IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2629 OF 2014

Information TV Pvt. Ltd.
a company duly incorporated
and registered under the
provisions of the Companies Act, 1956
having its registered office at 275,
Picadilly House, 1st floor,
Capt. Gaur Marg, Srinivaspuri,
Delhi 110 065 and also at
Media House, 276, Capt Gaur Marg,
Srinivas puri, Delhi 110065

2. Shri Kartikeya Sharma
Director of
Information TV Pvt. Ltd.
a company duly incorporated
and registered under the
provisions of the Companies Act, 1956
having its registered office at 275,
Picadilly House, 1st floor,
Capt. Gaur Marg, Srinivaspuri,
Delhi 110 065 and also at
Media House, 276, Capt Gaur Marg,
Srinivas puri, Delhi 110065 ..Petitioners

v/s.

Sasangi Engineering (Bombay)
Pvt. Ltd., having its
registered office at
Ramchandra Lane Extn.

Valani (Orlem), Malad (West),
Mumbai 400 064

2. State of Maharashtra
(through Public Prosecutor
High Court (AS), Bombay. ..Respondents

Mr. Subhash Jha i/b. Law Global for the Petitioner.
Mr. A.H. Ponda for the respondent no.1
Mrs. R.V. Newton, APP for the Respondent/State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : OCTOBER 12, 2015

JUDGMENT.

1. Rule. Rule made returnable forthwith. By consent of parties. Petition is taken up for hearing.

2. This is petition under Section 226 r/w. 482 of Cr.P.C. to set aside the order of issuing process under Section 138 of the Negotiable Instruments Act in Complaint C.C.No.2036/SS/2012, pending before the 43rd Court, Borivali, Mumbai.

3. The respondent no.1 company is the owner of the building

situated at Plot No.26 (part) Ramchandra Lane Extension, Valani, (Orlem), Malad (West), Mumbai. The respondent no.1 complainant in C.C.No.2036/SS/2012 has alleged that the petitioner no.1 company (Accused no.1) (hereinafter referred to as accused no.1 company) was in need of premises to operate the office of their TV Channel and interview studio. The petitioner-accused no.1 had therefore requested the respondent-complainant to provide 3300 sq.ft. of constructed area. After entering into negotiations the leave and licence agreement was entered between the respondent no.1 complainant and the accused no.1 company, by virtue of which physical possession of the said premises was given to the accused no.1 company, initially for 33 months commencing from 16.12.2007 on payment of license fees at the rate of Rs.37,500/- per month. The term of leave and license agreement was extended for further period of 27 months commencing from 16.9.2010. In terms of the agreement, the petitioner no.2 (Accused no.2) had forwarded 22 post dated cheques towards the license fee, after deducting the statutory deduction. By letter dated 19.3.2012 one Abhishek Sharma informed the complainant company that the agreement was being terminated as mutually agreed upon w.e.f. 15.4.2012. The respondent-complainant responded to the said letter and requested the accused no.2 to provide them with copy of the authority of Abhishek Sharma to draft such letter. The petitioner-accused no.1 company submitted that no such authorization letter was issued. The physical possession of the premises continued to be with the accused no.1 company, and the possession of the said premises was handed over to the complainant company on 28.9.2012 by virtue of the order passed by the Small Causes Court, in L.C. Suit No.85 of 2002.

4. The respondent-complainant had stated that the accused no.1 company was in possession of the said premises for the period of 27 months from 16.9.2010 to 15.12.2012 and hence it was constrained to deposit the cheque no.850125 dated 16.8.2012 for Rs.337500/- towards the license fee for the said period. The said cheque was dishonoured with endorsement “payment stopped by drawer”. The respondent-complainant issued statutory notice to the accused nos.1 and 2 on the office address as well as the residential address.

However, the same were returned unserved. As a matter of abundant precaution the complainant also sent the notice vide e-mail dated 28.9.2012. Since the accused no.1 did not repay the cheque amount, the respondent-complainant filed complaint under Section 138 of the Negotiable Instruments Act.

5. Shri Jha,the learned Counsel for the petitioner-accused no.1 has submitted that the leave and license agreement was terminated vide letter dated 19.3.2012 and the complainant company was called upon to take possession of the premises on 15.4.2012 and to refund the security deposit along with 8 post dated cheqeus issued towards the license fees.

6. Mr.Jha, the learned counsel for the petitioner, relied upon the judgment of the Apex Court in the case of ***Indus Airways Pvt. Ltd. & Ors. vs. Magnum Aviation Pvt. Ltd. & Anr. 2014(12) SCC 539.*** He submits that the drawer of the cheque in discharge of the existing or past adjudicated liability is sine qua non for bringing the offence

under Section 138 of N.I.Act. The learned counsel for the petitioner has submitted that in view of the termination of the said agreement, no legally enforceable debt was subsisting on the date of the subject cheque and as such the accused cannot be prosecuted under Section 138 of the Negotiable Instruments Act.

7. Shri Ponda, the learned Counsel for the respondent has submitted that the two petitions arising out of the same transaction have already been dismissed by this Court. He has further submitted that the accused no.1 company was in possession of the premises till September 2012 and the cheque was issued towards the license fee during the said period. He, therefore, claims that the decision of the Apex Court in Indus Airways Pvt. Ltd. (supra) is not applicable to the facts of the present case.

8. I have perused the record and considered the submissions advanced by the learned Counsel for the respective parties. At the outset it may be mentioned that one of the essential ingredients of Section 138 is that the cheque should be drawn for the discharge of

any debt or other liability. In the case of ***Indus Airways Pvt. Ltd. vs. Magnum Aviation Pvt. Ltd. 2014 LawSuit (SC) 252,*** the Apex Court has held as under:

> *"13. The explanation appended to Section 138 explains the meaning of the expression 'debt or liability' for the purpose of Section 138. This expression means a legally enforceable debt or other liability. Section 138 treats dishonoured cheque as an offence, if the cheque has been issued in discharge of any debt or other liability. The explanation leave no manner of doubt that to attract an offence under Section 138, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque. In other words, the drawal of the cheque in discharge of existing or past adjudicated liability is sine qua non for bringing an offence under Section 138. If a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise, and material or goods for which purchase order was placed is not supplied, in our considered view, the cheque cannot be held to have been drawn for an existing debt or liability."*

The said principles are not applicable to the facts of the present cse, as a perusal of the complaint prima facie reveals that the complainant company and the accused no.1 company had entered into leave and license agreement whereby the built up area of 3300 sq.ft was given on leave an license basis to the accused no.1. The said leave and license was initially for a period of 33 months which was extended for further period of 27 months from 16.9.2010 to 15.12.2012. It is not in dispute that the accused no.1 company had handed over the post dated cheques to the complainant company towards the license fees. The subject cheque was one of the said post dated cheques which came to be dishonoured. The averments made in the complaint prima face reveal that the said cheque was issued towards the license fee for the month of 16.8.2012 to 15.9.2012. Relying upon the letter dated 19.3.2012 the accused no.1 company has contended that the leave and license agreement was terminated w.e.f. 15.4.2012. The complainant company has disputed the authority of Abhishek Sharma to terminate the agreement and has further contended that the accused no.1 company had continued to be in possession of the premises and that the possession was taken from the accused no.1 company only on 28.9.2012 by virtue of the order dated 28.9.2012 of Small Causes Court No.33, Bandra. In view of these disputed facts, the question whether the cheques were issued towards the license fee for the month of September, 2012 is an issue which needs to be decided on merits, and the complaint cannot be quashed on the basis of the said disputed letter.

9. It is also pertinent to note that the petitioner herein had filed similar petitions being Criminal Writ Petition No.89 of 2013 and 3031 of 2013, arising from the same transaction and had raised the similar ground. Both these petitions were dismissed by this court by order dated 19.3.2013 and 4.4.2014. The present petition is replica of the earlier petitions and I find no reason to take a view different from the view taken in the previous petitions.

10. In the circumstances, the petition has no merits and is hereby dismissed.

11. At this juncture, learned Counsel for the petitioner prays to stay the order for a period of four weeks. Learned Counsel for the respondent opposes the same.

12. Prayer for stay is rejected.

(ANUJA PRABHUDESSAI, J.)