



CNR: KAHC010163442021

NC: 2026:KHC:55295
WP No. 7557 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

WRIT PETITION No.7557 OF 2021 (GM-RES)

BETWEEN:

BIJENDER SINGH LATHER
EX-TREASURER
AGED MAJOR,
P D MEMORIAL RELIGIOUS AND EDUCATIONAL
ASSOCIATION,
HAVING OFFICE AT SECTOR-3A,
SARAI AURANGABAD,
BAHADURGARH,
HARYANA -124507

...PETITIONER

(BY SMT MONICA PATIL, ADVOCATE)

AND:

IBM INDIA PVT. LTD.,
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT 1956,
HAVING ITS REGISTERED OFFICE
AT SUBRAMANYA ARCADE-12,
BANNERGHATTA MAIN ROAD,
BENGALURU-560029
REPRESENTED BY ITS MANAGER,
ACCOUNTS RECEIVABLES AND AUTHORIZED
SIGNATORY MR VENUGOPAL R

...RESPONDENT

(BY SMT.PUJA PRIYADARSHINI, FOR SRI. THOMAS
VELLAPALLY, ADVOCATES)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA R/W SECTION 482
CODE OF CRIMINAL PROCEDURE PRAYING TO QUASH THE

Digitally
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MANJUNATHA
Location:
HIGH COURT
OF
KARNATAKA



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ENTIRE PROCEEDINGS IN C.C.NO.15378/2018 PENDING ON THE FILE OF XVII ADDL. JUDGE COURT OF SMALL CAUSE AND ACMM MAYO HALL UNIT AT BENGALURU AND CONSEQUENTLY QUASH THE IMPUGNED ORDER OF COGNIZANCE DATED 17.09.2018 VIDE ANNEXURE-A AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

Heard Smt.Monica Patil, learned counsel for the petitioner and Smt.Puja Priyadarshini, advocate for Sri Thomas Vellapally, learned counsel for the respondent.

2. Petition under Articles 226 and 227 of the Constitution of India r/w Section 482 of the Code of Criminal Procedure with the following prayer:

"Quash the entire proceedings in C.C.No.15378/2018 as against the instant petition arrayed as accused No.3 in the said proceedings pending on the file of XVII Addl. Judge Court of Small Causes and ACMM, Mayo Hall Unit at Bengaluru and consequently quash the impugned Order of cognizance dated 17.09.2018 (Annexure-A)"

3. Petitioner is accused No.3 in C.C.No.15378/2018 which is pending adjudication for the offence punishable under Section



CNR: KAHC010163442021

138 of the Negotiable Instruments Act on the file of the XVII Additional Senior Civil Judge and Additional Chief Metropolitan Magistrate, Bengaluru.

4. Shorn of unnecessary details, the factual matrix of the case would read as under:

4.1 In respect of alleged financial liability of P.D.Memorial Religious and Educational Association (hereinafter referred to as 'Association' for short) having its office in the State of Haryana and registered office at Bengaluru, issued a cheque in favour of respondent/IBM India Pvt. Ltd.

4.2 Admittedly, said cheque on presentation returned with an endorsement 'payment stopped by drawer'.

4.3 A legal notice came to be issued demanding for the amount covered under cheque to be made good as is contemplated in Section 138(b) of the Negotiable Instruments Act. Notice was addressed to M/s P.D. Memorial Religious and Educational Association and Sri Joginder Singh Lather/accused No.2.



CNR: KAHC010163442021

5. There was no compliance to the callings of the legal notice and as such, criminal prosecution was lodged by filing a private complaint in PCR No.55444/2016.

6. Learned Trial Magistrate after completing the necessary formalities, took cognizance of the offence by placing reliance on the judgment of the Hon'ble Apex Court in the case of ***Indian Bank Association and others vs. Union of India and others*** reported in ***(2014)5 SCC 590*** and then issued the process.

7. Petitioner/accused No.3 has challenged the order taking cognizance and summoning the present petitioner on the following grounds:

- *That the ingredients of Section 138 of the Negotiable Instruments Act, 1881 have not been fulfilled to fasten liability on the Petitioner. Section 138 specifically provides that 'nothing contained in this section shall apply unless' and enlists certain conditions including that at (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 cheque within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid." Such*



CNR: KAHC010163442021

being the case, when the mandatory requirement under Section 138 is not complied with, a complaint under the said provision is not maintainable. This Hon'ble Court thus ought to intervene and prevent further abuse of the process of law.

- *That the Complaint does not make out a case as to how the Petitioner has been in charge of the business activities of the Association and as to how the Petitioner had specific knowledge of the alleged transactions. Merely making bald averments in the manner as has been done in the Complaint, without detailing the role played by the Petitioner would demonstrate that the Petitioner is merely arrayed as an arm twisting tactic and the same amounts to an abuse of the process of law.*
- *That it is trite law that any director of a company who was not in-charge or involved in day to day affairs of the Company during the alleged transactions, was completely unaware of such transactions, cannot be held vicariously liable for the acts of the company. In light of the same the Petitioner cannot be held liable for the alleged offence. Hence, owing to the said ground, the entire proceedings are liable to be quashed.*
- *That since the Respondent had failed to comply with the mandates of Section 138 of the NI Act, the Trial Court could not have taken cognizance of the complaint. The order of cognizance is thus bad in law.*
- *In view of the foregoing, the order of cognizance, the Complaint instituted and the consequent proceedings*



CNR: KAHC010163442021

against the Petitioner are unsustainable in law and liable to be quashed. In these circumstances, subjecting the Petitioner to face any proceedings relating to the aforementioned cheques will amount to an abuse of process. The entire proceedings are fraught with serious consequences and cannot be done in such a casual manner. It is hence imperative for this Hon'ble Court to intervene and protect the rights of the Petitioner."

8. Smt.Monica Patil, learned counsel for the petitioner reiterating the grounds urged in the petition, would contend that no notice was issued to the present petitioner. As such, the order taking cognizance as against the present petitioner has resulted in grave miscarriage of justice and sought for allowing the petition.

9. She would further contend that the petitioner is an ex-Treasurer of the Association. Therefore, he is not personally liable as he has acted as per the instructions of Joginder Singh Lather/accused No.2. As such, continuation of the criminal proceedings against the present petitioner is nothing but futile exercise and abuse of process of law and sought for allowing the petition.



CNR: KAHC010163442021

10. *Per contra*, Smt.Puja Priyadarshini, advocate representing Sri Thomas Vellapally, learned counsel for the respondent would support the impugned order.

11. She would contend that legal notice was addressed to the Association. No separate notice is necessary to the petitioner as he is the drawer of the cheque and Treasurer of the Association and thus sought for dismissal of the petition.

12. Having heard the arguments of both sides this Court perused the material on record meticulously.

13. Admittedly, cheque was signed by the present petitioner in the capacity of the Treasurer of the Association. The Association had authorized the present petitioner to sign the cheques of the Association as well.

14. Being the Treasurer, petitioner was aware of the financial health of the Association before issuing the cheque in question. Moreover, 'stop payment' instruction is issued to the banker of the Association.



CNR: KAHC010163442021

15. It is settled principles of law and requires no emphasis that if 'stop payment' is to be acted upon by the banker of the Association, it is necessary that sufficient balance be kept as on the date of the presentation of the cheque to the bank.

16. These aspects of the matter need to be adjudicated before the jurisdictional Magistrate in accordance with law.

17. At the most, if the contention of the petitioner that he acted as per the instructions of Joginder Singh Lather who is accused No.2, petitioner would be exonerated from the criminal liability in the proceedings before the Trial Court.

18. Reserving liberty to the petitioner to urge all the available defences in accordance with law before the Trial Magistrate as the respondent/complainant enjoys the presumption under Section 139 of the Negotiable Instruments Act, in view of the dictum of the Hon'ble Apex Court in the case of **Rajesh Jain vs. Ajay Singh** reported in **(2023) 10 SCC 148** and **Kuntegowda vs. Thurubaiah** reported in **2026 SCC OnLine SC 1485**, this Court does not find any good grounds whatsoever to allow the petition.



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19. Accordingly, the following:

ORDER

- (i) Petition ***dismissed.***
- (ii) All contentions are kept open to be urged in the trial in accordance with law.
- (iii) In view of dismissal of the petition, pending applications if any, stand consigned to record.

**Sd/-
(V SRISHANANDA)
JUDGE**

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List No.: 1 Sl No.: 64
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