IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRM No.M-232 of 2017 (O&M)

M. Sukumar Reddy and others

...Petitioners

VERSUS

State of Haryana and another

...Respondents

(ii) CRM No.M-606 of 2017 (O&M)

M. Sukumar Reddy and others

...Petitioners

VERSUS

State of Haryana and another

...Respondents

Date of Decision: December 21, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vinod S. Bhardwaj, Advocate
for the petitioners.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

Mr.R.S.Rai, Senior Advocate with
Mr.V.K.Sachdeva, Advocate
for respondent No.2.

****

INDERJIT SINGH, J.

Both the above-mentioned cases are taken up together as the point for determination in both the case is the same.

Petitioners have filed these petitions under Section 482 Cr.P.C.

for quashing criminal complaint No.2565 dated 21.08.2015 in CRM No.M-232 of 2017 (hereinafter referred to as '1st complaint) and complaint No.2564 dated 21.08.2015 in CRM No.M-606 of 2017 (hereinafter referred to as '2nd complaint) titled as 'India Bulls Housing Finance Ltd. vs. M/s Deccan Chronicle Holding Limited and others' pending in the Court of learned Judicial Magistrate Ist Class, Gurgaon under Sections 138,141 and 142 IPC of the Negotiable Instruments Act as well as summoning orders along with consequential proceedings arising therefrom.

From the record, I find that India Bulls Housing Finance Services Ltd. filed complaints against M/s Deccan Chronicle Holdings Limited and other accused including the present petitioners under Sections 138, 141 and 142 of the Negotiable Instruments Act and Section 357 of Cr.P.C. As per the allegations in the complaints, cheque bearing No.064296 dated 01.12.2012 for ₹1,75,78,517/- was issued in 1st complaint and cheque No.063357 dated 01.12.2012 for ₹1,70,49,998/- was issued in 2nd complaint in favour of the complainant, which on presentation for encashment, were dishonoured and returned vide memos dated 03.12.2012. It is further stated in the complaints that the cause of action arose for filing the complaints when the aforesaid cheques were dishonoured. Legal notices were issued. When the amount was not paid, then the complaints were filed.

Vide impugned orders dated 22.03.2013 (in 1st complaint) and 11.01.2016 (in 2nd complaint) learned JMIC, Gurgaon, summoned the accused.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

At the time of arguments, learned counsel for the petitioners argued that these complaints are liable to be quashed as the present petitioners have already resigned as Directors on 08.12.2012.

On the other hand, learned counsel for respondent No.2. contested these petitions and argued that offence was committed when the cheques were dishonoured and present petitioners have resigned after the commission of the offence under Section 138 of the Negotiable Instruments Act.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that the only dispute between the parties is that as to when the cause of action arose in the present cases. The Three Judges' Bench of the Hon'ble Supreme Court in ***Dashrath Rupsingh Rathod vs. State of Maharashtra and anothers, 2014(3) RCR (Criminal) 904***, has held as under:-

> *"30. MSR Leathers (supra) also looked at Section 138 and held that a complaint could be filed under Section 138 after cause of action to do so had accrued in terms of clause (c) of the proviso to Section 138 which happens no sooner the drawer of the cheque fails to make the payment of the cheque amount to the payee within fifteen days in terms of clause (b) to proviso to Section 138. MSR Leathers was not so much concerned with the question whether the proviso stipulated ingredients of the offence or conditions precedent for filing a complaint. It was primarily concerned with the question whether the second or successive dishonour followed by statutory notices and failure of the drawer to make payment could be made a basis for launching prosecution against the drawer. That question, as noticed above, was answered in the affirmative holding that successive cause of action could arise if there were successive dishonours followed by statutory notices as required under the law and successive failure of the drawer to make the payment. MSR Leathers cannot, therefore, be taken as an authority for determining whether the proviso stipulates conditions precedent for launching a prosecution or ingredients of the offence punishable under Section 138. Sadanandan Bhadran may have been overruled to the extent it held that successive*

causes of action cannot be made a basis for prosecution, but the distinction between the ingredient of the offence, on the one hand, and conditions precedent for launching prosecution, on the other, drawn in the said judgement has not been faulted. That distinction permeates the pronouncements of this Court in Sadanandan Bhadran and MSR Leathers. High Court of Kerala has, in our view, correctly interpreted Section 138 of the Act in ***Kairali Marketing & Processing Cooperative Society Ltd. V. Pullengadi Service Cooperative Ltd., 2007(1) RCR (Criminal)569; 2007(1) RCR (Civil) 443; (2007) 1 KLT 287*** *when it said:*

"It is evident from the language of Section 138 of the N.I. Act that the drawer is deemed to have committed the offence when a cheque issued by him of the variety contemplated under Section 138 is dishonoured for the reasons contemplated in the Section. The crucial words are "is returned by the bank unpaid". When that happens, such person shall be deemed to have committed the offence. With the deeming in the body of Section 138, the offence is already committed or deemed to have been committed. A careful reading of the body of Section 138 cannot lead to any other conclusion. Proviso to Section 138 according to me only insists on certain conditions precedent which have to be satisfied if the person who is deemed to have committed the offence were to be prosecuted successfully. The offence is already committed when the cheque is returned by the bank. But the cause of action for prosecution will be available to the complainant not when the offence is committed but only after the conditions precedent enumerated in the proviso are satisfied. After the offence is committed, only if the option given to avoid the prosecution under the proviso is not availed of by the offender, can the aggrieved person get a right or course of action to prosecute the offender. The offence is already deemed and declared but the offender can be prosecuted only when the requirements of the proviso are satisfied. The cause of action for prosecution will arise only when the period stipulated in the proviso elapses without payment. Ingredients of the offence have got to be distinguished from the conditions precedent for valid initiation of prosecution."

The stipulations in the proviso must also be proved certainly before the offender can be successfully prosecuted. But in the strict sense they are not ingredients of the deemed offence under the body of Section 138 of the N.I. Act, though the said stipulations; must also be proved to ensure and claim conviction. It is in this sense that it is said that the proviso does not make or unmake the offence under Section 138 of the N.I. Act. That is already done by the body of the Sections. This dispute as to whether the stipulations of the proviso are conditions precedent or ingredients/components of the offence *under Section 138 of the N.I. Act may only be academic in most cases. Undoubtedly the ingredients stricto sensu as also the conditions precedent will have to be established satisfactorily in all cases. Of course in an appropriate case it may have to be considered whether substantial compliance of the conditions precedent can be reckoned to be sufficient to justify a conviction. Be that as it may, the distinction between the ingredients and conditions precedent is certainly real and existent. That distinction is certainly vital while ascertaining complicity of an indictee who faces indictment in a prosecution under Section 138 with the aid of Section 141 of the N.I. Act. That is how the question assumes such crucial significance here."*

31. To sum up:

(i) An offence under Section 138 of the Negotiable Instruments Act, 1881 is committed no sooner a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank.
(ii) Cognizance of any such offence is however forbidden under Section 142 of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date the cause of action accrues to such payee or holder under clause (c) of proviso to Section 138.
(iii) The cause of action to file a complaint accrues to a complainant/payee/holder of a cheque in due course if
(a) the dishonoured cheque is presented to the drawee bank within a period of six months from the date of its issue.
(b) If the complainant has demanded payment of cheque amount within thirty days of receipt of information by him from the bank regarding the dishonour of the cheque and
(c) If the drawer has failed to pay the cheque amount within fifteen days of receipt of such notice.
(iv) The facts constituting cause of action do not constitute the ingredients of the offence under Section 138 of the Act.
(v) The proviso to Section 138 simply postpones/defers institution of criminal proceedings and taking of cognizance by the Court till such time cause of action in terms of clause (c) of proviso accrues to the complainant.
(vi) Once the cause of action accrues to the complainant, the jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonoured.
(vii) The general rule stipulated under Section 177 of Cr.P.C applies to cases under Section 138 of the Negotiable Instruments Act. Prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the Court within whose jurisdiction the dishonour takes place

> *except in situations where the offence of dishonour of the cheque punishable under Section 138 is committed along with other offences in a single transaction within the meaning of Section 220(1) read with Section 184 of the Code of Criminal Procedure or is covered by the provisions of Section 182(1) read with Sections 184 and 220 thereof."*

In the present case, it is admitted fact between the parties that the cheques in question were issued when the present petitioners were Directors of the company. It is also admitted fact that cheques were dishonoured when the present petitioners were the Directors. In view of the law laid down by the Hon'ble Supreme Court in ***Dashrath Rupsingh Rathod's case (supra)***, the offence under Section 138 of the Negotiable Instruments Act was committed when the cheques were dishonoured. Therefore, it cannot be held that when the offence was committed, the present petitiones were not the Directors. The present petitioners resigned as Directors on 08.12.2012 i.e. after commission of the offence. No other point has been argued.

Therefore, finding no merit in both the petitions, the same are dismissed.

December 21, 2017 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **No**