

GRM

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

CRIMINAL WRIT PETITION NO. 13 OF 2020

Puneet Ravindra Ruia through
Constituted Attorney Ravindra
Shubhkaran Ruia ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

WITH

CRIMINAL WRIT PETITION NO. 14 OF 2020

Arti Sameer Harlalka through
Constituted Attorney Sachin Subhash
Harlalka ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

WITH

CRIMINAL WRIT PETITION NO. 15 OF 2020

Ravindrakumar Ruia H.U.F. through its
Karta Ravindra Shubhkaran Ruia ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

WITH

CRIMINAL WRIT PETITION NO. 16 OF 2020

Komal Ravindrakumar Ruia through
Constituted Attorney Ravindra
Shubhkaran Ruia ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

WITH

CRIMINAL WRIT PETITION NO. 600 OF 2019

M/s. Rohit and Company through
Constituted Attorney Arun Mahabir P.
Ansari ... Petitioner

V/s.

M/s. Premier Industries & Ors. ... Respondents

WITH
CRIMINAL WRIT PETITION NO. 1463 OF 2018
J. K. Steel Corporation, a Proprietary
Firm ... Petitioner
V/s.
The State of Maharashtra & Ors. ... Respondents

WITH
CRIMINAL WRIT PETITION NO. 1464 OF 2018
WITH
CRIMINAL WRIT PETITION NO. 1465 OF 2018
WITH
CRIMINAL WRIT PETITION NO. 1466 OF 2018
WITH
CRIMINAL WRIT PETITION NO. 1467 OF 2018
WITH
CRIMINAL WRIT PETITION NO. 1471 OF 2018
WITH
CRIMINAL WRIT PETITION NO. 1473 OF 2018
WITH
CRIMINAL WRIT PETITION NO. 1474 OF 2018
Sandeep Steels ... Petitioner
V/s.
The State of Maharashtra & Ors. ... Respondents

Mr. Siddharth Murarka a/w Mr. Devendra Tiwari i/b Law Chamber
of Siddharth Murarka, Adv. for the Petitioner.

Mr. Arfan Sait, APP for the State/Respondent No. 1.

Mr. Kapil Dave, Adv. for Respondent Nos. 3 & 4.

CORAM : R. G. AVACHAT, J.

DATED : JANUARY 6, 2023

P.C. :

1. This group of writ petitions is being decided by this common order since common questions of fact and law arise therein.

2. The petitioners in all these petitions, is a complainant in the proceedings/complaints initiated by him under Section 138 of the Negotiable Instruments Act, 1881 (for short “**NI Act**”). The petitioner/complainant moved an application(s) before the Court of Metropolitan Magistrate seized of the matters. The said application(s) was moved for conducting those proceedings in the terms of directions given by the Hon’ble Apex Court in the case of **Indian Bank Association and Others v/s. Union of India and Others** in Writ Petition No. 18 of 2013.

3. Heard.

4. Learned Advocate for petitioners took this Court through the entire judgment of the Hon’ble Apex Court in the **Indian Bank Association and Others v/s. Union of India and Others** (*supra*). He then referred and relied on the provisions under Sections 138 & 145 of NI Act and the relevant provisions of Code of Criminal Procedure, 1973. According to the learned Advocate, it is for the respondent/accused to move an application to call the petitioner/complainant for cross-examination. The offence punishable under Section 138 of NI Act is document based.

5. Instead of detaining myself to the submissions made by learned Advocate for the petitioner, it would be desirable to reproduce the directions given by the Hon’ble Apex Court in the aforesaid case, the compliance of which was sought to be enforced before the Courts of Metropolitan Magistrate seized of the matters. The directions are as follows :-

- i. Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.
- ii. MM/JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address got from the complainant. Court, in appropriate cases, may take the assistance of the police or the nearby Court to serve notice to the accused. For notice of appearance, a short date be fixed. If the summons is received back un-served, immediate follow up action be taken.
- iii. Court may indicate in the summon that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, Court may pass appropriate orders at the earliest.
- iv. Court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251 Cr.P.C. to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) for re-calling a witness for cross-examination.
- v. The Court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The Court has option of accepting affidavits of the witnesses, instead of examining them in Court. Witnesses to the complaint and accused must be available for cross-examination as and when there is direction to this effect by the Court.

6. Learned Advocate for the petitioners would submit that once the complainant makes out his case based on the affidavit filed along with the complaint, the offence *prima-facie* gets made out. Section 139 of NI Act speaks of the statutory presumptions, which reads thus :-

“It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138, for the discharge, in whole or in part, of any debt or other liability.”

7. Learned Advocate for the petitioners would further submit that the objects of the proceeding under Section 138 of NI Act are that the cheques should not be used by the persons as a tool of dishonesty and when the cheque is issued by a person, it must be honoured and if it is not honoured, the person is given an opportunity to pay the cheque amount by issuance of a notice and if he still doesn't pay, he must face the criminal trial and consequences thereof.

8. The attention of this Court is also adverted to Chapter XXI of the Code of Criminal Procedure, 1973, which speaks of 'Summary Trials'. Section 263 of Cr.P.C. specifically speaks of record in summary trials. In para 16 of its judgment in the case of **Indian Bank Association and Others v/s. Union of India and Others** (*supra*), the Hon'ble Apex Court has observed that -

“We have indicated that under Section 145 of the Act, the complainant can give his evidence by way of an affidavit and such affidavit shall be read in

evidence in any inquiry, trial or other proceedings in the Court, which makes it clear that a complainant is not required to examine himself twice i.e. one after filing the complaint and one after summoning of the accused. Affidavit and the documents filed by the complainant along with complaint for taking cognizance of the offence are good enough to be read in evidence at both the stages i.e. pre-summoning stage and the post summoning stage. In other words, there is no necessity to recall and re-examine the complaint after summoning of accused, unless the Magistrate passes a specific order as to why the complainant is to be recalled. Such an order is to be passed on an application made by the accused or under Section 145(2) of the Act *suo moto* by the Court. In summary trial, after the accused is summoned, his plea is to be recorded under Section 263(g) Cr.P.C. and his examination, if any, can be done by a Magistrate and a finding can be given by the Court under Section 263(h) Cr.P.C. and the same procedure can be followed by a Magistrate for offence of dishonour of cheque since offence under Section 138 of the Act is a document based offence. We make it clear that if the proviso (a), (b) & (c) to Section 138 of the Act are shown to have been complied with, technically the commission of the offence stands completed and it is for the accused to show that no offence could have been committed by him for specific reasons and defences.

Amendment Act, 2002 has to be given effect to in its letter and spirit. Section 143 of the Act, as already indicated, has been inserted by the said Act stipulating that notwithstanding anything contained in the Code of Criminal Procedure, all offences contained in Chapter XVII of the Negotiable Instruments Act dealing with dishonour of cheques for insufficiency of funds, etc. shall be

tried by a Judicial Magistrate and the provisions of Sections 262 to 265 Cr.P.C. prescribing procedure for summary trials, shall apply to such trials and it shall be lawful for a Magistrate to pass sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding Rs. 5,000/- and it is further provided that in the course of a summary trial, if it appears to the Magistrate that the nature of the case requires passing of the sentence of imprisonment exceeding one year, the Magistrate, after hearing the parties, record an order to that effect and thereafter recall any witness and proceed to hear or rehear the case in the manner provided in Criminal Procedure Code.”

9. Nodoubt the directions of Hon’ble Apex Court have to be followed in the letter and spirit. The fact however is that, the petitioner/complainant filed his examination-in-chief on affidavit, after plea of the respondent/accused was recorded. Learned Metropolitan Magistrate did pass the order(s) on each of the complaint(s) expressly suggesting that the procedure meant for the trial of summons case would be followed.

10. It is true that Section 143 of NI Act mentions that all the offences under Chapter XVII of NI Act shall be tried summarily. The provisions of Sections 262 to 265 (both exclusive) of Cr.P.C., as far as may be, applied to such trials. Section 143 of NI Act is however not without an exception. Proviso thereto states that when at the commencement of, or in the course of, a summary trial under this Section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any

other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

11. It is true, the directions of Hon'ble Apex Court were also applicable to the pending cases. It is, however, reiterated that learned Metropolitan Magistrate passed the order(s) suggesting that it was undesirable to try the case summarily. The said order(s) has not been taken exception to by the petitioner/complainant. It also needs to be noted that in some other similar cases, the complainant himself submitted to the procedure of 'Summons Trial'.

12. For ready reference, para 6 of the impugned order is reproduced below :-

"6. Upon going through record, it reveals that the complainant has filed present complaint case on 08/05/2014 but complainant has filed the affidavit in lieu of examination-in-chief on 03/07/2017, after recording plea of the accused on 24/04/2017. It means, the complainant himself has not followed the directions issued by Hon'ble Apex Court in above cited case. The plea of accused has been recorded as per Section 251 of Code of Criminal Procedure. It means, this Court has adopted procedure of summons case as provided under Sections 251 to 259 of Code of Criminal Procedure. Section 262 of Code of Criminal Procedure also states that for summary trial, the procedure of summons case shall be followed. Upon going through record, it reveals that the complainant did not follow directions/guidelines issued by Hon'ble

Apex Court in case of Indian Bank Association and others v/s. Union of India and Others, in Writ Petition No. 18/2013 in its true sense. On the contrary, complainant is asking the accused to follow the directions of Hon'ble Apex Court in above cited case. When complainant has not followed the directions of Hon'ble Apex Court by filing evidence affidavit along with filing of the present complaint, how complainant is entitled to claim or make prayer for recording finding under Section 263(h) of Code of Criminal Procedure, on the ground that accused has not filed any affidavit or application mentioning therein about he has defence and he wants to cross-examine the complainant. As I have already discussed above that this Court has followed the procedure provided for summons case, therefore, recording of finding under Section 263(h) of Code of Criminal Procedure against the accused by this Court does not arise. Hence, on these reasons and in the light of above discussion, I do not find merit and substance in the application. Hence, application is liable to be rejected. Hence, I proceed to pass the following order.....”

13. For all the aforesaid reasons, this Court finds no reason to interfere with the order(s) impugned herein. The writ petitions, therefore, stand dismissed and disposed of.

14. Learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai shall decide the main proceeding(s) on its own merits within a time-frame of 6 months from the date of receipt of a copy of this order.

(R. G. AVACHAT, J.)