

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 636 OF 2022**

Shivalik Ventures Private Limited & ors. ...Petitioner

**Versus**

K J Infrastructure and anr. ...Respondents

**WITH**

**CRIMINAL WRIT PETITION NO. 629 OF 2022**

Mr. Raja Thakare, Senior Advocate, a/w Siddharth Jagushte,  
i/b Prathamesh Samant, for the Petitioner.

Mr. Yogesh Israni, a/w Karishma Kalathil, for Respondent  
no.1.

Ms. Anamika Malhotra, APP for the State/Respondent no.2.

**CORAM: N. J. JAMADAR, J.**

**DATED : 28<sup>th</sup> APRIL, 2022**

**PC:-**

1. The petitioners have preferred these petitions assailing the order passed by the learned Metropolitan Magistrate, 25<sup>th</sup> Court, Mazgaon at Sewree, Mumbai in criminal case being RCC No.5989/SS/2021 and 2241/SS/2021, whereby the application preferred by the petitioner to stay the proceedings of the complaint, lodged under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881, in view of the order passed by the Supreme Court dated 20<sup>th</sup> January, 2020 in *Bhupinder Singh vs. Unitech Ltd.*<sup>1</sup> providing for moratorium against the institution of proceedings against Unitech Limited

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**1** Civil Appeal No.10856/2016.

and its subsidiaries as well as the enforcement of orders that may have been passed against the Unitech Limited till further orders of the Supreme Court.

2. Accused no.1 Company claimed to be a group entity of Unitech Limited, which according to the accused, had 50% share holding in accused no.1 – Company.

3. The learned Magistrate, after perusal of the material on record and submissions canvassed across the bar, was persuaded to reject the application observing, *inter alia*, as under:

“On going through the record it reveals that accused failed to produce documentary evidence to show that Unitech Ltd. has 50% share holding in accused No.1 company. Accused also failed to file documentary evidence on record to show that they have approached Honourable Supreme Court as an intervener. Therefore, in absence of documentary evidence regarding the connection of accused no.1 Company with Unitech Ltd., it cannot be presumed that the order passed by the Honourable Supreme Court is applicable to the case in hand.”

4. Mr. Thakare, the learned Senior Counsel for the petitioner, submits that the petitioners have the documentary evidence to show that Unitech Limited has 50% share holding in the accused no.1 – Company.

5. It would be inappropriate to interfere with the order of the learned Magistrate on the basis of the material which was not placed on the record of the learned Magistrate when the

impugned order was passed. The proper course would be to give liberty to the petitioners to make a fresh application along with the documents in support of its claim.

6. If such an application is filed, within a period of four weeks, the learned Magistrate shall decide the same in accordance with law after providing an effective opportunity to all the parties, including the complainant – respondent no.1 herein.

7. With the aforesaid clarification, the petitions stand disposed.

**[N. J. JAMADAR, J.]**