IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4500 OF 2015

1) Rajendra Govindji Khona ...Petitioners.
Age-65 years, Indian Inhabitant,
Occ: Business, permanently residing
at 15, Girivihar, 2nd Floor, K.A.
Subramaniam road, King Circle,
Mumbai 400 019

2) M/s. Darshan Group,
a partnership firm, duly registered
and incorporated under the
Partnership Act, 1932, having its
office at 101, Sundar Apartment,
Lesbit Road, Mazgaon, Mumbai-400
010.

3) Chandulal Veerchand Jain,
Age 64 years, Indian inhabitant,
Occ:- Business, permanently residing
at Kalpataru Apartment, Love Lane,
Byculla, Mumbai 400 008.

Versus

1) Bharat Vijayraj Pandya,
Age : 39 years, Occ:- Business,
permanently residing at 30/A,
Champagali, 2nd Floor, Near M.J.
Market, Mumbai- 400 002.

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

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Mr. Subhash Jha a/w Ms Ruchita Jain i/b. M/s. Law Global for the Petitioner.
Mr. Mukesh Modi for the Respondent No.1.
Mr. P.H. Gaikwad, APP for the Respondent No.2-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

JUDGMENT RESERVED ON : 17th APRIL, 2018.
JUDGMENT PRONOUNCED ON :3rd MAY, 2018

JUDGMENT :-

The present petition impugns the order dated 16th October, 2015, whereby the learned Additional Sessions Judge, Greater Bombay dismissed the revision application No. 956 of 2015 and thus confirmed the order dated 11th November, 2014 issuing process against the petitioners for offences under Section 420, 467, 471, r/w. 34 of the Indian Penal Code.

2. Brief facts necessary to decide this petition are as under:- The petitioners are the accused in Complaint No.4700079/SW/2014 filed by the Respondent No.1 in the Court of Addl. Chief Metropolitan Magistrate's 47th Court, at Esplanade, Mumbai. The Respondent No.1 shall be hereinafter referred to as the 'complainant' and the Petitioner shall be referred to as the 'accused'. The complainant is one of the Directors of M/s. Indospin Filati Limited (the Company). The complainant had alleged that the accused No.1 is a broker in raw cotton market. The Company had purchased raw cotton from several persons, including M/s. Mahavir Ginning and Pressing Factory,

introduced by the accused No.1.

3. The Company of the complainant had purchased 96 bales of cotton from M/s. Mahavir Ginning and Pressing Factory under two invoices being Invoice No.551 and 552 dated 13th April, 2011 for Rs.27,19,446/- and Rs.27,03,401/- respectively. The Company had handed over to the accused No.1 two post dated, signed Blank cheques bearing nos.962246 and 962247, towards security for payment of price under the said invoices. The complainant claims that between 8.6.2011 and 6.1.2012 the company paid Rs.1,21,23,956/- to M/s.Mahavir Ginning & Pressing Factory. The said amount included the price of cotton bales under invoice Nos.551 and 552.

4. The complainant alleged that the accused No.1 did not return the said two cheques, but handed over the said two cheques to the accused Nos.2 and 3. The accused Nos.2 and 3 inserted the details such as date, amount and the name of the payee that of the accused No.1 and presented the same to the bank for encashment. The said cheques were dishonoured and as a consequence thereof the accused No.2 filed a complaint under Section 138 of the N.I. Act, being complaint No. 17707 of 2012 against the complainant-Director of the

Indospin Company and other Directors.

5. The complainant claimed that the company did not have any business transactions with the accused Nos.2 and 3 and that the company had not issued the said cheques in favour of the accused No.2 towards payment of any liability. The complainant claimed that the accused had forged the cheques and deposited the same in the bank with an intention of cheating the Company.

6. Upon considering the allegations made in the complaint, the verification statement, report under Section 202 of Cr.P.C. as well as the other document placed on record, the learned Magistrate issued process for offences punishable under Sections 420, 467, 471 r/w. 34 of the IPC. Being aggrieved by this order the accused filed revision before the Additional Sessions Judge, Greater Bombay, which came to be dismissed by the impugned order.

7. Mr. Jha, the learned counsel for the accused contends that the complaint is nothing but a counter blast to the complaint filed by the accused under Sec. 138 of the NI Act. He has submitted that there is inordinate delay in filing the complaint besides the complaint does not disclose the essential ingredients of the offence. He has relied upon

Hriday Ranjan Prasad Verma & Ors. Vs. State of Bihar and Anr., (2004) 9 SCC 168, Anjani Kumar Vs. State of Bihar and Anr., (2008) 5 WSCC 248, Eicher Tractor Ltd. & Ors. vs. Harihar Singh and Anr., (2008) 16 SCC 763, Mahindra & Mahindra Financial Services Ltd. & Anr. Vs. Rajiv Dubey (2009) 1 SCC 706, D.P. Guati Manager Accounts Jetking Infotrain Ltd. Vs. State of Uttar Pradesh & Anr. (2015) 11 SCC 730, Vijay Shekhar & Anr. Vs. Union of India and Ors. (2004) 4 SCC 666 and Kishan Singh Vs. Gurpal Singh and Ors.(2010), 8 SCC 775.

8. In ***Hriday Ranjan Prasad Verma*** (supra), the Apex Court has reiterated the principles laid down in the case of ***State of Haryana and Ors.Vs. Bhajan Lal, 1992 SCC (Cr.)426*** and has held as under:

> "8. In the case of State of Haryana and Others v. Bhajan Lal and Others, [1992] Supp. 1 SCC 335, this Court in the back drop of interpretation of various relevant provisions of the Code of Criminal Procedure under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice, making it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercise :
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> (1) Where the allegations made in the first information

report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) xxx

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) xxx

9. In the decision this Court added a note of caution to the effect that the power of quashing a criminal proceeding should be exercised 'very sparingly and with circumspection and that too in the rarest of rare cases'.

10. The principles laid down in this decision have been followed in several decisions of this Court like [1995] 5 SCC 194 Rupan Deal Bajaj (Mrs.) and another v. Kanwal Pal Singh Gill and another, [1999] 3 SCC 259; Rajesh Bajaj v. State NCT of Delhi and Others , [1992] 2 SCC 651; State of Kerala and Others v. O.C. Kuttan and Others, [1996] 9 SCC 1 and P.S. Rajya v. State

of Bihar, [1996] 2 SCC 194 State of Orissa v. Bansidhar Singh.”

9. Upon applying principles laid down in the earlier decisions the Apex Court held that the averments made in the said complaint, even if, were accepted in its entirety and the allegations were considered to be true, the complaint did not disclose the essential ingredients of the offence and hence, quashed the complaint and the proceedings initiated on the basis of the same.

10. In the instant case, the averments made in the complaint prima facie indicate that the accused No.1 is a broker in raw cotton market. The complainant had placed orders with several companies including Mahavir Ginning and Pressing Factory, introduced by the accused No.1. The complaint further states that the he had handed over to the accused No.1 blank signed cheques as security deposits towards payment of the money towards raw cotton bales purchased from M/s. Mahavir Ginning and Pressing Factory, the company introduced by the accused No.1. These cheques were to be returned to the complainant on making payment to the said company.

11. The complaint prima facie indicates that the two subject cheques were issued towards the payment of cotton bales purchased

from M/s. Mahavir Ginning and Pressing Factory. The complaint further indicates that the complainant had paid the money as indicated in invoice Nos.551 and 552 and as such the accused No.1 was required to return the said two cheques. The complainant had called upon the accused to return the subject cheques. The averments made in the complaint further indicates that accused No.1 had not returned the cheques but had in fact handed over the cheques to accused Nos.2 and 3, with whom the complainant had absolutely no business dealings. The complainant has alleged that the accused Nos.2 and 3 have misused the said cheques, by entering the details in the cheque and presenting the cheques in the bank with a fraudulent intention of cheating the complainant. It is further alleged that the accused had filed a complaint under Section 138 of the NI Act on the basis of the said forged cheques.

12. The records prima facie indicate that by notice dated 13.6.2012, which was issued much prior to the presentation of the cheques to the Bank, the complainant had called upon the accused No.1 to return the blank signed post dated cheques including the subject cheques, which were issued as security of payment of price. Though the accused No.1 had replied to the said notice by reply dated

16.6.2012, there is no specific denial that the complainant had issued the signed blank cheques as security towards payment of raw cotton bales. It is also to be noted that by notice dated 7.11.2012 issued under Section 138 of the Negotiable Instruments Act, the accused had informed the complainant about the dishonour of the cheuqe and called upon them to pay the said cheque amount. Said notice states that the complainant had issued the subject cheques towards the price of the cotton bales supplied by the accused.

13. The complainant had replied to the said notice vide reply dated 12.12.2012, wherein he had denied having approached M/s. Darshan Group-a partnership firm, for supply of cotton bales. The complainant had stated that there was no business relationship with the M/s. Darshan Group. The complainant had specifically stated that these cheques were handed over to accused No.1 Rajendra Khona and that he had misused the said cheques by handing over the same to M/s. Darshan Group.

14. It is pertinent to note that the accused No.2- M/s. Darshan Group had replied to the said notice vide reply dated 22.12.2012, wherein it had admitted that the complainant had purchased cotton bales from M/s. Mahavir Ginning and Pressing Factory. It was alleged

that upon receipt of the goods the complainant had issued cheques in favour of M/s. Mahavir Ginning and Pressing Factory. Since the said two cheques were returned unpaid with the remark "insufficient funds", the owner of M/s. Mahavir Ginning and Pressing Factory had approached the complainant and that the complainant had sought a week's time to make further payment. It was alleged that the complainant had approached M/s. Darshan Group of companies and requested for temporary hand loan. Since Devendrabhai Challani owner of M/s. Mahavir Ginning and Pressing Factory was in need of money, the complainant convinced M/s. Darshan Group to pay the said amount to M/s. Mahavir Ginning and Pressing Factory on its behalf. It is alleged that M/s. Darshan Group had paid the amount to M/s. Mahavir Ginning and Pressing Factory on behalf of the complainant. It is stated that the two subject cheques were issued towards repayment of said hand loan.

15. As stated earlier, a perusal of the complaint prima facie indicates that there was no business relationship with the complainant and M/s. Darshan Group. The complaint prima facie indicates that the cheques were issued as security deposits. The notice dated 7.11.2012 issued under Section 138 of the Negotiable Instruments Act as well as

the complaint under Section 138 of the NI Act proceeds on the basis that the subject two cheques were issued towards the price of cotton bales supplied to the complainant by M/s. Darshan Group whereas the reply dated 22.12.2012 prima facie supports the contention of the complainant that he had not purchased any cotton bales from M/s. Darshan Group and that there was no business transaction between him and the accused. Thus, prima facie there is variance in the stand taken in the complaint under Section 138 of the NI Act vis-a-vis reply dated 22.12.2012.

16. It is also pertinent to note that the complaint under section 138 of the NI Act has been dismissed on merits, with findings that the accused in the said case had rebutted the presumption that the said cheques were issued towards discharge of liability. Under the circumstances, prima facie, the complaint cannot be considered to be a counter blast to the proceedings under Section 138 of the NI Act. Hence, the decisions relied upon by the learned counsel for the accused are not applicable to the facts of the case.

17. The case does not come under any of the categories enumerated in ***Bhajan Lal*** (supra). Furthermore, this is not a stage to analyse the case of the complainant and to assess the material in order

to determine whether a conviction is sustainable. It is well settled that the Court while exercising powers under Article 226 of the Constitution or Section 482 of the Cr.P.C., has to adopt a very cautious approach. In the instant case, the averments in the complaint and the other material, prima facie discloses the essential ingredients of offence. Hence, at this stage the powers under Article 226 of the Constitution of India cannot be exercised to stifle a legitimate prosecution.

18. In view of the reasons stated above the petition is dismissed. It is however, clarified that the above observations are limited to the order of taking congnizance and issuance of process and not an expression on merits of the case. The learned Magistrate shall decide the case on its own merits and in accordance with law without being influenced by the above observations.

(SMT. ANUJA PRABHUDESSAI, J.)