Reserved On : 07/07/2025
Pronounced On : 15/07/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 7382 of 2015

With
R/SPECIAL CRIMINAL APPLICATION NO. 7383 of 2015
With
R/SPECIAL CRIMINAL APPLICATION NO. 7384 of 2015
With
R/SPECIAL CRIMINAL APPLICATION NO. 7385 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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Approved for Reporting	Yes	No

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ARJUN THAPAR & ORS.
Versus
MACHHAR POLYMER PRIVATE LIMITED & ANR.

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Appearance:
ADVOCATE NOTICE SERVED for the Applicant(s) No. 5
MR.D K.PUJ(3836) for the Applicant(s) No. 1,3,4
UNSERVED EXPIRED (N) for the Applicant(s) No. 2
MR RAJENDRA K GOLANI(2125) for the Respondent(s) No. 1
MR CHINTAN DAVE, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

CAV JUDGMENT

1. Since common questions of law and fact arise in these batch of petitions, with the consent of learned advocates for the

respective parties, they are being disposed of by this common order.

2. By way of this petitions under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code"), the petitioners have prayed for quashing and setting proceedings of Criminal Case Nos.6676 of 2014, 6677 of 2014, 6675 of 2014 and 6674 of 2014 as well as all other consequential proceedings arising out of the aforesaid FIR qua the petitioners herein.

3. Brief facts of the case are as under:-

3.1 The petitioner No.1 is engaged in the business inter-alia of manufacturing TV tubes and is also supplying the same to various end consumers, manufacturing television.

3.2 That on account of several financial difficulties confronted by the petitioner, the petitioners had approached Board for Industrial and Financial Reconstruction (BIFR) under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 and the case of the petitioners was registered on 31.3.2002. The respondent complainant is also aware about the aforesaid aspect. In view of the settled legal position, the commencement of the proceedings before BIFR is considered to have been commenced, from the date of registration of the reference and accordingly, Section 22 of the said Act would come into operation the moment it is registered. In view of the specific bar contained under Section 22, all proceedings against the Company including execution proceedings and/or recovery

proceedings and/or alike including recovery suits are not maintainable. The aforesaid fact was within the knowledge as aforesaid to the respondent complainant.

3.3 That during the course of proceedings before BIFR, after appropriate inquiry under Section 16, 17, 18 and 19 of the said Act, the BIFR has been pleased to declare the petitioners as Sick Industrial undertaking vide order dated 12.3.2007 and a scheme is framed and operating agency is also appointed accordingly. The scheme is in force for the period 1.4.2007 to 31.3.2017.

3.4 That impugned complaint is filed on account of dishonour of 3 cheques, viz. (i) cheque No.001123 dated 17.10.2013 for an amount of Rs. 1,50,000/-, (ii) cheque No.001124 dated 19.10.2013 for an amount of Rs.1,50,000/-, and (iii) cheque No.001125 dated 21.10.2013 for an amount of Rs. 1,50,000/-.

3.5 Said complaints are culminated into Criminal Case No. 6674 of 2014, Criminal Case No. 6675 of 2014, Criminal Case No. 6676 of 2014 (the impugned complaint) and Criminal Case No. 6677 of 2014 pending before the Court at Vadodara.

3.6 The petitioners paid the amount of cheque dishonoured being root cause of criminal complaint, during trial. Yet criminal complaint continued to proceeding. Hence, present petition.

4. Heard learned advocate Mr. DK Puj appearing for the petitioners, learned advocate Mr. Rajendra Golani appearing for

the respondent No.1 as well as learned APP Mr. Chintan Dave appearing for the state.

5. The short substance of arguments of learned advocate Mr. DK Puj is as under:-

5.1 That JCT Electronics Limited petitioner and the original accused has paid substantial amounts by cheque to the complainant during pendency of the trial.

5.2 That the disputes between the parties have been settled since the amount in question have already paid.

5.3 That in view of letters produced at Annexure III and Annexure IV, JCT Electronics Limited has specifically stated that they are paying the amount as against the settlement in the Criminal Cases. However, the complainant, instead of accepting the amount towards the settlement, credited said amount for some other outstanding in the account and thereby have breached the provisions of sections 59 to 61 of the Contract Act.

5.4 Referring to the judgment in case of Gurpreet Singh Vs. Union of India, Manu/SC/4736/2006, more particularly para 5 to 7 and 37 to 40, it is submitted that where several distinct debts are owing by a debtor i.e. the petitioners to his creditor i.e. the complainant. In the present case, the debtor has the right when he makes a payment to appropriate the money to any of the debts that he pleases, and the creditor is bound if he takes

the money, to apply it in the manner directed by the debtor. That in the present case, looking to Annexure III and Annexure IV, it appears that JCT Electronics Ltd - the debtor has directed that the payment they are making is towards the settlement against particular complaint. Thus, creditor i.e. the complainant is bound to give effect of that payment.

5.5 That JCT Electronics Ltd is since turned sick company the proceedings was initiated before the BIFR and order of moratorium was issued for the period commencing from 2007 till 2017 and no one was permitted to make the payment to unsecured creditor. He refers to the order passed by the BIFR and submitted that since a specific contention was raised that for some payment, cheques in advance are issued, the director may be permitted to issue cheques and pursuant to that, directors of JCT Electronics Ltd have issued the cheque to fulfill the debt for which the cheques were earlier given and proceeding under the NI act was initiated.

5.6 That since the debt was appropriated by paying the amount by issuing fresh cheques, continuation of the proceedings under the NI Act would be abuse of process of law.

5.7 Mainly upon above submissions, learned advocate Mr. Puj requests to allow the petitions and to quash the proceedings initiated under the NI Act.

6. *Per Contra*, learned advocate Mr. Golani appearing for the respondent No.1 would argue as under:-

6.1 That the company has not filed the petition, which is the principal accused. In absence of the petition for quashing filed by the company being a principal accused, the directors, who are vicariously liable, cannot prefer quashing petition independently.

6.2 That para 14 of the petition indicates total outstanding amount of Rs.31,77,000/-. The amounts towards the cheques issued are dishonoured, but the total amount paid is Rs.24,07,000/- only. Therefore, even if it is believed that the amount is paid towards the cheques, which are dishonoured, it is insufficient amount paid towards the cheques dishonoured, and therefore, complaint initiated under the provisions of the NI Act cannot be quashed.

6.3 That power of compounding is lying with the company and it cannot be enforced at the instance of the accused by saying that he has paid the amount of cheques dishonoured during trial.

6.4 In support of his submission, judgment in case of Mainuddin Abdul Sattar Shaikh Vs. Vijay D. Salvi, (2015) 9 SCC 622 and in case of R. Vijayan Vs. Baby and another, (2012) 1 SCC 260 are relied upon.

6.5 Upon such submission, learned advocate Mr. Golani requests to dismiss the petition.

7. Learned APP, in a private dispute between the parties,

while adopting the argument of learned advocate for the complainant, prays to pass necessary orders.

8. Regard being had to the rival submissions of learned advocates of both the parties and perusing the records, what could be noticed that by way of this petition, the petitioners, who are accused in trial under the NI Act, insisted that since they have paid the amount of the cheques, which were dishonoured during the pendency of the trial under the NI Act, it should be treated as settlement between the company and the accused, which ends trial against the petitioners accused. Further since the payment of the cheque dishonoured is already paid, The petitioners cannot be sent to face the trial.

9. In context to arguments canvassed by herein above, it is relevant to find that when the cause of action arose for filing complaint u/s 138 of the NI Act.

10. In Sadanandan Bhadran Versus Madhavan Sunilkumar, 1998 (6) SCC 514, the Hon'ble Apex Court referring to sections 138 and 142 of the NI Act in regards to the cause of action arose for filing of the complaint held and observed as under:-

> *"5. Chapter XVII of the Act containing the fascicule of Secs. 138 to 142 was brought into the statute book with effect from Apr. 1, 1989 by Sec. 4 of the Banking Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988. The 'objects and reasons' clause of the Bill which introduced the Amending Act indicates that the new Chapter was incorporated to enhance the*

acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of funds in the accounts or for the reason that it exceeds the arrangements made by the drawer with adequate safeguards to prevent harassment of honest drawers. Sec. 138 of the Act reads as under :

> *["Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both :*
>
> *[Provided that nothing contained in this Section shall apply unless -*
>
> *[(a) the cheque has been presented to the bank within a period of ,six months from the date on which it is drawn or within the period of its validity, whichever is earlier;]*
>
> *[(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and]*
>
> *[(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice."]*

On a careful analysis of the above Section it is seen that its main part creates an offence when a cheque is returned by the bank unpaid for any of the reasons mentioned therein. The significant fact, however, is that the proviso lays down three conditions precedent to the applicability of the above Section and, for that matter, creation of such offence and the conditions are: (i) the cheque should have been presented to the bank within six months of its issue or within the period of its validity whichever is earlier; (ii) payee should have made a demand for payment by registered notice after the cheque is returned unpaid: and (iii) that the drawer should have failed to pay the amount within 15 days of the receipt of notice. It is only when all the above three conditions are satisfied that a prosecution can be launched for the offence under Section ! 38. So far as the first condition is concerned clause (a) of -the proviso to Sec. 138 does not put any embargo upon the payee to successively present a dishonoured cheque during the period of its validity. This apart, in course of business transactions it is not uncommon for a cheque being returned due to insufficient funds or similar such reasons and being presented again by the payee after sometime, on his own volition or at the request of the drawer, in expectation that it would be encashed. Needless to say, the primary interest of the payee is to get his money and not prosecution of the drawer, recourse to which, normally, is taken out of compulsion and not choice. For the above reasons it must be held that a cheque can be presented any number of times during the period of its validity. Indeed that is also the consistent view of all the High Courts except that of the Division Bench of the Kerala High Court in Kumaresan (supra) which struck a discordant note with the observation that for the first dishonour of the cheque only a prosecution can be launched for there cannot be more than one cause of action for prosecution.

5. The next question that fails for our determination is whether dishonour of the cheque on each occasion of

its presentation gives rise to a fresh cause of action within the meaning of Sec. 142(b) of the Act. Sec. 142 reads as under :

> *["Notwithstanding anything contained in the Code of Criminal Procedure, 1973 -*
>
> *[(a) no court shall take cognizance of any offence punishable under Sec. 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;]*
>
> *[(b) such complaint is made within one month of the date on which the cause of action arises under clause of the proviso to Sec. 138;]*
>
> *[(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138."]*

] From a plain reading of the above Sec-lion it is manifest that a competent Court can take cognizance of a written complaint of an offence under Sec. 138 if it is made within one month of the date on which the cause of action arises under clause (C) of the proviso to Sec. 138. (Emphasis supplied.)

6. In a generic and wide sense (as in Sec. 20 of the Civil Procedure Code, 1908) 'cause of action' means every fact which it is necessary to establish to support a right or obtain a judgment. Viewed in that context, the following facts are required to be proved to successfully prosecute the drawer for an offence under Sec. 138 of the Act : -

> *[(a) that the cheque was drawn for payment of an amount of money for discharge of a debt/liability and the cheque was dishonoured;]*
>
> *[(b) that the cheque was presented within the prescribed period;]*
>
> *[(c) that the payee made a demand for payment of the money by giving a notice in writing to the drawer within the stipulated period; and]*
>
> *[(d) that the drawer failed to make the payment*

within 15 days of the receipt of the notice.]

If we were to proceed on the basis of the generic meaning of the term 'cause of action' certainly each of the above facts would constitute a part of the cause of action but then it is significant to note that clause (b) Sec. 142 gives it a restrictive meaning, in that, it refers to only one fact which will give rise to the cause of action and that is the failure to make the payment within 15 days from the date of the receipt of the notice. The reason behind giving such a restrictive meaning is not far to seek Consequent upon the failure of the drawer to pay the money within the period of 15 days as envisaged under clause (C) of the proviso to Sec. 138, the liability of the drawer for being prosecuted for the offence he has committed arises, and the period of one month for filing the complaint under Sec. 142 is to be reckoned accordingly. The combined reading of the above two Sections of the Act leaves no room for doubt that cause of Action within the meaning of Sec. 142 (C) arises - and can arise - only once."

11. Thus, in view of aforesaid proposition of the law laid down by the Hon'ble Apex Court, in order to successfully prosecute the offender for the offence under section 138 of the NI Act the insignia are that cheque was drawn for payment of an amount of money for discharge of a debt/liability and the cheque was dishonoured; that the cheque was presented within the prescribed period; that the payee made a demand for payment of the money by giving a notice in writing to the drawer within the stipulated period; and that the drawer failed to make the payment within statutory period after receiving notice. If all above insignia exists, the complainant can successfully prosecute drawer of the cheque. Cause of action for filing the complaint u/s 138 of the NI Act would start as soon as the

aforesaid insignia are completed.

12. In the present case, it is undoubted that all four insignia exist and the prosecution under the NI Act has been launched. It is now case of the petitioners - accused that since they have paid the amount of cheques dishonoured during pendency of the trial towards settlement, further proceedings of trial u/s 138 of the NI Act would be abuse of process of law.

13. In Rajneesh Aggarwal Versus Amit J.Bhalla, 2001 (1) SCC 631, before the Hon'ble Apex Court, two questions arose for consideration, out of them, question No.2 posed by the Hon'ble Apex Court is relevant to decide the dispute raised in the petition, which reads as under:-

> *"(1) Was the High Court justified in coming to the conclusion that the drawer has not been duly served with notice for payment -*
> *(2) Whether deposit of the entire amount covered by three cheques, while the matter is pending in this Court, would make any difference?*

13.1 The Hon'ble Apex Court discussed and answered aforesaid question in para 7 as under:-

> *"**7.** So far as the question of deposit of the money during the pendency of these appeals is concerned, we may state that in course of hearing the parties wanted to settle the matter in Court and it is in that connection, to prove the bona fide, the respondent deposited the amount covered under all the three cheques in the Court, but the complainant's counsel insisted that if there is going to be a settlement, then all the pending cases between the parties should be*

> *settled, which was, however not agreed to by the respondent and, therefore, the matter could not be settled. So far as the criminal complaint is concerned, once the offence is committed, any payment made subsequent thereto will not absolve the accused of the liability of criminal offence, though in the matter of awarding of sentence, it may have some effect on the Court trying the offence. But by no stretch of imagination, a criminal proceeding could be quashed on account of deposit of money in the Court or that an order of quashing of criminal proceeding, which is otherwise unsustainable in law, could be sustained because of the deposit of money in this Court. In this view of the matter, the so-called deposit of money by the respondent in this Court is of no consequence."*

12. The findings recorded by the Hon'ble Apex Court is clearly providing answer to the argument of learned advocate Mr. DK Puj. Therefore, merely depositing money during the trial, criminal proceedings initiated under the provisions of the NI Act cannot be quashed.

13. The word "compounding" means to compromise to effect the composition with creditor. The compromise as such is a bilateral act and one of the parties cannot compromise lis unilaterally. Even admission of the claim lodged by the adversary does not amount to compromising the lis. True, offence u/s 138 of the NI Act has been made compoundable by section 147 of the NI Act, but unless, both the parties seek for compounding the offence, the Court cannot in its discretion order for compounding the offence and acquit the accused u/s 320(8) of the Code notwithstanding the fact that the accused has, by this time, either repaid the entire cheque amount or is willing to pay the same.

14. Thus, it is true that section 147 of the NI Act provides

that offence under the NI Act is compounding offence. However, compounding of the offence u/s 138 of the NI Act cannot be held effective in absence of consent of the person i.e. the complainant compounding it. In Jik Industries Limited Versus Amarlal V.Jumani, AIR 2012 SC 1079, the Hon'ble Apex Court held that consent of the complainant is necessary for compounding the offence u/s 147 of the NI Act.

15. Noticeably, the direction given by the Coordinate Bench of this Court in its order dated 11.12.2025 to place on record the letter of authorization in favour of original accused Nos.9 and 10 on the strength of which they issued the cheques in favour of the complainant, is not complied with.

16. As far as judgment cited by learned advocate for the petitioners, it is on the different footings and rendered no help to the case of the petitioners.

17. In view of above and for the foregoing reasons, since the petitions being bereft of merit, accordingly, they stand dismissed. Notice discharged. Interim relief granted earlier stands vacated.

(J. C. DOSHI,J)

SHEKHAR P. BARVE

FURTHER ORDER

After pronouncement of the judgment, learned advocates for the respective petitioners request the Court to stay operation and execution of this judgment for a further period of four weeks so as to enable the petitioners to approach the higher forum. Considering the facts and circumstances of the case and further considering the fact that trial under the provisions of the Negotiable Instrument Act is going on, the request is declined.

(J. C. DOSHI,J)

SHEKHAR P. BARVE

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SHEKHAR PRAFULBHAI BARVE(HC00200), Principal Pvt. Secretary, at High Court of Gujarat on 15/07/2025 15:49:57