IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 763 OF 2001

1. Magic Creation Pvt. Ltd & Anr.)
its Registered Office at 43, Thakur Vas,)
Near Bhudreshwar Mahadev Mandir,)
Bhudarpura Gam, Amdavad 386006)

2. Rajendra Somsinh Zala,)
an adult Indian Inhabitant,)
Occupation – Director of Magic)
Creation Pvt. Ltd.,)
Residing at 1542, Somvila Society,)
Theltej road, Daskroi,)
District Ahmedabad)
and also having his office at 43,)
Thakur Vas, Near Bhudreshwar Mahadev)
Mandir, Bhudreshwar Gam)
Amdavad – 386 006.) .. Petitioners
(Org. Accused No.6 & 7)

Versus

1. Satish Shreedhar Modak Karta &)
Manager of Satish S. Modak HUF)
a Hindu residing at 1041, Belscot Tower,)
Lokhandwala Complex, Andheri (W),)
Mumbai 400 056.) .. Respondents

2. Anil Shankarlal Patel,)
An adult, Indian Inhabitant,)
residing at Stella Tower Bunglow,)
Lokhandwala Complx, Andheri (W))
Mumbai 400 053.)

3. Devendra Shantilal Patel)
An adult, Indian Inhabitant,)
residing at 3-A, Vrindavan Society No.2)
H.K. Marg, Malyan, Dahanu Road,)
Dist. Thane.)

4. Pravin Shah,)
An adult, Inhabitant,)
At C/1013, Station Plaza, Station Road,)
Bhandup (W) Mumbai 400 067.)

5. Ramesh Kotian,)
An adult, Indian Inhabitant,)
having his office address at)
230, New Appolo Industrial Estate, Mogra)
Lane, Andheri (E) Mumbai 400 069.)

6. Vinod Mhatre,
An adult, Indian Inhabitant,)
having his office address at)
230, New Appolo Industrial Estate, Mogra)
Lane, Andheri (E) Mumbai 400 069.)

7. Patel Polymers Pvt. Ltd.)
Its registered address at 8, Nahar Parekh)
Industrial Estate No.2, Collage Road,)
Vadkun, Dahanu Road, Tal. Dahanu,)
Dist. Thane.)

8. Devendra Shantilal Patel)
An adult, Indian Inhabitant,)
Director, Polymers Pvt. Ltd.)
having his address at)
Industrial Estate No.2, Collage Road,)
Vadkun, Dahanu Road, Tal. Dahanu,)
Dist. Thane.)

9. Electron Industries Ltd.)
having his office address at)
230, New Appolo Industrial Estate, Mogra)
Lane, Andheri (E) Mumbai 400 069.)

10. Anil Shankar Patel)
An adult, Indian Inhabitant,)
Director, Electron Industries Ltd.)
having his office address at)
230, New Appolo Industrial Estate, Mogra)
Lane, Andheri (E) Mumbai 400 069.)

11. Kirshore Shankarlal Patel,)
an adult, Hindu India,)
Inhabitant, residing at 21,Sanjay Park)
Row House, Behind Sundravan, Satellite)
Road, Ahmedbad, 380 015.)
and also having his business office)
at 43, Thakur Vas, Near Bhudreshwar)
Mahadev Mandir, Bhudreshwar Gam,)
Amdavad 386 006.)

12. Messers Electron Textile)
230, New Appolo Industrial Estate, Mogra)
Lane, Andheri (E) Mumbai 400 069.)

13. Bank of India)
at M.G.Road, Fort, Mumbai and a)
Branch office known and described as)
SSI Andheri East Branch, at Mathuria)
Apartments 49, Sir M.V. Road,)
Andheri (E) Mumbai 400 069.)

14. G.L.N. Shastry,)
Branch Manager, SSI Andheri)
Branch, at Mathuria Apartments)
(E) Mumbai 400 069.)

15. The State of Maharashtra) ..Respondents.
(Org. Complainant
Accused No.s 1 to
9, 11, and 13 to
15.)

WITH
CRIMINAL WRIT PETITION NO. 764 OF 2001

1. Patel Polymers Pvt. Ltd.)
Its registered address at 8, Nahar Parekh)
Industrial Estate No.2, Collage Road,)
Vadkun, Dahanu Road, Tal. Dahanu,)
Dist. Thane.)

2. Devendra Shantilal Patel)
An adult, Indian Inhabitant,)

Director, Polymers Pvt. Ltd.)
having his address at)
Industrial Estate No.2, Collage Road,)
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Dist. Thane.) .. Petitioners
(Org. Accused
No.6 & 7)

Versus

1. Satish Shreedhar Modak Karta &)
Manager of Satish S. Modak HUF)
a Hindu residing at 1041, Belscot Tower,)
Lokhandwala Complex, Andheri (W),)
Mumbai 400 056.) .. Respondents

2. Anil Shankarlal Patel,)
An adult, Indian Inhabitant,)
residing at Stella Tower Bunglow,)
Lokhandwala Complx, Andheri (W))
Mumbai 400 053.)

3. Devendra Shantilal Patel)
An adult, Indian Inhabitant,)
residing at 3-A, Vrindavan Society No.2)
H.K. Marg, Malyan, Dahanu Road,)
Dist. Thane.)

4. Pravin Shah,)
An adult, Inhabitant,)
At C/1013, Station Plaza, Station Road,)
Bhandup (W) Mumbai 400 067.)

5. Ramesh Kotian,)
An adult, Indian Inhabitant,)
having his office address at)
230, New Appolo Industrial Estate, Mogra)
Lane, Andheri (E) Mumbai 400 069.)

6. Vinod Mhatre,)
An adult, Indian Inhabitant,)
having his office address at)
230, New Appolo Industrial Estate, Mogra)
Lane, Andheri (E) Mumbai 400 069.)

7. Electron Industries Ltd.)
having his office address at)
230, New Appolo Industrial Estate, Mogra)
Lane, Andheri (E) Mumbai 400 069.)

8. Anil Shankar Patel)
adult, Indian Inhabitant,)
Director, Electron Industries Ltd.)
having his office address at)
230, New Appolo Industrial Estate, Mogra)
Lane, Andheri (E) Mumbai 400 069.)

9. Magic Creation Pvt. Ltd & Anr.)
its Registered Office at 43, Thakur Vas,)
Near Bhudreshwar Mahadev Mandir,)
Bhudarpura Gam, Amdavad 386006)

10. Kirshore Shankarlal Patel,)
an adult, Hindu India,)
Inhabitant, residing at 21,Sanjay Park)
Row House, Behind Sundravan, Satellite)
Road, Ahmedbad, 380 015.)
and also having his business office)
at 43, Thakur Vas, Near Bhudreshwar)
Mahadev Mandir, Bhudreshwar Gam,)
Amdavad 386 006.)

11. Rajendra Somsinh Zala,)
an adult Indian Inhabitant,)
Occupation – Director of Magic)
Creation Pvt. Ltd.,)
Residing at 1542, Somvila Society,)
Theltej road, Daskroi,)
District Ahmedabad)
and also having his office at 43,)
Thakur Vas, Near Bhudreshwar Mahadev)
Mandir, Bhudreshwar Gam)
Amdavad – 386 006.)

12. Messers Electron Textile)
230, New Appolo Industrial Estate, Mogra)
Lane, Andheri (E) Mumbai 400 069.)

13.	Bank of India at M.G.Road, Fort, Mumbai and a Branch office known and described as SSI Andheri East Branch, at Mathuria Apartments 49, Sir M.V. Road, Andheri (E) Mumbai 400 069.	))))))
14.	G.L.N. Shastry, Branch Manager, SSI Andheri Branch, at Mathuria Apartments (E) Mumbai 400 069.	))))
15.	The State of Maharashtra	) ..Respondents. (Org. Complainant Accused Nos. 1 to 5 and 8 to 15.)

WITH
CRIMINAL WRIT PETITION NO. 836 OF 2001

1.	Kirshore Shankarlal Patel, an adult, Hindu India, Inhabitant, residing at 21,Sanjay Park Row House, Behind Sundravan, Satellite Road, Ahmedbad, 380 015.	))))) .. Petitioners (Org. Accused No.11)

Versus

1.	Satish Shreedhar Modak Karta & Manager of Satish S. Modak HUF a Hindu residing at 1041, Belscot Tower, Lokhandwala Complex, Andheri (W), Mumbai 400 056.	))))) .. Respondents
2.	Anil Shankarlal Patel, An adult, Indian Inhabitant, residing at Stella Tower Bunglow, Lokhandwala Complx, Andheri (W) Mumbai 400 053.	)))))

3. Devendra Shantilal Patel)
An adult, Indian Inhabitant,)
residing at 3-A, Vrindavan Society No.2)
H.K. Marg, Malyan, Dahanu Road,)
Dist. Thane.)

4. Pravin Shah,)
An adult, Inhabitant,)
At C/1013, Station Plaza, Station Road,)
Bhandup (W) Mumbai 400 067.)

5. Ramesh Kotian,)
An adult, Indian Inhabitant,)
having his office address at)
230, New Appolo Industrial Estate, Mogra)
Lane, Andheri (E) Mumbai 400 069.)

6. Vinod Mhatre,)
An adult, Indian Inhabitant,)
having his office address at)
230, New Appolo Industrial Estate, Mogra)
Lane, Andheri (E) Mumbai 400 069.)

7. Patel Polymers Pvt. Ltd.)
Its registered address at 8, Nahar Parekh)
Industrial Estate No.2, Collage Road,)
Vadkun, Dahanu Road, Tal. Dahanu,)
Dist. Thane.)

8. Devendra Shantilal Patel)
An adult, Indian Inhabitant,)
Director, Polymers Pvt. Ltd.)
having his address at)
Industrial Estate No.2, Collage Road,)
Vadkun, Dahanu Road, Tal. Dahanu,)
Dist. Thane.)

9. Electron Industries Ltd.)
having his office address at)
230, New Appolo Industrial Estate, Mogra)
Lane, Andheri (E) Mumbai 400 069.)

10. Anil Shankar Patel)
adult, Indian Inhabitant,)

Director, Electron Industries Ltd.)
having his office address at)
230, New Appolo Industrial Estate, Mogra)
Lane, Andheri (E) Mumbai 400 069.)

11. Magic Creation Pvt. Ltd & Anr.)
its Registered Office at 43, Thakur Vas,)
Near Bhudreshwar Mahadev Mandir,)
Bhudarpura Gam, Amdavad 386006)

12. Rajendra Somsinh Zala,)
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Occupation – Director of Magic)
Creation Pvt. Ltd.,)
Residing at 1542, Somvila Society,)
Theltej road, Daskroi,)
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13. Messers Electron Textile)
230, New Appolo Industrial Estate, Mogra)
Lane, Andheri (E) Mumbai 400 069.)

14. Bank of India)
at M.G.Road, Fort, Mumbai and a)
Branch office known and described as)
SSI Andheri East Branch, at Mathuria)
Apartments 49, Sir M.V. Road,)
Andheri (E) Mumbai 400 069.)

15. G.L.N. Shastry,)
Branch Manager, SSI Andheri)
Branch, at Mathuria Apartments)
(E) Mumbai 400 069.)

16. The State of Maharashtra) ..Respondents.
(Org.Complainant,
Accused Nos. 1 to
10 and 12 to 15).

Mr. R.R.Sharma for Petitioners.
Mr. P.H.Gaikwad, APP for State.

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CORAM : PRAKASH D. NAIK, J.
Date of Reserving the Judgment : 19th July, 2018
Date of Pronouncing the Judgment : 7th June, 2019.

JUDGMENT :-

1 The petitioners have invoked the writ jurisdiction of this Court under Article 227 of the Constitution of India and inherent powers under Section 482 of Criminal Procedure Code. The petitioners have challenged the criminal proceedings initiated by respondent No.1 vide Criminal Case No.10/S/2001 vide private complaint before the Court of Metropolitan Magistrate 10th Court, at Andheri, Mumbai.

2 The petitioners in Writ Petition No.763/2001 were impleaded as accused No.10 and 12 in the impugned complainant. Where as the petitioners in Writ Petition No. 764/2001 were accused No.6 and 7 and petitioner in Writ Petition No.836 of 2001 was arraigned as accused No.11. The complaint was filed alleging offences under Sections 403, 405, 463, 464, 477A, 192, 193, 120A 120B, 201, 202, 425, 426 read with Section 34 of Indian Penal Code. The complaint was filed on 09-02-2001.

3 The brief allegations spelt out in the complaint are as follows.

a) Accused No.1 is proprietor of M/s. Electron Industries Ltd. (Accused No.13). He *de facto* manages affairs of Patel Polymers Pvt. Ltd. (Accused No.6). He is also director of Electron Industries Ltd (Accused No.8), Accused No.2, 7 and 11 are cousins of the Accused No.1. They are directors of Accused No.6 and Magic Creation Pvt. Ltd. (Accused No.10). Accused No.12 is director of Accused No.10. Accused No.4 and 5 are employees of accused No.1 and his associated companies. Accused No.14 is a banking company. Accused No.15 is employee of Accused No.14. Accused No.3 is the Chartered Accountant.

b) The complainant was conducting proprietary business of trading in Textile Chemicals and other materials in the name and style of Perfect Trading. In the year 1990 complainant joined Electron Textile Exports Pvt. Ltd. as marking executive. The said company is now known as Patel Polymers Pvt. Ltd. (Accused No.6) The accused No.6 is a manufacturer and trader in Textile Chemicals.

c) The Accused No.3 is a Chartered Accountant. He used to represent accused No.1, 2, 6 and 8 for their assessments before the Income

Tax, Sales Tax, and other authorities. He was also engaged by the complainant to represent in his Income Tax and Sales Tax Assessments and other matters.

d) The complainant was made director of Laser Exports Pvt. Ltd. in which accused No.1 and his father-in-law were directors. The complainant had liberty to use the office premises situated at 230, New Apollo Industrial Estate, Mogra Lane, Andheri (E) Mumbai 400 069. The complainant used to manage, conduct and operate business affairs of his proprietary concern namely Perfect Trading from the said office.

e) Accused No.4 and 5 were employees of Accused No.6 and Accused No.1. Some where in 3rd week of August 2000, the complainant received notice from income tax about scrutiny of books of account of M/s. Perfect Trading for assessment year 1999-2000. Since complainant was busy, he had instructed Accused No.3 to attend the department. The Accused No.3 had stated that, he would request Accused No.4 to prepare statement from the books of account of M/s. Perfect Trading for presenting the same to the income tax department. The complaint requested Accused No.4 to arrange the sent to Cheque Book in spite of bank account of

Perfect Trading with Bank of India to the residence of complainant. The complainant was to leave for business tour.

f) The complainant learnt that the Cheque book was not delivered by Accused No.4 at his residence. Accused No.4 gave an evasive reply to the complainant and stated that he could not locate the Cheque book of Perfect Trading. The complainant reported the loss of Cheque book to the police on 19-09-2000 containing Cheques bearing No.094527 onwards and also addressed a letter to the Bank of India. The complainant also issued letter to Accused No.14 Bank of India to freeze the account of Perfect Trading.

g) The complainant learnt that, the cheque issued in favour of Accused No.6 was presented for encashment and the same was dishonoured on 12-09-2000. The complainant forwarded letter to Accused No.6 informing that a police complaint has been lodged about loss of cheque. The letter was received by accused No.6. The reply dated 10-11-2000 was addressed through their advocate by Accused No.6.

h) The accused hatched a conspiracy and in terms of the conspiracy one blank cheque No. 094530 drawn on Bank of India, Andheri signed inadvertently by the complainant and left in the office at

230, New Apollo Industrial Estate, Mogra Lane, Andheri (East) Mumbai was forged by Accused No.4 at the behest of Accused No. 1, 2, 6, and 8 and the sum of Rs. 71,17,132.90/- was incorporated in the cheque by incorporating the name of Patel Polymers Private Ltd. as payee of the said amount. The cheque was allegedly issued on 02-09-2000. The Accused also forged letter head of M/s Perfect Trading by preparing confirmation latter dated 02-09-2000 to show that M/s Perfect Trading was due and liable to pay the aforesaid amount against business transactions allegedly carried between Perfect Trading and Accused No.6.

i) Accused No.6 filed a Criminal Case bearing No. 538/2000 in the Court of Judicial Magistrate First Class, Dahanu. The letter dated 02-09-2000 was part of the said complaint. The said letter was fabricated. The business of Perfect Trading was dissolved on 31-03-2000.

j) The Accused No.1 to 4, 10, 11, 12 had also stolen signed cheque bearing No.094531. The name of Accused No.10 was incorporated as payee of the said cheque by also mentioning the amount of Rs. 92,40,000/- in the said cheque. The complainant received notice dated 08-01-2001 from the advocate of Accused No.10. The complainant was not liable to pay in amount to the payee.

k) The Accused have forged and fabricated documents and committed various penal offences as stated in the complaint.

4 The complainant had relied upon the documents which were annexed to the complaint. In pursuance of filing of the complaint, verification statement was recorded. The Learned Metropolitan Magistrate vide Order dated 09-03-2001 issued process against the accused under Sections 403, 405, 403, 463, 464, 477A, 201, 202, 420, 425, 426, 192, 120A, 120B read with Section 34 of the IPC on the ground that there is sufficient ground to proceed against the accused. The Trial Court thereafter issued summons to the accused.

5 Learned advocate for the petitioners submitted that, the Learned Magistrate has mechanically issued process against the accused. The complaint is false and frivolous. The complaint has been filed as a counter blast for denying the liabilities. The cheques issued by the complainant for an amount of Rs.92,40,000/- and Rs.71,17,132.90/- were dishonoured. The said cheques were issued in discharge of liability. The offences alleged in the complaint are not made out. Continuation of the proceeding initiated by the respondent

No.1 would amount of abuse of Process of Law. In exercise of jurisdiction under Article 227 of the Constitution of India and inherent power of this court under Section 482 of Code of Criminal Procedure the proceedings be caused.

6 Learned Advocate for the petitioners further submitted that, the proceedings initiated for offences under Section 138 of Negotiable and Instrument Act in relation to cheque issued for an amount of Rs.92,40,000/- had resulted in conviction. Appeal preferred by the respondent No.1 was dismissed and the revision application challenging the orders of Lower Court was preferred before the High Court of Gujrat at Ahmadabad which was admitted subject to condition that the respondent No.1 shall deposit 15% amount of the cheque before the Court.

7 The contention of petitioners in Criminal Writ Petition No. 763 of 2001 is that the Petitioner No.1 has sold and delivered to complainant goods during the period of October 2000 to December 2000 as per the requirement and orders placed by the complainant. The petitioners have relied upon the copies of relevant invoices of the goods delivered and received by the complainant which has been annexed to the petition. In respect of the said supply of goods, the

amount of Rs. 92,40,000/- was due and payable by the complainant issued Cheque No.094531 dated 16-12-2000 for the amount of Rs. 92,40,000/- in favor of the petitioners. The said cheque was issued in favor of the petitioner No.1 Magic Creation Private Ltd. On presentation the same was dishonoured on 03-01-2001. The intimation of dishonour was received from the bankers on 03-01-2001. The petitioners therein through their advocate sent notice dated 08-01-2001 calling upon respondent No.1 to make the payment of the amount under the said cheque. The notice was received by respondent No.1 and he also forwarded reply dated 31-01-2001. The petitioner No.1/Accused No10 filed Criminal complaint before the Court of Metropolitan Magistrate at Ahmadabad which was registered as Criminal Case No.342 of 2001 on 09-02-2001 for the offence under Section 138 of Negotiable Instrument Act on account of dishonour of Cheque No. 094531 for an amount of Rs. 92,40,000/-.

8 The petitioners in Criminal Writ Petition No. 764 of 2001, preferred by Accused No. 6 & 7, contends that the Petitioner No.1/Accused No.6 in the course of its business sold and delivered to the complainant textile goods during the period from 03-10-1999 to 30-02-2000 as per the requirements and orders placed by respondent

No.1 at the instance of Perfect Traders. Reliance is placed on invoices of the goods delivered and received by the complainant. The amount of Rs.71,17,132.90/- was due and payable by the complainant to the petitioner and in acknowledgement of the payment, the Cheque bearing No. 094530 dated 02-09-2000 for an amount of Rs.71,17,132.90/- in favour of Accused No.6. The said Cheque was presented with the bank and the same was dishonoured. Intimation was received on 12-09-2000. Demand notice was issued to the respondent No.1 calling upon him to make the payment. Notice was received by respondent No.1. The respondent No.1 failed to make payment. The notice was not replied. Complaint was filed in the Court of Judicial Magistrate First Class, Dahanu being Criminal Case No. 538/2000 against the respondent No.1 for offences under Section 138 of Negotiable Instrument Act. The process was issued against respondent No.1, discharge application was filed by respondent No.1 contending that the statutory notice has not been served upon him. No other ground was raised. There is no reference of theft of cheque or forgery of documents or denying the liability of the amount. The complaint was filed with *malafide* intention to put pressure upon the petitioners.

9 The petitioner in Criminal Writ Petition No. 836 of 2001 is being impleaded as accused No.11. It is submitted that, he was surprised to find his name as the accused in complaint filed by respondent No.1. He never had any transaction with respondent No.1, no offence is disclosed against him. No averment in complaint showing his complicity. The process has been issued mechanically.

10 The respondent No.1 has filed affidavit in reply in Criminal Writ Petition No. 763 of 2001 and 764 of 2001. In the reply it is stated that the petitioner in Writ Petition No. 763/2001 has filed Civil Summery Suit No. 5696 of 2001 in the City Civil Court at Ahmadabad and had obtained *ex-party* decree against the complainant. However, the said decree was set aside and the complainant was granted an unconditional leave to defend the said suit. In the meanwhile the *ex-party* decree came to be transferred for execution. Execution proceedings were filed in the Court of Civil Judge Senior Division at Thane which are pending. It is further stated that subsequent to filing all the petitions, the aforesaid Summary Suit was filed. The complaint makes out essential ingredients of offence of Criminal misappropriations of property, breach of trust, making false document, falsification of account, making false statement, causing

disappearance of evidence, giving false information to screen offender, mischief, fabricating false evidence and Criminal conspiracy. Accused had acted collusively with *mens-rea* for committing several offences. The powers confered by under Article 227 of Constitution of India are required to be exercised sparingly and only in appropriate cases. There are serious material question of fact which ought to be tried by the Metropolitan Magistrate. The complainant did not have business transactions between 18-10-2000 to 16-10-2000 with Petitioner No. 1 and the documents produced by the petitioners are false. The respondent No.1 had closed his business in the name and style of M/s Perfect Trading in March 2000 and there was no question of making purchases. Most of the accused are related to each other. There was direct nexus between the parties. Thus Cheque was forged by endorsing name of complainant and inserting the amount. Complaint was filed to the police about loss of Cheque Book. The Police did not take cognizance of his complaint. The contentions of the petitioners are disputed. In the reply filed by respondent No.1 in Criminal Writ Petition No. 764 of 2001 it is stated that, the petitioner company has filed Special Civil Suit No. 72 of 2001 in the Court of Civil Judge Senior division Palghar, for recovery of amount alleged to be due under the disputed cheque. Witnesses were examined. The petitioner had failed to make out the case of sale and delivery of goods alleged to have been to sold to the complainant. The goods were never ordered by respondent No.1 The depositions are full of contradictions, affidavit was filed in Civil Proceedings, there are admissions in the affidavit that the petitioners company, Electronic Industries and Magic Creations are sister concern. The petitioners had relied upon delivery challans, lorry receipts for delivery of goods in the suit proceedings.

11 The petitioner in Criminal Writ Petition No. 764 of 2001 has filed an affidavit putting on record relevant documents, such as the copy of summons, the verification statement of the complainant recorded by the Court, order issuing process passed by the Metropolitan Magistrate along with documents relied upon by complainant.

12 The respondent No.1 has filed a complaint alleging offences as stated above on 09-02-2001. The said complaint was filed against fifteen accused. These petitions are preferred by Accused No.10, 12, 6, 7, and 11. Accused No.14 is Bank of India and Accused No.15 is the Branch Manager of the said Bank. The grievance of the complainant is that the stolen Cheques of the complainant were forged

and fabricated by filling up the name of payee and the amount. There was no liability in respect to the two disputed Cheques. The accused have also fabricated document creating liability for issuance of cheques. The complainant had lodged complaint alleging loss of cheque book. It is alleged that signed cheques were misused by the accused.

13 I have perused the documents on record, the cheque bearing No.094531 dated 16-12-2000 was issued for an amount of Rs. 92,40,000/-. The cheque has been dishonoured. The cheque contains undisputed signature of respondent No.1 and the stamp of Perfect Trading. The said cheque was issued in favour of Magic Creations Pvt. Ltd. (Accused No.10). The endorsement on the cheque indicates that cheque is returned on the ground, unable to obtain payment of the cheque for the reasons given in the Memo attached to the cheque. The reason for returning cheque mentioned in the memo is “funds insufficient”. According to the complainant he had issued instructions to the banker for freezing of account. It is also alleged that the bank was informed about loss of cheques. However, the cheque was not dishonoured on account of stop payment or freezing of account. It is also pertinent to note that, the notice of dishonour was issued to the

complainant. In reply dated 08-01-2001 it was contented that Cheques were lost and the same were misused. The petitioners have relied upon the invoices issued by Magic Creations Pvt. Ltd. The respondent No.1 is apparently been tried for the offence under Section 138 of Negotiable Instrument Act. *Prima facie* it appears that, the complainant was filed as a counter blast to the proceeding initiated by the accused against respondent No.1. It is not the case of the complainant that by fabricating the cheques, the amount was credited into the account of the accused, thereby resulting in misappropriation of amount. The contention of the complainant that the documents in respect to the liability are fabricated also *Prima-facie* appears to be after thought. There is no evidence of fabrication of documents. Admittedly Civil proceeding are pending before the appropriate Court and the claims of respective parties are subject matter of the said proceeding. The Cheque for an amount of Rs.71,17,132.90/- was dishonoured. The said Cheque was also signed by the complainant. It was dishonoured on 12-09-2000. After receipt of intimation from banker, notice was issued to the complainant demanding the amount in accordance with Section 138 of Negotiable Instrument Act. According to the petitioner the said notice was not replied by the complainant. The complaint for offence under Section 138 of Negotiable Instrument Act viz., Criminal Case No. 538 of 2000 was filed by Patel Polymers Pvt. Ltd. (Accused No.6)/Petitioner No.1 in Writ Petition No. 764/2001. The respondent No.1 has apparently filed an application for discharge on 19-03-2001 before the appropriate Court which has been annexed to the petition. The defence of respondent No.1 is that there is failure to establish *Prima-facie* that notice was issued by the advocate for the complainant therein and was received by the accused.

14 From the documents on record it is apparent that, Cheque No.094530 was dishonoured on 12-09-2000. The complainant forwarded letter dated 19-09-2000 to Andheri Police Station on 19-09-2000 at 16.55 Hrs. Thus the said letter/complaint was submitted after dishonour of above cheque. In the complaint dated 19-09-2000 it stated that from 16-08-2000 cheque book bearing No. 094527 onwards is missing. He used to keep the same at Electron Industries Ltd., 230, New Apollo industrial Estate, Andheri (East. He is afraid that, cheques are misused. Complainant relied upon letter issued to Bank of India for freezing account. The said letter is 27-09-2000, which was received by bank on 28-09-2000. Thereafter complainant forwarded letter dated 25-10-2000 to Bank of India alleging forgery of

cheque. Accused No.6 was also forwarded letter contanding that, no cheque was issued by complainant and called upon Accused No.6 to explain how cheque was received by them. The said letter was dated 25-10-2000. Thus the aforesaid letters/complaints were forwarded after dishonour of cheque No. 094530. The letter dated 25-10-2000 was replied by Accused No.6 through their advocate denying allegations and stating that the said cheque was issued by respondent No.1 alongwith covering letter dated 02-09-2000 whereby he admitted and acknowledged that the outstanding amount as per his record is payable to them. The learned Magistrate has mechanically issued process for all the offences stated in the complaint against all accused. The proceedings smack malafide.

15. The fact remains, there was no amount in the account of the complainant and the cheques were dishonoured for insufficient funds. The proceedings under Section 138 were initiated by the accused. The petitioners have relied upon the invoices in support of their claims. Civil proceedings are also pending in the respective Court. Several accused are impleaded in this proceeding. The allegations against them are vague. Taking into consideration the aforesaid circumstances I find that, it would be an abuse of Process of

Law to continue the prosecution against the petitioners and hence the proceedings are required to be quashed and set aside.

:: <u>O R D E R</u> ::

1. Criminal Writ Petition No. 763 of 2001, 764 of 2001 and Criminal Writ Petition No. 836 of 2001 are allowed.
2. Proceedings in impugned complaint bearing No.10/S/2001 pending in the Court of Metropolitan Magistrate Andheri, alongwith the order issuing process passed therein are hereby quashed and set aside against the petitioners.
3. Petitions are disposed of.

(PRAKASH D. NAIK, J.)