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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.425 OF 2024

1. Pancham International Ltd.,
A Company registered under the provisions
of Companies Act, 1956 having its office
at 1108, 11th Floor, Om Tower – 32,
Chowringhee Road, Kolkata (WB) – 700071.
2. Bimal Singh Kothari,
Adult, Occupation : Business,
Having business at 123,
12th Floor, B – wing, (original Accused Nos.1 and 3)
Mittal Court, 224,
Nariman Point, Mumbai 400 021. **..... PETITIONERS**

// VERSUS //

1. Shevam s/o Jugalkishore Kothari
Aged about 38 Years,
Occupation : Business,
Proprietor of M/s Ramchandra
Ramgaopal Financial Services,
Having office at Gorakshan Road,
Akola, District Akola. ... (Original Complainant)
2. Rajendra Kumar Baid,
Adult, Occupation : Business,
Having office at 1108, 11th Floor,
Om Tower – 32, Chowringhee Road,
Kolkata (WB) – 700071. ... (Original Accused No.2)
3. Dhyan Chand Swami,
Adult, Occupation – Business,
Having business at 123, 12th Floor,
B-wing, Mittal Court, 224,
Nariman Point, Mumbai 400 021. **.... RESPONDENTS**
(Orig. Accused No.4)
4. ~~State of Maharashtra~~ ... Deleted
Proforma Respondent

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Mr. A. S. Mardikar, Senior Counsel a/b Mr. Rohan Chandurkar with
Mr. Benny Joseph, Counsel for the petitioners.
Mr. M. G. Sarda, Counsel for the respondent No.1.
Mr. Borwankar, Counsel for the respondent Nos.2 and 3.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 16.07.2025
PRONOUNCED ON : 20.08.2025

JUDGMENT :

1. **Rule.** Rule made returnable forthwith. By consent of parties, heard finally.
2. By present writ petition, the petitioners seek following reliefs by invoking Articles 226 and 227 of the Constitution of India.
 - (a) It is therefore respectfully prayed that this Hon'ble Court may kindly be pleased to call for records and proceedings of Criminal Revision Application No.94/2022 (Pancham International Limited and 3 others Vs. Shevam s/o Jugalkishore Kothari and 1 Another) from the Court of Sessions Judge, Akola (date of disposal, 12th April 2024).
 - (b) And be further pleased to call the records and proceedings of S.C.C. No.7222 of 2021 pending before the learned Judicial Magistrate, First Class, 7th Court, Akola and after examining the correctness, legality and validity of the said impugned judgment and order and the said impugned order be further pleased to examine the correctness, legality and validity thereof and be further pleased to issue an appropriate writ, order and direction to set them aside and quash them and also quash and set aside the impugned

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judgment and order of learned Sessions Judge, Akola passed in C.R.A. No.94/2022 dated 12th April 2022 and the impugned order passed by the Judicial Magistrate First Class, 7th Court, Akola in S.C.C. No. 7222 of 2021 dated 20th January, 2022.

(c) That pending and hearing final disposal of this petition further proceedings in Criminal Case SCC No.7222/2021 pending before learned Judicial Magistrate, First Class, 7th Court, Akola may kindly be stayed.

(d) Ad-interim and interim reliefs in terms of prayer clauses 'b' and 'c' may kindly be granted.

3. Petitioner No.1 is a Company duly incorporated under the Companies Act. The respondent No.1 is the original complainant filed a complaint through its Proprietor Ramchandra Ramgaopal Financial Services. The complaint was filed by the complainant on an allegation that the present petitioner No.1 Company had purchased pulses, edible oil and other goods from Navalkishore Kothari Sons which is a partnership firm having its office at Akola. The transaction between the present petitioner No.1 and Navalkishore Kothari Sons are prior to year 2002. An amount of Rs.35,26,102/- was due and payable by the petitioner No.1 to Navalkishore Kothari Sons as on 31.03.2002. It was agreed between the petitioner No.1 and the Navalkishore Kothari Sons that the petitioner No.1 shall pay interest on the outstanding amount at the rate of 12% per annum. The petitioner No.1 had acknowledged the amount payable to Navalkishore Kothari Sons in writing from

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time to time. These acknowledgements are for the amount along with the interest. However, the petitioner No.1 failed to pay the amount to Navalkishore Kothari Sons. On 06.04.2021, Navalkishore Kothari Sons has transferred the debt due from the petitioner No.1 to the complainant. This transfer has been effected by way of registered instrument duly signed for and on behalf of Navalkishore Kothari Sons. As per this agreement, the complainant has agreed to pay an amount of Rs.70,00,000/- to Navalkishore Kothari Sons on or before 31.12.2021. In consideration thereof, it is agreed that the complainant shall be entitled to receive, recover and retain the amount from petitioner No.1. It was specifically informed the complainant that in view of the acknowledgement given by the petitioner No.1, the debt is within limitation.

4. After the aforesaid agreement, the complainant contacted to the petitioners for recovery of the amount. During the said meeting with the petitioners, the petitioners acknowledged the amount due and during negotiation agreed to pay an amount of Rs.75,00,000/- to the complainant towards full and final settlement of the account. The petitioner No.2 and other co-accused were present at the time of negotiation and final agreement upon the amount. Accordingly, the petitioner company had issued a cheque of Rs.75,00,000/- bearing No.818895 dated 21.07.2021 of Axis Bank Limited in favour of the respondent – original complainant.

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The petitioner No.1 company had assured that the cheque would be honoured on its presentation to the bank for encashment. Accordingly, the complainant presented the cheque through his account with the Axis Bank on 14.10.2021. However, the cheque has been dishonoured for the reason 'Account Closed'. Therefore, the respondent – complainant issued a notice to the petitioners through the Advocate on 20.10.2021 and called upon the petitioners to make payment of the cheque amount. Despite the notice duly served on petitioners on 23.10.2021, the petitioners failed to make payment of the cheque amount within a period of 15 days and therefore, the complainant was constrained to file the complaint.

5. The Magistrate has taken cognizance of the said complaint and passed an order of issuance of process on 20.01.2022. Being aggrieved and dissatisfied with the order of issuance of process, the petitioner along with its Directors challenged the order by preferring Criminal Revision Application No.94/2022. The said revision application came to be dismissed and therefore, the petitioners approached to this Court for quashing and setting aside the order of issuance of process and quashing of the criminal proceeding.

6. The ground raised in the petition is that the petitioner No.1 is a Company duly incorporated under the Companies Act, 1956 and did not transact any business before 2002 with the

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respondent No.1 - complainant or with his Predecessor, as alleged in the complaint. The complaint is factually frivolous and filed with sole and mala fide intention to harass and extract money from the petitioners. It is further contended that the petitioners are not bound by the agreement on which the respondent No.1-complainant is relied upon as the petitioner was not a party to the said agreement, therefore, the principles underlying the transfer of actionable claim would not be applicable at all. The cheques were neither issued by the petitioners nor its Director and therefore, the order of issuance of process is liable to be quashed and set aside. It is further contended that even accepting that there was a debt which was transferred, it is time barred debt. In view of that also the order of issuance of process is also liable to be quashed and set aside.

7. Heard learned Senior Counsel Mr. Mardikar for the petitioners, who submitted that the alleged cheque was issued against the discharge of legal and enforceable debt. However, there was no transaction between the petitioners and the original complainant, who is respondent No.1 in the present petition. The cheque was issued against the discharge of time barred debt. The endorsement on the cheque is 'Account Closed', which does not come within the purview of Section 138 of the Negotiable Instruments Act (for short 'the N.I.Act'). The cheque was dated

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21.07.2021 i.e. after closure of the account. There was no enforceable liability on the date of issuance of cheque. Verification statement nowhere refers to the said agreement. No inquiry was conducted under Section 202 of Code of Criminal Procedure (for short 'the Cr.P.C.') as the petitioners were not party to the said agreement and therefore, the provisions under Section 25(3) of the Contract Act, will also not help the complainant. There was no legal enforceable debt against the present petitioners. In view of that, the petition deserves to be allowed.

8. Per contra, learned Counsel for the respondents submitted that the petitioner No.2 and respondent Nos.2 and 3 and the original accused No.5 were Directors of the petitioner's company at the time of issuance of cheque. They failed to comply with the statutory notice issued under Section 138 of the N.I.Act within the prescribed period. The offence under Section 138 of the N. I. Act is triggered upon the failure to pay the amount of the cheque. The bank account upon which the cheque was drawn was closed on 03.10.2013. The phrase 'amount of money is insufficient' as it appears in Section 138 of the N.I.Act is broad category and dishonoured due to such reasons as the account closed falls within the category derived under Section 138 of the N.I. Act. All the individuals responsible for the conduct of the Company's business are potentially lack up to prosecution. The contention of the

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petitioners that the petitioner No.2 along with the respondent Nos. 2 and 3 are not parties to the agreement dated 06.04.2001 between the respondent No.1 and his predecessor and there is no privity of contract between the petitioners and the respondent No.1 is relevant. There was transfer of an actionable claim and transaction between the creditor and transferee, the debtor's participation in signing the agreement is not required. There need not be any privity of contract between the transferee and the debtor still the transfer is entitled to recover the amount from the debtor and against the said liability the cheque was issued. The learned trial Court as well as Revisional Court has considered this aspect and rightly issued the process.

9. In support of the contention learned Senior Counsel for the petitioners placed reliance on **Abhijit Pawar Vs. Hemant Madhukar Nimbalkar and another** reported in **(2017) 3 SCC 528, Vijay Dhanuka and others Vs. Najim Mamtaj and others** reported in **(2014) 14 SCC 638, Odi Jerang Vs. Nabajyoti Baruah and Ors.** order passed by the Apex Court in **Special Leave to Appeal (Crl.) No.2135/2022 dated 22.08.2023, Bansilal S. Kabra Vs. Global Trade Finance Limited and another** reported in **(2024) SCC OnLine Bom 416.**

10. Learned Counsel for the respondents also placed reliance on **P. Rasiya Vs. Abdul Nazer and another** reported in

2022 SCC OnLine SC 1131, Rajesh Jain Vs. Ajay Singh reported in **(2023) 10 SCC 148, Shankar Finance and Investment vs. State of Andhra Pradesh and others** reported in **(2008) 8 SCC 536, NEPC Micon Ltd. and others Vs. Magma Leasing Ltd.** reported in **(1999) 4 SCC 253, Mr. Ritwik s/o Milind Buddhisagar vs. The Dharampeth Mahila Multi State, Co-operative Society, Limited Nagpur in Criminal Application (APL) No.32/2024 decided on 17.04.2024, K. Hymavathi Vs. State of Andhra Pradesh and another** reported in **2023 SCC OnLine SC 1128, Dinesh B. Chokshi Vs. Rahul Vasudeo Bhatt** reported in **2013 (2) Mh. L.J. 130.**

11. The thread of the argument of the learned Senior Counsel was that though the inquiry contemplated under Section 202 of Cr.P.C. is mandatory in case the accused resides outside the jurisdiction of the learned Magistrate, before whom, the complaint is made, but when the case entirely depends on documents particularly in complaint filed for offences punishable under Section 138 of N.I. Act, there is a need to adduce the evidence and even an affidavit filed by the complainant would suffice the purpose of inquiry. The learned Chief Judicial Magistrate has not conducted the inquiry under Section 202 of the Cr.P.C. and therefore, the entire proceeding requires to be quashed and set aside.

12. Considering the submissions made by the learned Counsel for the respective parties, it would be appropriate to refer Section 202 of Cr.P.C. which reads as under:

"202. Postponement of issue of process.—(1) *Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:*

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that

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investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

13. Section 202 of the Cr.P.C. speaks about postponing the issuance of process against the accused in case he resides beyond the area in which the Magistrate before whom the complaint is made exercises his jurisdiction. In that case, the Magistrate either inquire into the case himself or direct an investigation to be made by the police officer for the purpose of deciding whether there are sufficient grounds for proceedings or not. Whether the inquiry as contemplated under Section 202 of Cr.P.C. is mandatory is the question arise for consideration.

14. Learned Senior Counsel for the petitioner placed reliance on the decision of **Abhijit Pawar Vs. Hemant Madhukar Nimbalkar and another** referred supra, wherein the Hon'ble Apex Court dealt with this issue and observed that Section 202 Cr.P.C. was amended in the year 2005 by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22.06.2006 by adding the words 'and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction'. There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far-off places in order to save them from unnecessary harassment. Thus, in those cases where the accused is residing at a place beyond the area in

which the Magistrate exercises his jurisdiction, it is mandatory on the part of the Magistrate to conduct an enquiry or investigation before issuing the process, so that false complaints are filtered and rejected. It is further held that the requirement of conducting enquiry or directing investigation before issuing process is, therefore, not an empty formality. What kind of "enquiry" is needed under this provision has also been explained in **Vijay Dhanuka (2014) 14 SCC 638**, wherein it is held "No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code." The amended provision casts an obligation on the Magistrate to apply his mind carefully and satisfy himself that the allegations in the complaint, when considered along with the statements recorded or the enquiry conducted thereon, would prima facie constitute the offence for which the complaint is filed. He also placed reliance on **Vijay Dhanuka and others Vs. Najim Mamtaj and others** referred supra, wherein also the Hon'ble Apex Court by referring Section 200 and 202 of the Cr.P.C. observes that "Section 202 of the Code, inter alia, contemplates

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postponement of the issue of the process “in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction” and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.”

15. Learned Counsel for the respondent No.1 also placed reliance on the decision of the Hon’ble Apex Court in expeditious trial of cases under Section 138 of NI Act in **Suo Motu Writ Petition (Crl.) No.2 of 2020 decided on 16.04.2021 [(2021) 16 SCC 116]** wherein requirement to conduct inquiry of direct investigation before issuing process where accused residing beyond territorial jurisdiction of Magistrate concerned held mandatory purpose is to protect innocent persons residing at far of places from being harass. In the said judgment after discussing all facts of the various aspects relevant and connected to the issues before it, the five-Judge Bench of the Apex Court held:

(i) The High Courts are requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial.

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(ii) *Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.*

(iii) *For the conduct of inquiry under Section 202 CrPC, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.*

(iv) *It is recommend that suitable amendments be made to the Act for provision of one trial against a person for multiple offences under Section 138 of the Act committed within a period of 12 months, notwithstanding the restriction in Section 219 CrPC.*

(v) *The High Courts are requested to issue practice directions to the trial courts to treat service of summons in one complaint under Section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonour of cheques issued as part of the said transaction.*

(vi) *The judgments of this Court in **Adalat Prasad, (2004) 7 SCC 338** and **Subramaniam Sethuraman, (2004) 13 SCC 324** have interpreted the law correctly and it is reiterated that there is no inherent power of trial courts to review or recall the issue of summons. This does not affect the power of the trial court under Section 322 CrPC to revisit the order of issue of process in case it is brought to the court's notice that it lacks jurisdiction to try the complaint.*

*(vii) Section 258 CrPC is not applicable to complaints under Section 138 of the Act and findings to the contrary in **Meters and Instruments, (2018) 1 SCC 560** do not lay down correct law. To conclusively deal with this aspect, amendment to the Act empowering the Trial Courts to reconsider/recall summons in respect of complaints under Section 138 shall be considered by the Committee constituted by an order of the Supreme Court dated 10.03.2021.*

(viii) All other points, which have been raised by the Amicus Curiae in their preliminary report and written submissions and not considered herein, shall be the subject matter of deliberation by the aforementioned Committee. Any other issue relating to expeditious disposal of complaints under Section 138 of the Act shall also be considered by the Committee.

16. He further placed reliance on the **Criminal Application (APL) No.32/2024** referred supra, wherein the coordinate Bench has considered the aspect of Section 202 and observed that the present complaints are filed for the offence punishable under Section 138 of N.I. Act and while issuing the process the learned Magistrate has passed the order after considering the affidavit of the complainant and as the ingredients are put forth. Thus, he submitted that the Hon'ble Apex Court has already observed that the said inquiry as far as the complaints under Section 138 of the N.I. Act are concerned is inapplicable and therefore, the ground raised in the petition on the basis of no inquiry is held is

unsustainable and on that ground itself the writ petition deserves to be dismissed.

17. He invited my attention towards the para No.10 of the decision of the Hon'ble Apex Court in the case of **Expeditious trial of cases under Section 138 of NI Act**, wherein the Hon'ble Apex Court has observed that "Section 202 of the Code confers jurisdiction on the Magistrate to conduct an inquiry for the purpose of deciding whether sufficient grounds justifying the issue of process are made out. The amendment to Section 202 of the Code with effect from 23.06.2006, vide Act 25 of 2005, made it mandatory for the Magistrate to conduct an inquiry before issue of process, in a case where the accused resides beyond the area of jurisdiction of the court. (See: **Vijay Dhanuka v. Najima Mamtaj, Abhijit Pawar v. Hemant Madhukar Nimbalkar and Birla Corporation Limited v. Adventz Investments and Holdings Limited**). There has been a divergence of opinion amongst the High Courts relating to the applicability of Section 202 in respect of complaints filed under Section 138 of the Act. Certain view that it is mandatory for the Magistrate to conduct an inquiry, as provided in Section 202 of the Code, before issuance of process in complaints filed under Section 138. Contrary views have been expressed in some other cases. It has been held that merely because the accused is residing outside the jurisdiction of the court, it is not necessary for the

Magistrate to postpone the issuance of process in each and every case. Further, it has also been held that not conducting inquiry under Section 202 of the Code would not vitiate the issuance of process, if requisite satisfaction can be obtained from materials available on record” and thereafter the Hon’ble Apex Court by referring the Section 145 observed that on a holistic reading of Section 145 along with Section 202, we hold that Section 202 (2) of the Code is inapplicable to complaints under Section 138 in respect of examination of witnesses on oath. The evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses. In suitable cases, the Magistrate can examine documents for satisfaction as to the sufficiency of grounds for proceeding under Section 202.

18. Thus, by referring the decisions in the case of **Abhijit Pawar Vs. Hemant Madhukar Nimbalkar and another** and **Vijay Dhanuka and others Vs. Najim Mamtaj and others** relied upon by the learned Senior Counsel for the petitioners. The Hon’ble Apex Court in **Expeditious trial of cases under Section 138 of N.I. Act which is a Suo Motu Writ Petition (Crl.) No.2 of 2020 decided on 16.04.2021** held that Section 202 (2) of the Code is inapplicable to complaints under Section 138 in respect of examination of witnesses on oath. In view of that observations of

the Hon'ble Apex Court herein the present case the ground raised by the learned Senior Counsel for the petitioners that no inquiry was held which is mandate of Section 202 is not sustainable.

19. The ground raised by the petitioners is that there was no privity of contract between the petitioners and respondent No.1 and thus, there was no legal and enforceable debt and the cheque was not issued by the petitioners against the legal and enforceable debt. It is further contended that the debt as alleged is already time barred and therefore, the petitioners are not liable for any action against the time barred debt. Per contra, it is submitted on behalf of the respondents that the cheque was issued against the actionable claim. The actionable claim is defined under Section (3) of the Transfer of Property Act. Before advertng to the merits of the submissions it is necessary to refer the definition of actionable claim given under Section 3 of the Transfer of Property Act.

20. Section 3 defines "actionable claim" means a claim for any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

"a person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it."

Explanation I.—Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:]

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908) and the rules made thereunder,

(2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II.—Any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.

21. Here the petitioner's claim is that they issued cheque against enforceable debt against the transaction of the year 2002 is unsustainable. The Limitation Act, 1963 typically bar a recovery of debt after a certain period, Section 25(3) of the Indian Contract Act provides a crucial exception. This section validates a written and signed promise to pay a time barred debt. The issuance of a cheque signed by the drawer or their authorized agents, fulfils its requirement. It is important to note that past consideration is a good consideration under the Indian Contract Act. The original transaction, even if time barred, serves as valid past consideration for the new promise to pay represented by the cheque. This principle has been affirmed in numerous Judicial decisions therefore, the cheque creates a new, legally enforceable obligations independent of the original transactions limitation period. As far as

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the present matter is concerned, that the underlying transaction occurred before 2002. The petitioner No.2 and respondent Nos.2 and 3 and the original accused No.5 were not associated with the petitioner No.1 company. Petitioner No.2, respondent No.2 and 3 and the original accused No. 5 were Directors of the company at the time of the issuance of cheque. The cheque was issued against the discharge of legal and enforceable debt due against the petitioner No.1. The agreement which is on record shows that on 06.04.2021, Navalkishore Kothari Sons has transferred the debt due from the accused No.1 to the complainant. This transfer has been effected by way of registered instrument duly signed for an on behalf of Navalkishore Kothari Sons. As per this agreement, the complainant has agreed to pay an amount of Rs.70,00,000/- to Navalkishore Kothari Sons on or before 31.12.2021. In consideration thereof it is agreed that the complainant shall be entitled to receive, recover and retain the amount from the accused No.1, it was specifically contended in the complaint that the complainant was informed that in view of that acknowledgement given by the petitioner No.1, the debt is within limitation. After the aforesaid agreement, the complainant initiated the action by contacting the petitioner No.1 for recovery of the amount. During negotiations, the petitioner No.1 acknowledged the amount due and thereafter agreed to pay the cheque of Rs.75,00,000/- to the complainant towards full and final settlement and accordingly, the cheque was issued which was

dishonoured. After receipt of the notice also the cheque amount was not paid and therefore, the complaint was filed.

22. As far as the submission of the learned Senior Counsel Mr. Mardikar that Section 25(3) of the Contract Act will not come for the help of the respondents, as already observed that in the year 2001 the said debt was transferred to the complainant and against the said debt the said cheque was in question was issued. This aspect is considered by the various decisions of the Hon'ble Apex Court as well as by this Court. It is observed in **Rajesh Jain Vs. Ajay Singh** referred supra that the Court will necessarily presume that the cheque had been issued towards discharge of a legally enforceable debt/liability in two circumstances. Firstly, when the drawer of the cheque admits issuance/execution of the cheque and secondly, in the event where the complainant proves that cheque was issued/executed in his favour by the drawer.

23. In the case of **K. Hymavathi vs. State of Andhra Pradesh** reported in **2023 SCC OnLine SC 1128** wherein the Hon'ble Apex Court in para No.10 observed that:

"From a perusal of the legal position enunciated, it is crystal clear that this Court keeping in perspective the nature of the proceedings arising under the NI Act and also keeping in view that the cheque itself is a promise to pay even if the debt is barred by time has in that circumstance kept in view the provision contained in

Section 25(3) of the Contract Act and has indicated that if the question as to whether the debt or liability being barred by limitation was an issue to be considered in such proceedings, the same is to be decided based on the evidence to be adduced by the parties since the question of limitation is a mixed question of law and fact. It is only in cases wherein an amount which is out and out non-recoverable, towards which a cheque is issued, dishonoured and for recovery of which a criminal action is initiated, the question of threshold jurisdiction will arise. In such cases, the Court exercising jurisdiction under Section 482 CrPC will be justified in interfering but not otherwise. In that light, this Court was of the view that entertaining a petition under Section 482 CrPC to quash the proceedings at the stage earlier to the evidence would not be justified."

24. In **Dinesh B. Chokshi Vs. Rahul Vasudeo Bhatt** (referred supra) wherein also the Hon'ble Apex Court by referring Section 25(3) of the Contract Act observed as follows:

"9. Thus, Sub-section (3) of Section 25 of the Contract Act is an exception to the general rule that an agreement made without consideration is void. Sub-section (3) of Section 25 of the Contract Act applies to a case where there is a promise made in writing and signed by a person to be charged therewith to pay wholly or in part a debt which is barred by law of limitation. A promise covered by Sub-section (3) becomes enforceable agreement notwithstanding the fact that it is a promise to pay a debt which is already barred by limitation. Thus, Sub-section

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(3) of Section 25 of the Contract Act applies to a promise made in writing which is signed by a person to pay a debt which cannot be recovered by reason of expiry of period of limitation for filing a suit for recovery. Therefore, if a debtor after expiry of the period of limitation provided for recovery of debt makes a promise in writing signed by him to pay the debt wholly or in part, the said promise being governed by Sub-section (3) of Section 25 of the Contract Act becomes an agreement which is enforceable in law. By virtue of the promise governed by Sub-section (3) of Section 25 of the Contract Act, the time barred debt becomes enforceable. The Sub-section (3) of Section 25 of the Contract Act does not apply to promise to pay all categories of debts which are not enforceable in law. It applies only to a debt which is not recoverable in law only on the ground of bar created by the law of limitation. Thus, the promise under Sub-section (3) of Section 25 of the Contract Act will not validate a debt which is not enforceable on a ground other than the ground of bar of limitation. For example, if there is a promise to pay an amount advanced for immoral purposes which is hit by Section 23 of the Contract Act, it will not attract Sub-section (3) of Section 25 of the Contract Act and the said provision will be attracted only when a promise is made in writing and signed by the promisor to pay a debt which is barred by limitation.”

25. It is the case of the complainant that the petitioner No.1 company had purchased pulses, edible oil and other goods from NavalkKishore Kothari Sons partnership firm having its office at

Akola. The transaction between the petitioner No.1 and Navalkishore Kothari Sons are prior to the year 2002. The amount due was Rs.35,26,102/-. It was agreed between the petitioner No.1 and the said Navalkishore Kothari and Sons that the petitioner No.1 shall pay interest on the outstanding amount at the rate of 12%. Thus, petitioner No.1 had acknowledged the amount payable to Navalkishore Kothari Sons in writing from time to time. On 06.04.2021, Navalkishore Kothari Sons has transferred the debt which was due from the petitioner No.1 to the complainant. This transfer has been effected by way of registered instrument duly signed for on behalf of Navalkishore Kothari and Sons and the cheque was issued against the said debt. The cheque was issued by the petitioner No.1 after negotiation towards the full and final settlement of the amount. Thus, by issuing the cheque the petitioner No.1 acknowledged the amount is due from them and it was a promise covered by Sub Section 3 will becomes enforceable agreement notwithstanding the fact that it is a promise to pay a debt which is already barred by limitation. As observed by the Hon'ble Apex Court in the case of **K. Hymavathi v. State of Andhra Pradesh** referred supra that if the question as to whether the debt or liability being barred by limitation was an issue to be considered in such proceedings, the same is to be decided based on the evidence to be adduced by the parties since the question of limitation is a mixed question of law and fact. It is only in cases

wherein an amount which is out and out non-recoverable, towards which a cheque is issued, dishonoured and for recovery of which a criminal action is initiated, the question of threshold jurisdiction will arise. In such cases, the Court exercising jurisdiction under Section 482 CrPC will be justified in interfering but not otherwise. Thus, at this stage, it would not be proper to give a finding as to whether the debt was time barred or not.

26. On going through the entire record, the two grounds are raised by the petitioners. As far as the ground that there was no legal and enforceable debt and Section 25(3) of the Contract Act is not applicable and will not help to the petitioners is already answered that at this stage, it would not be proper to say that the debt was time barred and therefore, it would not be justified to interfere in the order passed by the learned Magistrate.

27. The another ground raised is that the learned Magistrate ought to have record the reasons for not examining the witnesses on affidavit while exercising power under Section 202 of Cr. P.C. The Constitution Bench Judgment of the Apex Court while deciding reference in **Bansilal S. Kabra Vs. Golbal Trade Finance Limited and another** referred supra observed that it is nowhere stated that it is mandatory to the Magistrate to record the reasons for not examining the witnesses on affidavit while exercise power under Section 202 of Cr.P.C. (Section 225 of the Bharatiya Nagarik

(27)

Suraksha Sanhita (BNSS), 2023) and the absence of recording the reasons would amount to procedural lapses of non application of mind. The submission of the learned Senior Counsel for the petitioners that absence of any reason in the order of Magistrate as to why he is restricting to the examination of the documents without examining the witnesses would be illegality cannot be accepted.

28. The Magistrate in the present case issued process by examining the complainant i.e. verification of the complaint, documents. This was sufficient compliance of Section 202 of Cr.P.C. (Section 225 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023). The Revisional Court dealt with all aspects of the matter and arrived at a plausible and just conclusion. I do not find any perversity or error of jurisdiction in the impugned order and judgment. No case is made out to cause interference in the impugned order and judgment.

29. For the reasons stated above, the writ petition is devoid of merit, liable to be dismissed. Hence, writ petition is dismissed.

Rule stands discharged.

(URMILA JOSHI-PHALKE, J.)