

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 908 of 2016**

1. Frigate Teknologies Private Limited, 2nd Floor, A-1550, Green Field, Faridabad-121003, Haryana
2. Anirban Bhattachariya S/o H. Bhattachariya (Ex-Managing Director) Frigate Teknologies Pvt. Ltd. R/o Flat No.-262, G.H.-23, Sector-21C, Part-III, Power Grid Residency, Faridabad- 121001, Haryana
3. Parminder Singh Vasir S/o Late Jaswant Singh Vasir (Operations Director) Frigate Teknologies Pvt. Ltd. R/o Flat No.-231, Power Grid Residency, G.H.-23, Sector-21C, Faridabad- 121001, Haryana
4. Ajay Kumar Hooda S/o Chander Singh Hooda (Marketing Director) Frigate Teknologies Pvt. Ltd. R/o House No.-433, Block- C1, Palam Vihar, Gurgaon- 122017, Haryana

---- Petitioners**Versus**

Systems India through its Partner Vikram Jhamb, S/o Sushil Kumar Jhamb, R/o- 9-C, Light Industries Area, Bhilai-490026, Chhattisgarh

---- Respondent

For Petitioners	:	Shri A. V. Shridhar, Advocate
For Respondent	:	Shri P. R. Patankar, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****04/01/2017**

The present petition under Section 482 CrPC has been preferred seeking for quashment of the entire criminal proceedings in Criminal Complaint No. 480/2012 pending before the JMFC, Durg.

2. Facts in brief are that the respondent herein carries on business of steel and aluminium fabrication who had received a purchase order from the petitioners' establishment for supply of steel and aluminium structure. Against the said purchase order, the petitioners' establishment had issued four cheques valuing Rs.62,15,366/- in favour of the respondent. Subsequently, when the said cheques were presented for clearance, they were dishonoured on account of stop payment at the instance of the

petitioners. After necessary formalities required under Section 138 of Negotiable Instrument Act, a complaint was lodged before the JMFC, Durg where the case was registered as Criminal Complaint No. 480 of 2012. The petitioners 2 to 4 entered appearance before the Court below and had taken bail as early as in the year 2014. Charges were also framed on 12.05.2014 and thereafter the matter was fixed for evidence of the complainant-respondent.

3. Meanwhile, the petitioners had moved an application raising objection that the Court at Durg was not having the territorial jurisdiction for considering the complaint. The said objection was rejected by the trial Court which was also subjected to revision before the Sixth Additional Sessions Judge, Durg in Criminal Revision No. 55 of 2013. The Revisional Court also rejected the revision petition on 12th March, 2014 upholding the order of the JMFC that the complaint is maintainable at Durg.

4. Thereafter the evidence of the complainant-respondent was recorded and closed on 06.08.2016 and since then the matter is getting adjourned for recording of the evidence of the petitioners who have been repeatedly taking time since then. While the matter was fixed before the Court below for recording of the evidence of the accused petitioners, the present CrMP was filed before this Court on 4th August, 2016.

5. Counsel for the petitioners submits that the prayer in the present petition is for quashment of the entire criminal proceedings pending before the JMFC, Durg. According to him, since there is no limitation expressly provided under the Code of Criminal Procedure, the petition seeking for quashment of criminal proceedings can be filed at any stage including at the time of recording of the evidence. According to the counsel for the petitioners, the term 'any stage' means it can be at any time before the final judgment is passed. Therefore, counsel for the petitioners prays that

this Court invoking the provisions of Section 482 CrPC can set aside the entire criminal proceedings pending before the JMFC, Durg.

6. Counsel for the petitioners submits that on merit, the petitioners have a very good case as the necessary ingredients required under Section 138 of NI Act are not made out and therefore the complaint itself at the threshold should have been rejected by the Court below. He submits that though the cheques had been issued by the petitioners but before the cheques could have been presented for clearance on account of some misunderstanding between the petitioners and their banker i.e. HDFC bank of which the cheques were issued, the account was closed. This fact was brought to the notice of the respondent immediately and even before presentation of the cheques with a note that in case the post dated cheques are handed over back to the petitioners, they were ready and willing to discharge their obligations by issuing fresh cheques. However, a legal notice as is required under Section 138 NI Act was issued to the petitioners to which the petitioners immediately replied bringing the aforesaid facts to the notice of the respondent yet the respondent did not take any action as per the advice note given by the petitioners and went on further filing of the complaint case under Section 138 of NI Act.

7. According to the petitioners, once under the peculiar facts and circumstances of the case the petitioners themselves had closed the bank account, the question of presentation of the post dated cheques does not arise at all particularly when the respondent had been intimated to the closure of the bank account. It was also intimated to the respondent that they may come and collect the money which is payable to the respondent subject to their returning the post dated cheques. Counsel for the petitioners submits that it is a case where no criminal offence to the alleged act on the part of the petitioners in closing of their bank account is

made out. Thus, prayed for quashment of the entire criminal proceedings in Criminal Complaint No. 480/2012.

8. So far as the delay in filing of the present petition is concerned, counsel for the petitioners relied upon the decision of the Delhi High Court in the case of **Enforcement Directorate Vs. Ajay Bakliwal** reported in **2003 CRLJ 1813** wherein it has been enumerated by the Delhi High Court that object of Section 482 CrPC is to prevent abuse of process of any Court or otherwise to secure the ends of justice. It has been further held that there was no period of limitation prescribed for availing the remedy under Section 482 CrPC and merely because the revision petition was filed at a belated stage can not provide colour of legality to an order which is patently illegal or suffers from the abuse of process of any court.

9. Counsel for the respondent vehemently opposes the petition on the ground that the same has been filed at a much belated stage and therefore, does not warrant any interference. He submits that the complaint was filed as early as on 09.08.2012 and from 2012 to August 2016 the petitioners never thought of seeking quashment of the entire criminal prosecution itself. He submits that it is a case where the trial itself has reached to the fag end stage i.e. at the stage of recording of the statement of the accused and at this stage, it would not be proper for this Court to invoke the extraordinary powers under Section 482 CrPC and hold a roving enquiry or a mini trial to reach to a conclusion whether the offence under Section 138 NI Act is made out or not. He further submits that it is a case where the records which have been produced before the Court below sufficiently show that they had prima facie brought the necessary ingredients as required under Section 138 of NI Act. The four cheques admittedly were issued by the petitioners to the respondent and the signatures on the cheques are also not in dispute. The cheques being dishonoured on account of the stop payment at the instance of the

petitioners, the subsequent issuance of legal notice and the reply which has been submitted by the petitioners in response to the legal notice are also not in dispute. Counsel for the petitioner submits that since it is a final stage of trial, the Court below should be left to reach to the logical conclusion of the criminal case and therefore prayed for rejection of the present petition.

10. It is all the more pertinent to mention that the alleged commercial transaction between the petitioners and the respondent is not in dispute in as much as the issuance of the purchase order by the petitioners and the supply made by the respondent on the said supply order though the petitioners had alleged that the product was not upto the specification which was ordered for.

11. Having considered the rival contentions put forth by the counsel appearing on either side and on perusal of the record and also taking into consideration the admitted position as is reflected in the preceding paragraphs, this Court at this stage of trial does not think it proper for holding a roving enquiry or a mini trial to reach to a conclusion whether the offence under Section 138 NI Act against the petitioners is made out or not? Once when the trial itself has proceeded substantially, it should be left for the trial Court to reach to a conclusion whether an offence against the petitioners is made out or not.

12. So far as the judgment of the Delhi High Court is concerned, the same has been passed under entirely different contractual background which in the facts of the present case is quite distinguishable. It is pertinent to mention at this juncture that the charges in the present case were framed as early as on 12.05.2014 and the petitioners did not think it proper even to challenge the charges which were framed almost 2 ½ years ago and now they woke up from their slumber for quashment of the entire

criminal proceedings which in the opinion of this Court is not proper and justified.

13. Thus, the present CrMP being devoid of merit deserves to be and is accordingly dismissed.

**Sd/-
(P. Sam Koshy)
JUDGE**