Sayali Upasani

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 5208 OF 2017
WITH
CRIMINAL WRIT PETITION NO. 5209 OF 2017

Karmayogi Shankarraoji Patil & Ors. ...Petitioners

Versus

Ruia & Ruia Pvt. Ltd. & Ors. ... Respondents

Mr. Sanjeev P. Kadam, a/w Ramdas Hake Patil, for the Petitioners.
Mr. Mihir Gheewala, a/w Ali Kazmi, Sajid Sayed, i/b AAK Legal, for Respondent No. 1
Ms. Anamika Malhotra, APP for the State.

CORAM: N. J. JAMADAR, J.
RESERVED ON: 28th APRIL, 2022
PRONOUNCED ON: 3rd AUGUST, 2022

JUDGMENT:-

1. Since these petitions arise out of identical facts and common question in law is involved, both the petitions are decided together.

2. Rule. Rule made returnable forthwith and, with the consent of the Counsels for the parties, heard finally.

3. The challenge in these petitions is to the orders passed by the learned Additional Sessions Judge, Greater Mumbai, in Criminal Revision Application Nos.1234 of 2016 and 1235 of 2016, whereby the learned Additional Sessions Judge was

persuaded to dismiss the Revision Applications and affirm the orders dated 4th January, 2016, passed by the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai, in Criminal Complaint Nos.8222/SS/2015 and 8223/SS/2015, of issue of process against the accused-petitioners herein for the offence punishable under Sections 138 read with 141 Negotiable Instruments Act, 1881 ("the N. I. Act").

4. Shorn of unnecessary details, the background facts relevant for determination of these petitions can be summarized as under-

(a) The respondent No.1 – complainant is a Company registered under the Companies Act, 1956. The complainant is engaged in trade of various commodities such as sugar, molasses, alcohol and chemicals. Petitioner No.1 is a Co-operative Society, registered under the Maharashtra Co-operative Societies Act, 1960. The petitioner No.2 is the Chairman of petitioner No.1. The petitioner No.3 is its Vice-Chairman and petitioner No.4 is the Managing Director.

(b) The petitioners - accused run a sugar factory. On 21st October,2014, the accused had entered into an agreement with the complainant to supply and sale 'A' grade molasses having TRS 50% and above for industrial/export/liquor purpose. The respondent No.1 agreed to pay an advance amount of

Rs.3,49,65,000/- to accused. Under the terms of the agreement, the delivery of the molasses, as per schedule, was the essence of the contract. In the event of default in the delivery of the specified quantity of molasses, as per schedule, for the quantity short supplied the price was to be reduced by Rs.500/-, per MT for the month of November, 2014, Rs. 750/-, for the month of December, 2014 and Rs.1000/-, for the month of January, 2015. To cover the advance payment of Rs.3,49,65,000/-, the accused No. 1 had drawn Seven cheques in favour of the complainant payable on 21th October, 2014.

(c) It seems that there was failure on the part of accused No.1 to supply the molasses in accordance with the terms of the contract. Correspondence was exchanged between the parties. In lieu of seven cheques, referred to above, the accused No.1 had drawn four cheques for Rs. 50,00,000/-, each, payable on 15th January, 2015. Eventually, those four cheques were also dishonored on presentment on 10th April, 2015. Thereupon, the accused gave a proposal to settle the dispute by incorporating the terms and conditions in a letter dated 4th June, 2015 (the letter of settlement). The accused No.1, while acknowledging the debt of Rs.2,62,79,654/-, agreed to pay a sum of Rs.1,57,75,607/- towards the full and final settlement of the complainant's claim. Under the terms of the said settlement, the

accused had drawn cheque bearing No.519921 for a sum of Rs.50,00,000/- payable on 20th June, 2015, cheque No-519922 for a sum of Rs.42,75,607/- payable on 10th July, 2015 and cheque No. 519923 for an amount of Rs.65,00,000/- payable on 31st July, 2015 on State Bank of India, Branch – Indapur. The accused further agreed that in the event of default in payment of any of the installments, the entire amount of Rs.2,62,79,654/- would become due and payable and the complainant would be entitled to initiate appropriate legal action to recover the entire due amount.

(**d**) The complainant received payment of a sum of Rs. 50,00,000/- on 17th June, 2015 via RTGS. The accused No.1 paid a further sum of Rs.23,00,000/- via RTGS in between 16th July, 2015 to 24th July, 2015. However, the cheque bearing No.519922 drawn for a sum of Rs.42,75,607/- was returned "unencashed" on presentment on 27th July, 2015. Cheque No. 519923 drawn for Rs.65,00,000/- was also dishonoured on presentment on 11th August, 2015. The complainant thus addressed demand notices calling upon the accused to pay the amount covered by the dishonoured cheques as well as the entire due amount, agreed to be paid in accordance with the terms of the settlement. Despite the service of notices, the accused committed default in payment. Hence, the complaints.

5. By an order dated 4th January, 2016, the learned Metropolitan Magistrate issued process against the accused for the offence punishable under Section 138 read with Section 141 of the N.I. Act, 1881. The petitioners-accused carried the matter in revision before the learned Sessions Judge. The principal ground urged before the learned Sessions Judge was that by 17th February, 2016, the entire amount payable under the dishonoured cheques was cleared. Thus, there was no justifiable reason to proceed with the trial.

6. The learned Additional Sessions Judge was not inclined to accede to the submission as, in the letter of settlement, it was, *inter alia,* recorded that in the event of default, the complainant would be entitled to recover the entire due amount. Thus, the question of liability was a matter for trial. Moreover, since the plea of the accused was already recorded, there was no reason to interfere with the order passed by the learned Magistrate, observed the learned Additional Sessions Judge. Being aggrieved, the petitioner-accused have invoked the writ jurisdiction of this Court.

7. I have heard Mr. Kadam, the learned Counsel for the Petitioners and Mr. Gheewala, the learned Counsel for the respondent No.1 - complainant and Mr. Malhotra, the learned APP for the State, at some length. With the assistance of the

learned Counsels for the parties, I have perused the material on record.

8. Mr. Kadam, the learned Counsel for the petitioners canvassed a three-fold submission. Firstly, it was urged that the issue of process against the accused No.2 by invoking the provisions contained in Section 141 of the N. I. Act, 1881, is legally infirm. The accused No.2 is neither the drawer of the dishonoured cheques nor the signatory to the letter of settlement, issued on 4th June, 2015. The accused No.2 has been roped in only for being the chairman of the accused No. 1 – society. However, the accused No.2 cannot be said to be in-charge of and responsible to the affairs of the accused No.1 - society. Secondly, the demand notice preceding the institution of the complaint is not valid as instead of the amount covered by the dishonoured cheques, the complainant made a demand of a sum of Rs.2,62,79,654/-. Thirdly, since the entire due amount under terms of the letter of settlement dated 4th June, 2015, was paid by 16th February, 2016, there was no subsisting liability. Hence, the learned Additional Sessions Judge was in error in rejecting the revision applications.

9. In opposition to this, Mr. Gheewala, the learned Counsel for the respondent No. 1 submitted that the grounds sought to be urged on behalf of the petitioners are unworthy of

countenance. First and foremost, there was no reply to the statutory demand notices. The claim that accused No.2 was not in-charge of and responsible to the affairs of the society was not urged hereinbefore. In fact, in the complaint there are adequate averments to show that the accused No. 2 was in-charge of and responsible to the affairs of accused No.1 society. Moreover, being the Chairman of accused No.1 society, the accused No.2 cannot be heard to urge that he was not responsible for the affairs of the society. Mr. Gheewala further submitted that the fact that, after the institution of the complaint and order of issue of process, the accused paid the amount covered by the dishonoured cheques is of no consequence. A two-pronged submission was canvassed by Mr. Gheewala. First, there was no appropriation of payments made by the accused No. 1. Two, in the letter of settlement, the accused had acknowledged in unequivocal terms that in the event of default in payment, the entire amount as claimed by the complainant in the letter dated 8th April, 2015 read with the notice issued on 20th April, 2015 along with interest, would become due and payable and the complainant would be entitled to take appropriate legal action. Thus, the accused on account of default in payment, in accordance with the terms of the settlement, incurred the liability to pay a sum of Rs.2,62,79,654/-. Resultantly, the subject cheques can be said

to have been drawn towards the discharge of the said liability.

10. The first challenge revolving around invocation of Section 141 of the N. I. Act, 1881 appears to be primarily premised on the fact that the accused No. 2 is not the signatory to the cheuqe. Nor the accused No. 2 had executed the letter of settlement dated 4th June, 2015 under which the subject cheques were delivered. However, it is incontrovertible that the accused No. 2 was the Chairman of accused No. 1 - society.

11. The legal position has crystallized to the effect that in order to bring a case within Section 141 of N. I. Act, 1881, the complaint must disclose the necessary facts which makes a person liable.

12. It would be suffice to note that in the complaint there are averments to the effect that the accused No. 2 to 4 were in-charge of the affairs of accused No. 1 - society and were aware of all the day to day affairs and were also responsible for the conduct of the business of accused No. 1 - society. These averments are required to be considered in the light of the indisputable position that the accused No. 2 was the Chairman of accused No. 1 - society.

13. The reliance placed by Mr. Kadam on the judgment of the Supreme Court in the case of ***SMS Pharma Ltd V Nita Bhalla***[1]

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1 2005 (8) SCC 89.

does not seem to advance to cause of the accused No. 2 as in the case at hand the elements necessary to proceed against the accused No.2 by invoking Section 141 of the N. I. Act, 1881 appear to have been squarely made out.

14. The Second ground of challenge based on the demand of amount, which the complainant asserted the accused No. 1 was liable to pay, apart from the amount covered by the dishonoured cheques, in the demand notices dated 24th August, 2015 and 11th August, 2015 rendering those notices invalid also does not appear to be well merited. In the notice of demand dated 11th August, 2015 in respect of dishonoured cheque No.519922 drawn for an amount of Rs.42,75,604/-, there is a clear and categorical demand that amount of the said dishonoured cheque be paid within a period of 15 days from the date of the said notice. In addition, without prejudice to the aforesaid demand, the complainant had called upon the accused No. 1 to pay a sum of Rs.1,89,79,654/-, the amount allegedly agreed to be paid, minus the payment already made, along with interest at the rate of 18% per annum. Whereas, in the demand notice dated 24th August, 2015 in respect of the dishonoured cheque No. 519923 drawn for Rs.65,00,000/-, there is a categorical demand to pay the amount of Rs.65,00,000/- covered by the aforesaid cheque. Again, without prejudice to the said demand, accused were called upon

to pay a sum of Rs.1,69,79,654/- after adjusting the amount which was paid till then, along with interest at the rate of 18% per annum.

15. The challenge to the validity of demand notices is required to be appreciated in the light of the fact that in accordance with the terms of the settlement, the accused had apparently acknowledged the liability to pay the entire amount, as claimed by the complainant in its letter dated 8th April, 2015 read with notice issued on 20th April, 2015, in the event of default in payment of any of the installments. The fact that the demand notice contains demand for an amount in addition to the amount covered by the dishonoured cheques, therefore, does not erode the validity of the demand notice. There was a clear and unequivocal demand of the amounts covered by the subject cheques.

16. In the case of ***Sunil Sethi Vs. Ajay K. Churiwal and another***[2], this aspect was instructively expounded. The observations in paragraph No. 8 make the position clear.

> "**8**. It is a well-settled principle of law that the notice has to be read as a whole. In the notice, demand has to be made for the "said amount" i.e. the cheque amount. If no such demand is made the notice no doubt would fall short of its legal requirement. Where in addition to the "said amount" there is also a claim by way of interest, cost etc. whether the notice is bad would depend on the language of the notice. If in a notice while giving the break-up of the claim the cheque

2 (2000) 2 SCC 380.

> amount, interest, damages etc. are separately specified, other such claims for interest, cost etc. would be superfluous and these additional claims would be severable and will not invalidate the notice. If, however, in the notice an omnibus demand is made without specifying what was due under the dishonoured cheque, the notice might well fail to meet the legal requirement and may be regarded as bad."

17. As indicated above, in the case at hand, there is a clear and unambiguous demand of the amounts covered by the dishonoured cheques. The said demand is severable from the demand of the total amount, which according to the complainant the accused were liable to pay on account of the default in payment of the amount covered by dishonoured cheques.

18. A revisit to the facts would facilitate a better appreciation of the third challenge on the ground that the entire liability has been duly discharged, which was strenuously urged by Mr. Kadam. On account of the default on the part of the accused in the delivery of the molasses, as per agreed schedule, and the dishonour of the cheques drawn for Rs.2 Crores, it seems, by a letter dated 8th April, 2015, the complainant called upon the accused to pay a sum of Rs.2,62,79,654/-. On 20th April, 2015, a statutory demand notice, post dishonour of the four cheques drawn for Rs.50,00,000/-, each, was issued and the accused were, *inter alia,* called upon to pay the amount covered by four dishonoured cheques aggregating to Rs.2 Crores plus the balance due amount of Rs.62,79,654/-. On 4th June, 2015, a

settlement was arrived at between the parties with reference to the aforesaid demand in the letter dated 8th April, 2015 and statutory notice dated 20th April, 2015. It was, *inter alia,* agreed that a sum of Rs.1,57,75,607/- would be paid to the complainant as a full and final settlement of the debt owed by the accused to the complainant. Towards the discharge of the said liability, three cheques were drawn. First, for a sum of Rs.50,00,000/- payable on 20th June, 2015. Second, for a sum of Rs.45,75,607/-, payable on 10th July, 2015. And, the third for a sum of Rs.65,00,000/-, payable on 31st July, 2015.

19. There is, by and large, consensus on the point as regards the payment made by the accused No.1. Against the first cheque drawn for a sum of Rs.50,00,000/- payable on 20th June, 2015, the accused paid a sum of Rs.50,00,000/- on 17th June, 2015. As against the second cheque drawn for Rs.42,75,607/-, payable on 10th July, 2015, a sum of Rs. 10,00,000/- was credited on 16th July, 2015, another sum of Rs.10,00,000/- on 20th July, 2015 and a further sum of Rs.3,00,000/- on 24th July, 2015, followed by a payment of Rs.20,00,000/- on 28th August, 2015.

20. It would be contextually relevant to note that the cheque drawn for a sum of Rs.42,75,607/- was presented for encashment on 27th July, 2015 and returned unencahsed on account of insufficiency of funds. Thus, by the date of

presentment of the cheque a sum of Rs.23,00,000/- was paid against the cheque, drawn for Rs.42,75,607/-.

21. The cheque drawn for Rs.65,00,000/- was presented for encashment on 11th August, 2015 and was returned unencashed along with Cheque Return Memo on 12th August, 2015 for insufficiency of funds. As against the third cheque drawn for Rs.65,00,000/-, payable on 31st July, 2015, the accused claimed to have paid a sum of Rs.10,00,000/- on 23rd September, 2015, a sum of Rs. 25,00,000/- on 2nd December, 2015, another sum of Rs.5,00,000/- on 12th February, 2016, followed by the payment of Rs.25,75,607/- on 17th February, 2016.

22. At this stage itself, it may be necessary to note that in respect of second cheque the demand notice was issued on 11th August, 2015 and in respect of the third cheuqe, the demand notice was issued on 24th August, 2015. Alleging non-payment of the amount covered by the demand notices, the complainant lodged the complaints. First complaint was lodged on 23rd September, 2015 and Second complaint was lodged on 5th October, 2015.

23. Laying emphasis on the fact that by 17th February, 2016, the entire amount covered by the dishonoured cheques came to be paid to the complainant, Mr. Kadam, the learned counsel for the petitioners, would urge that the learned Additional Sessions

Judge committed an error in not interfering with the order passed by the learned Magistrate and, in the circumstances of the case, the proceedings in the complaints ought to have been interdicted. The learned Additional Sessions Judge, according to Mr. Kadam, was not justified in refusing to dismiss the complaints on the premise that the question as to whether the accused had incurred the liability to pay the entire amount in accordance with the terms of the settlement dated 4th June, 2015 was a question of fact, which warranted trial.

24. Mr. Kadam placed a very strong reliance on the judgment of the Supreme Court in the case of ***Meters and Instruments Private Limited and another Vs. Kanchan Mehta,***[3] wherein the Supreme Court had expounded the nature of the proceedings under Section 138 of N.I. Act, 1881 and the approach to be adopted by the Court where the entire amount covered by the cheque along with interest and costs was paid by the accused.

25. Per contra, Mr. Gheewala submitted that the learned Additional Sessions Judge was well within his rights in negativating the prayer for dismissal of the complaints as the mere fact that the amount covered by the cheques was paid by the accused, in itself, does not furnish a justification for quashing the complaints where the offence punishable under

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3 (2018) 1 Supreme Court Cases 560.

Section 138 of N.I. Act, 1881, is clearly made out. Mr. Gheewala laid stress on the fact that in the letter dated 4th June, 2015 the accused had clearly acknowledged the liability to pay the entire amount, as claimed by the complainant in letter dated 8th April, 2015 and notice 20th April, 2015, and the acceptance of payment of a sum of Rs.1,57,75,607/- by way of full and final settlement was conditioned upon the timely payment of all the installments mentioned therein. Thus, it was specifically provided that, in the event of default in payment of any of the installments, the entire amount, as claimed by the complainant, would become due.

26. Mr. Gheewala laid particular emphasis on the following admissions in the said letter dated 4th June, 2015.

> "1. We refer to your letter dated 8th April, 2015 and notice dated 20th April, 2015.
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> 2. We hereby acknowledge our debt to you of the entire amount claimed by you under the said notice and further acknowledged that we are in default of the captioned Agreement. We further undertake and confirm to not make any claim contrary thereto in any suit or proceeding whether civil or criminal. We hereby agree and undertake to be bound by this letter in respect of the matters contained herein and to fully comply with our obligations as set out hereinafter.
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> .....
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> 6. We hereby agree, declare, confirm and undertake that in the event we fall and/or neglect to honur any of the said cheques on the respective due dates as recorded in para 4 hereinabove, you shall be entitled to take the course to such legal action as you may deem appropriate to recover the entire amount claimed by you against us in your letter dated 8th April, 2015 read with notice dated 20th April, 2015, plus interest, including by filing civil or criminal proceedings against us and/or our officers."

27. As regards, the payment of the amount, as indicated above, Mr. Gheewala would urge that, on the one hand, there was no appropriation of payments and, on the other hand, the payment which was received by the complainant, post default, can be said to be towards the discharge of the entire liability which the accused incurred under the letter of settlement. The said payment, according to Mr. Gheewala, cannot be attributed towards the amount covered by the dishonoured cheques only.

28. Evidently, it does not appear that the accused had specifically indicated the debt towards which the amount was to be appropriated. Section 59 of the Indian Contract Act provides for appropriation of payments by the debtor. Where the debtor makes a payment either with express intimation, or under circumstance implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted must be applied by the creditor to that particular debt. Section 60 of the Indian Contract Act provides that where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it, at his discretion, to any lawful debt actually due and payable to him from the debtor, whether it's recovery is or is not barred by the law of limitation. Section 61 covers a case where neither party makes any appropriation. It

provides that in such an event the payment shall be applied in discharge of debts in order of time, whether they are or are not barred by the law of limitation.

29. To appreciate the existence or otherwise of the circumstances which bear upon the appropriation of payments, in the case at hand, it may be apposite to consider the payments, in the context of the dates on which the cheques became payable, the dates on which the cheques were dishonoured, the dates of the demand notices and the statutory grace period for payment of the amounts covered by the dishonoured cheques.

Cheque No.	Amount (in Rs.)	Payable on	Amount paid & Date of receipt (in Rs.)	Cheque dishonoured on	Demand Notice Served on	Statutory time to make payment expired on
519921	50,00,000/-	20/6/2015	50,00,000/- 17/06/2015			
519922	42,75,607/-	10/7/2015	10,00,000/- 16/7/2015	27/7/2015	12/8/2015	27/8/2015
			10,00,000/- 20/7/2015			
			3,00,000/- **24/7/2015**			
			20,00,000/- **20/8/2015**			
519923	65,00,000/-	31/7/2015	10,00,000/- 24/9/2015	11/8/2015	24/8/2015	9/9/2015
			24,99,944/- 3/12/2015			
			5,00,000/- 12/1/2016			
			24,75,607/- 17/1/2-16			

30. The situation which thus obtains is that as regards the first cheque, drawn for Rs.50,00,000/-, the accused made the payment of the amount covered by the said cheque much before the said cheque became payable. As regards the second cheque payable on 10th July, 2015, part payments were made on 15th July, 2015, 20th July, 2015 and 24th July, 2015, before the second cheque was presented for encashment. It is imperative to note, at that point of time no other debt was due and payable by the accused to the complainant. The debt of Rs.65,00,000/-, as covered by the third cheque, was admittedly payable on 31st July, 2015.

31. Undoubtedly, when the accused paid the sum of Rs.20,00,000/- on 20th August, 2015, the third cheque drawn for Rs.65,00,000/- had became due and payable. However, it needs to be appreciated that by the said payment of Rs.20,00,000/- on 20th August, 2018, the accused can be said to have paid the amount covered by the second cheque i.e. Rs.42,75,607/-, within the statutory grace period prescribed by Clause "c" of the proviso to Section 138 of the N.I. Act, 1881, as the demand notice was served on 12th August, 2015. It could be thus urged that on the date the complainant lodged the complaint in respect of the dishonoured cheque No.519922, drawn for Rs.42,75,607/- (Complaint No.8222/SS/2015), the amount covered by the said

cheque was duly paid and, thus, the liability stood discharged.

32. As regards the third cheque drawn for Rs.65,00,000/-, evidently, the first payment of Rs.10,00,000/-, itself came to be made even beyond the expiry of the period prescribed under Clause "c" of the proviso of Section 138 of N.I. Act, 1881. Indisputably, the entire amount covered by said cheque, from the own showing of the accused, came to be paid after the institution of the complaint (Complaint No.8223/SS/2015) and the order of issue of process.

33. With the aforesaid clarity on facts, the judgment in the case of ***Meters and Instruments Private Limited*** (Supra) can now be consulted. In the said case, the Supreme Court had issued notice to consider the following question.

> "As to how proceedings for an offence under Section 138 of the Act can be regulated where the accused is willing to deposit the cheque amount.
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> Whether in such a case, the proceedings can be closed or exemption granted from personal appearance or any other order can be passed."

34. The Supreme Court after considering the object of the enactment of Chapter XVII of the N.I. Act, 1881, the amendment introduced thereto by the Amendment Act, 2002 and the

previous pronouncements expounding the nature of the proceeding, the object of the amendment, especially, the decisions in the cases of ***Mandvi Co-op Bank Ltd, Vs. Nimesh B. Thakore***[4] and ***Indian Bank Association and Others Vs. Union of India and Others***[5] culled out the propositions, *inter alia,* as under:

> "**18**. From the above discussion the following aspects emerge:
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> **18.1.** Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on the accused in view of presumption under Section 139 but the standard of such proof is "preponderance of probabilities". The same has to be normally tried summarily as per provisions of summary trial under Cr.PC but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 CrPC will apply and the court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.
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> **18.2.** The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the court.
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> **18.3**. Though compounding requires consent of both parties, even in absence of such consent, the court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.
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> .....
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> **19**. In view of the above, we hold that where the cheque amount with interest and costs as assessed by the court is paid by a specified date, the court is entitled to close the proceedings in exercise of its powers under Section 143 of the Act read with Section 258 CrPC. As already observed, normal rule for trial of cases under Chapter XVII of the Act

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4 2010 (3) SCC 83.

5 2014 (5) SCC 590.

> is to follow the summary procedure and summons trial procedure can be followed where sentence exceeding one year may be necessary taking into account the fact that compensation under Section 357(3) CrPC with sentence of less than one year will not be adequate, having regard to the amount of cheque, conduct of the accused and other circumstances."
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> (emphasis supplied)

35. In the said case, the Supreme Court also adverted to the issue of the legality of the discharge of an accused after the plea of the accused is recorded. The Supreme Court observed that, the statutory scheme post 2002 amendment as considered in ***Mandavi Co-operative Bank Ltd*** (supra) and ***J.V. Baharuni and another Vs. State of Gujarat and another***[6]***,*** has brought about a change in law and it needs to be recognized. After 2002 amendment, Section 143 of the Act confers implied power on the Magistrate to discharge the accused if the complainant is compensated to the satisfaction of the Court, where the accused tenders the cheque amount with interest and reasonable cost of litigation as assessed by the Court. Such as interpretation was consistent with the intention of legislature.

36. The aforesaid pronouncement, thus, enunciates in clear and explicit terms that the fact that the plea of the accused is recorded does not constitute an impediment in discharging the accused if the Court is of the view that the payment of the amount covered by the cheque along with interest and costs of

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6 2014 (10) SCC 494.

litigation subserves the ends of justice. One cannot loose sight of the fact that the dispute of non payment of the amount covered by the cheque is predominantly of a civil nature. It was with a view to lend credibility to the transactions effected through the cheques and instill a sense of confidence in commercial transactions entered on the faith of the cheque, the penal consequences, with certain safeguards, were introduced. Even where an accused either makes the payment or offers to make the payment of the amount covered by the cheque along with interest and costs of litigation, should he be prosecuted was the moot question which the Supreme Court considered and answered in the aforesaid decision.

37. It is imperative to note that in the case of ***Makwana Mangaldas Tulsidas Vs. State of Gujrath and Another,***[7] while issuing further directions, the Supreme Court adverted to the pronouncement in ***Meters and Instruments Private Ltd*** (supra) and observed *inter alia as under*.

> "**18**. In *Meters & Instruments (P) Ltd.*, this Court had also observed that the nature of offence under Section 138 primarily relates to a civil wrong. While criminalizing of dishonour of cheques took place in the year 1988 taking into account the magnitude of economic transactions today, decriminalization of dishonour of cheque of a small amount may also be considered, leaving it to be dealt with under civil jurisdiction."

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7 (2020) 4 Supreme Court Cases 695.

38. Undoubtedly the attendant circumstances of a given case are required to be taken into account while exercising the discretion to close the proceedings in exercise of the power under Section 143 of the N.I. Act read with Section 258 of the Code. The nature of the underlying transaction, the nature of the relationship between the parties; jural and otherwise, the special damages which the complainant suffered on account of the dishonour of the cheque, the existence of pressing circumstances which make the payment of the amount covered by the cheque the essence of the transaction between the parties, the circumstances in which the amount could not be paid within the grace period under clause "c" of the proviso to Section 138 of the Act, the proximity of the payment or offer of payment to the institution of the complaint and the element of the *bona fide*, are few of the factors which bear upon the decision to close the proceedings.

39. On the aforesaid touchstone, readverting to the facts of the case, as indicated above, the amount covered by second cheque drawn for Rs.42,75,607/- can be said to have been paid within the grace period provided by clause "c" of the proviso to Section 138 of N.I. Act, 1881. As regards the amount covered by third cheque, the payment appears to have been made within five

months of the expiry of the period prescribed under clause "c". The last tranche to cover the said payment was within one and half month of the order of issue of process. In the totality of the circumstances, where the first installmentt of Rs.50,00,000/- was paid, even before the first cheque became payable, the second installment was paid within the statutory grace period and third was paid after few months of the expiry of the statutory grace period, in my view, the exercise of discretion to stop the proceedings would be justifiable. It does not seem that there was lack of *bona fide* on the part of the accused in making the payments. In the course of purely commercial transaction undoubtedly the accused failed to honor the commitment under terms of the letter of settlement. Apparently, the prerequisite for issue of process for the offence punishable under Section 138 of N. I. Act, 1881, especially as regards the third cheque, can be said to have been complied with. Yet, if the entire gamut of the circumstances is considered the principles enunciated by the Supreme Court in the case of ***Meters And Instruments Pvt. Ltd.*** (supra) seem to govern the facts of the case.

40. This propels me to submission on behalf of the complainant, forcefully canvassed by Mr. Gheewala, that with the default in payment of the installments, the entire amount, as claimed by the complainant, became due and the payments

made by the accused could be legitimately attributed towards the said dues and not necessarily towards the amount covered by the cheques. In the backdrop of the clauses of the letter of settlement extracted above, the submission that the entire amount became due and payable, as per the agreement between the parties, cannot said to be without substance. The complainant may well be justified in seeking enforcement of the terms of the letter of settlement and the liability incurred thereunder. The complainant could also legitimately institute appropriate proceedings to enforce the said liability. However, this does not necessarily imply that to urge that the liability covered by the subject cheques is discharged, the accused must first pay the entire due amount. To put in other words, qua the complaints in question the barometer would be whether the amount covered by the cheques is paid or offered to be paid along with interest and costs.

41. The conspectus of aforesaid discussion is that in the facts of the case at hand since the amount covered by the dishonoured cheques is indisputably paid, the Court would be justified in invoking the power under Section 143 read with Section 258 of the Code of Criminal Procedure to close the proceedings upon payment of interest and costs of proceedings.

42. I am thus inclined to direct that the accused shall pay interest to the complainant at the rate of 18% per annum, as prescribed in Section 80 of the N.I. Act, 1881, for the period the amount covered by the respective cheques remained unpaid, and costs of the proceedings, as indicated below, within a stipulated period and upon such payment the complaints would stand disposed and accused discharged.

Sr. No.	Amount on which interest shall to be payable (in Rupees)	Duration interest for which interest shall be payable at the rate of 18% p.a.
1.	10,00,000/-	1/7/2015 to 15/7/2015
2.	10,00,000/-	1/7/2015 to 20/7/2015
3.	3,00,000/-	1/7/2015 to 24/7/15
4.	20,00,000/-	1/7/2015 to 28/8/2015
5.	10,00,000/-	31/7/2015 to 23/9/2015
6.	25,00,000/-	31/7/2015 to 2/12/2015
7.	5,00,000/-	31/7/2015 to 11/2/2016
8.	24,00,000/-	31/7/2015 to 16/2/2016
9.	75,607/-	1/7/2015 to 16/02/2016

The accused shall also pay Rs.2,00,000/- towards the costs of litigation.

43. Hence, the following order.

: ORDER :

The petitions stand allowed in the following terms:

(i) The petitioners-accused shall deposit the amount of interest and costs of litigation indicated in the table below paragraph No.42 within a period of three weeks from the

date of this order in the Court of the learned Metropolitan Magistrate.

(ii) If the accused deposit the aforesaid amount within the said period, both the complaints CC No.8222/SS/2015 and CC No.8223/SS/2015 shall stand disposed as closed under Section 143 of the N.I. Act, 1881 read with Section 258 of the Code of Criminal Procedure and the accused stand discharged.

(iii) In the event of default, the complaints would proceed in accordance with law.

(iv) Rule made absolute in the aforesaid terms.

No separate costs of these petitions.

[N. J. JAMADAR, J.]