Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 471 OF 2015
(Arising out of SLP (Crl) No. 5295 OF 2014)

HMT Watches Ltd. ... Appellant

Versus

M.A. Abida & Anr. ... Respondents

WITH

CRIMINAL APPEAL NO. 472 OF 2015
(Arising out of SLP(Crl) No. 5800 OF 2014)

J U D G M E N T

PRAFULLA C. PANT, J.

These appeals are directed against judgment and order dated 25.2.2014 passed by the High Court of Kerala in Criminal M.C. No 2366 of 2008 and Criminal M.C. No. 2367 of 2008, whereby the said Court has allowed the petitions and

quashed the proceedings of criminal complaint case Nos. 1790, 1791, 1792, 1793, 1794, 1795, 1796, 1824, 1825, 1826, 1827, 1828, 1829, 1830 and 1831 of 2007 pending in the Court of Judicial First Class Magistrate (Court No. IV), Kochi; and C.C. Nos. 1208, 1209, 1210,1211 and 1212 of 2007, pending in the Court of Judicial First Class Magistrate (Court No. III), Kochi. All these criminal complaint cases were pertaining to offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the N.I. Act").

2. We have heard learned counsel for the parties and perused the papers on record.

3. Succinctly stated, the appellant filed criminal complaint cases against respondent – M.A. Abida stating that as many as 57 cheques dated 28.09.2006 were issued by her in discharge of outstanding liability towards the complainant/appellant (HMT Watches Ltd.). When the cheques were presented for collection the same were received back, dishonoured by bankers with the

endorsement – “payment stopped by the drawer”. Notice of demand dated 9.10.2006 was issued by the complainant to the respondent no.1 but she failed to make the payment of the amount mentioned in the cheques, i.e., total Rs.1,79,86,357/-. Instead, she sent reply to the notice disputing liability to pay. On this, complainant filed twenty criminal complaints mentioned above, against the respondent no.1 with regard to the offence punishable under Section 138 of the N.I. Act.

4. The accused – M.A. Abida filed Criminal M.C. No. 2366 of 2008 and Criminal M.C. No. 2367 of 2008 challenging the proceedings initiated by the complainant on the ground that she was Re-Distribution Stockist (RDS) of watches manufactured by the appellant. The business with the appellant was done till September, 2003 on “cash and carry” basis. The accused further pleaded in the petitions filed before the High Court under Section 482 of the Code of Criminal Procedure, that after 2003 the appellant company used to collect cheques towards the amount covered by

distinct invoices with respect to various consignments for securing payment of amount covered by the invoices.

5. The High Court accepted the plea of the accused (respondent no.1) and quashed the criminal complaint cases. Hence, these appeals through special leave.

6. On behalf of the appellant, it is argued before us that the High Court committed a grave error of law in quashing the proceedings of the criminal complaint cases on the factual pleas taken by the respondent no.1. On the other hand, learned counsel for the respondent no.1 contended that since the cheques were given as security, as such there was no liability to make the payment, and the ingredients of the offence punishable under Section 138 of the N.I Act were not made out.

7. Section 138 of the Negotiable Instruments Act, 1881 reads as under:

> **"138. Dishonour of cheque for insufficiency, etc., of funds in the accounts.** - 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 provisions of this Act, be punished with imprisonment for "a term which may extend to two 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 thirty days" of the receipt of information by him from the bank regarding the return of the cheques 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 purpose of this section, "debt or other liability" means a legally enforceable debt or other liability."

8. Section 139 of the Negotiable Instruments Act, 1881 provides that there shall be a presumption in favor of holder of a cheque as to the debt or liability. It reads as under:

> "**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, or any debt or other liability."

9. Section 140 of the Negotiable Instruments Act, 1881 prohibits what cannot be a defence in a prosecution in respect of offence punishable under Section 138 of the N.I. Act. It reads as under:

> **"140. Defence which may not be allowed in any prosecution under section 138.** - Defence which may not be allowed in any prosecution under section 138 It shall not be a defence in a prosecution of an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section."

10. Having heard learned counsel for the parties, we are of the view that the accused (respondent no.1) challenged the proceedings of criminal complaint cases before the High Court, taking factual defences. Whether the cheques were given as security or not, or whether there was outstanding

liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under Section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties. The High Court further erred in observing that Section 138(b) of N.I. Act stood uncomplied, even though the respondent no.1 (accused) had admitted that he replied the notice issued by the complainant. Also, the fact, as to whether the signatory of demand notice was authorized by the complainant company or not, could not have been examined by the High Court in its jurisdiction under Section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it.

11. In ***Suryalakshmi Cotton Mills Limited* v. *Rajvir Industries Limited and others***[1], this Court has made

[1] (2008) 13 SCC 678

following observations explaining the parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure: -

> "**17.** The parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is now well settled. Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of the well-known legal principles involved in the matter.
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> xxx xxx xxx
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> **22.** Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of process of court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain

matters, both civil proceedings and criminal proceedings would be maintainable.'

12. In ***Rallis India Limited* v. *Poduru Vidya Bhushan and others***[2], this Court expressed its views on this point as under:-

> "**12.** At the threshold, the High Court should not have interfered with the cognizance of the complaints having been taken by the trial court. The High Court could not have discharged the respondents of the said liability at the threshold. Unless the parties are given opportunity to lead evidence, it is not possible to come to a definite conclusion as to what was the date when the earlier partnership was dissolved and since what date the respondents ceased to be the partners of the firm."

In view of the law laid down by this Court as above, in the present case High Court exceeded its jurisdiction by giving its opinion on disputed questions of fact, before the trial court.

13. Lastly, it is contended on behalf of the respondent no.1 that it was not a case of insufficiency of fund, as such, ingredients of offence punishable under Section 138 of the N.I.Act are not made out. We are not inclined to accept the

[2] (2011) 13 SCC 88

contention of learned counsel for respondent no.1. In this connection, it is sufficient to mention that in the case of **Pulsive Technologies P. Ltd**. vs. **State of Gujarat[3],** this Court has already held that instruction of "stop payment" issued to the banker could be sufficient to make the accused liable for an offence punishable under Section 138 of the N.I. Act. Earlier also in **Modi Cements Ltd.** vs. **Kuchil Kumar Nandi**[4], this Court has clarified that if a cheque is dishonoured because of stop payment instruction even then offence punishable under Section 138 of N.I. Act gets attracted.

14. For the reasons as discussed above, we find that the High Court has committed grave error of law in quashing the criminal complaints filed by the appellant in respect of offence punishable under Section 138 of the N.I. Act, in exercise of powers under Section 482 of the Code of Criminal Procedure by accepting factual defences of the accused which were disputed ones. Such defences, if taken before

[3] (2014) 9 SCALE 437
[4] (1998) 3 SCC 249

trial court, after recording of the evidence, can be better appreciated.

15. Therefore, for the reasons, as discussed above, these appeals deserve to be allowed. Accordingly, the appeals are allowed. The impugned order dated 25.2.2004 passed by High Court of Kerala in Criminal M.C. Nos. 2366 of 2008 and 2367 of 2008 is hereby quashed. The trial court shall proceed with the trial in the criminal complaint cases. It is clarified that we have not expressed our opinion as to correctness of the defence pleas taken by the respondent no.1. No order as to costs.

.....J.
[Dipak Misra]

.....J.
[Prafulla C. Pant]

New Delhi;
March 19, 2015