for the petitioner that address on the legal notice was not correct. At any rate, the said issue would be one of a disputed question of fact and on this basis, the present petition underSection 482 Cr.P.C. cannot be allowed and the same point can be agitated before the trial Court after the evidence have been led. Thus, the second argument of learned counsel for the petitioner also stands rejected.

(44) Thus, the present petition stands dismissed.

J.S. Mehndiratta

[11] (2014) 12 SCC 685