

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRI. WRIT PETITION NO. 2373 OF 2014**

M/s. Laliput Kidswear Ltd., & Ors. ... Petitioners.

V/s.

M/s. Siyaram Silk Mills Ltd., & Anr. ... Respondents.

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**WITH**

**CRI. WRIT PETITION NO. 2412 OF 2014**

M/s. Laliput Kidswear Ltd., & Ors. ... Petitioners.

V/s.

M/s. Siyaram Silk Mills Ltd., & Anr. ... Respondents.

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Mr. Kapil Dave i/by M.D. Pareek, Advocate for the Petitioners.

Mr. Jatin P. Shah, Advocate for Respondent No.1.

Mrs. P. P. Bhosale, APP for the State.

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**CORAM : M.L.TAHALIYANI,J.**

**DATE : 23 JANUARY, 2015**

**P.C. :**

1            Heard learned counsel appearing for the parties and the learned additional public prosecutor for the State. Parties to both the petitions are same.

2            In both the petitions, the Petitioners are facing trial for the offences punishable under section 138 read with 141 of the Negotiable Instruments Act in a criminal case no.

1441/SS/2012 and 1442/SS/2012 in the court of Metropolitan Magistrate, 7<sup>th</sup> Court at Dadar.

3           The cheques have been dishonoured by the bankers of the Petitioners on the ground that the account has been blocked by the Income Tax Authorities. I have gone through the letter issued to the Bank by the Income Tax Authorities. I find nothing in the letter which amounts to blockage of the accounts. More over during the course of arguments when a query was made by the court as to whether the amount equivalent to the cheques amount was available in the bank account of the petitioners. There was no answer to the query of the court. Moreover the offence punishable under section 138 of the Negotiable Instruments Act is not complete only on the dishonour of the cheque. It is completed when amount is not paid despite expiry of the notice period. It is an admitted position that the Petitioners did not pay the amount despite the notice.

4           It is submitted by the learned counsel for the Petitioners that the Petitioners had overdraft facility and therefore, the Petitioners were under impression that the cheques would be honoured. Respondent No.1 is not supposed to know the exact limit of overdraft facility available to the petitioner. If the cheques were dishonoured despite there being overdraft facility, it was for the petitioners to see

that the cheques were again deposited and were honoured or at least the amount was paid after receipt of the notice within the statutory period. In view thereof, I do not find any infirmity in the order of the learned Magistrate. Similarly, there is no infirmity in the order passed by the learned additional Sessions Judge, who rejected the revision application.

5           At this stage, the learned counsel for the Petitioners states that the Petitioner No. 5 had resigned before issuance of the cheques. The learned counsel Mr. Jatin Shah had no objection for giving concession to Petitioner No.5.

6           In view of the above discussion, I pass the following order.

- i.       Proceedings pending against the Petitioner No.5 in both the Petitions for the offence punishable under section 138 of the Negotiable Instruments Act in Criminal Case No. 1441/SS/2012 and 1442/SS/2012, pending in the court of learned Metropolitan Magistrate, 7<sup>th</sup> Court at Dadar, stand quashed.
- ii.      Petition of Petitioner Nos. 1 to 4 stands dismissed.

iii. Both the Petitions are hereby disposed of accordingly.

(JUDGE)

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