

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No.5606/2024

SHASHANKBHAI JAYANTIBHAI SHAH

APPELLANT

VERSUS

HDFC BANK LTD. & ORS.

RESPONDENT

WITH

CRIMINAL APPEAL No.5607/2024

ORDER

1. The appellant was convicted by the Additional Chief Metropolitan Magistrate, NIA Court No.30, Ahmedabad¹, vide judgment and order dated 03rd April, 2017, in a case registered under the provisions of Section 138 of the Negotiable Instruments Act, 1881², for dishonour of a cheque. He was sentenced to undergo imprisonment for two years and to pay Rs.2,50,00,000/- (Rupees two crore fifty lakh) as compensation.

2. An appeal was carried from the said judgment and order by the appellant before the Sessions Court at Ahmedabad³.

3. During the pendency of the appeal, a petition came to be admitted by the National Company Law Tribunal, Ahmedabad against a

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1 Magistrate
2 N.I. Act
3 sessions court

company.

4. By an order dated 19th March, 2018, the National Company Law Tribunal⁴ passed an order for liquidation of the company.

5. Even in the wake of such development, the sessions court confirmed the order of the Magistrate convicting the appellant and dismissed the appeal on 26th July, 2018.

6. While things stood thus, by an order dated 31st July, 2018, the National Company Law Appellate Tribunal⁵ while considering Company Appeal⁶, which was carried from the order of the NCLT dated 19th March, 2018, permitted proceedings under Section 138 of the N.I. Act to continue despite the period of moratorium.

7. Within a week from date of such order, the appellant questioned the appellate judgment and order of the sessions court affirming the conviction and sentence recorded by the Magistrate in a revisional application⁷ before the High Court of Judicature at Gujarat at Ahmedabad.

8. By an order dated 13th August, 2018, a learned single judge of the High Court directed suspension of sentence pending hearing of the revisional application on condition that the appellant deposits 25% of the amount of the dishonoured cheque without fail within a period of three months from date. Conditions regarding release of the appellant on bail bond were also imposed.

9. This order dated 13th August, 2018 is the subject matter of challenge, by special leave, in Criminal Appeal No.5606/2024.

⁴ NCLT

⁵ NCLAT

⁶ Company Appeal (AT) (Insolvency) No.306 of 2018

⁷ Criminal Revision Application No.955/2018

10. The appellant failed to deposit 25% of the cheque amount as directed by the order dated 13th August, 2018. This triggered an application⁸ from the side of the complainant seeking cancellation of bail. It was alleged therein that despite expiry of the time limit fixed by the earlier order dated 13th August, 2018, the appellant had not deposited any sum.

11. Learned counsel representing the appellant before the High Court urged that he was not required to make payment of any sum in terms of the earlier direction.

12. The learned judge disagreed and overruled such contention. The application filed by the complainant was allowed by an order dated 25th September, 2019 and the order dated 13th August, 2018, passed on the revisional application, was recalled. The trial court was left free to proceed in accordance with law.

13. In Criminal Appeal No.5607 of 2024, the order dated 25th September, 2019 is under challenge by special leave.

14. We have heard learned counsel appearing for the appellant who submits that in view of liquidation of the company as well as lack of financial resources of the appellant, he is not in a position to make payment of 25% of the cheque amount. She urges that in the event the court does not come to the appellant's rescue, he would be remediless in the sense that the revisional application would not be heard.

15. Learned counsel appearing for the complainant and the official liquidator have been heard.

16. Reliance has been placed by them on the decision of this Court in

⁸ Criminal Misc. Application No.1 of 2019 in CRA No.955/ 2018

Rakesh Bhanot V. Gurdas Agro (P) Ltd.⁹ and in particular

paragraphs 12 and 13 thereof :

12. The legislative intent behind the Insolvency and Bankruptcy Code (IBC) is to provide a structured framework for the resolution of corporate debtors' financial distress, facilitating their rehabilitation and ensuring the maximization of asset value. The application under Section 94 or 95 would fall under Chapter III of the IBC. An application under Section 94, when taken out by a debtor in the capacity of a personal guarantor of a company, to declare him/her as insolvent, is to be disposed by following the procedures in Sections 97 to 119. The application filed under Section 94 is scrutinized by the Resolution Professional and a report is submitted as contemplated under Section 99 recommending either the approval or rejection of the application. The interim moratorium which commences on the presentation of the application will expire on the admission of the application by an order of the adjudicating authority under Section 100. Upon admission, the moratorium under Section 101 comes into operation. The interim moratorium under Section 96 and the moratorium under Section 101 IBC are designed to offer a breathing space to the corporate debtor, allowing them to reorganize their financial affairs without the immediate threat of creditor actions. However, this moratorium is not intended to shield individuals from personal criminal liabilities arising from their actions outside the scope of corporate debt restructuring. The respective appellants/petitioners, having filed insolvency applications as personal guarantors under Section 94 IBC, cannot extend this protection to avoid prosecution under Section 138 of the N.I. Act, 1881. Upon filing of the application under section 94 IPC, a moratorium comes into effect, designed to protect the debtors from any legal actions concerning their debts. Specifically, Section 96 IBC provides that any legal proceedings pending against the debtor concerning any debt shall be deemed to have been stayed. The term "any legal action or proceedings" does not mean "every legal action or proceedings". In sub-clauses 96(b)(i) and (ii), the term "legal action or proceedings" are followed by

⁹ 2025 SCC Online SC 728

the term “in respect of any debt”. The term “legal action or proceedings” would have to be understood to include such legal action or proceedings relating to recovery of debt by invoking the principles of *noscitur a socius*. The purpose of interim moratorium contemplated under Section 96 is to be derived from the object of the act, which is not to stall the proceedings unrelated to the recovery of the debt. The protection is not available against penal actions, the object of which is to not recover any debt. This moratorium serves as a critical mechanism, allowing the debtor to reorganize their financial affairs without the immediate threat of creditor actions. The clear and unequivocal language of this provision reflects the legislative intent to provide a protective shield for debtors during the insolvency process.

13. On the other hand, the proceedings under Section 138 of the N.I. Act, 1881, pertain to the dishonor of cheques issued by the respective appellants/petitioners in their personal capacity. These proceedings are distinct from the corporate insolvency proceedings and are aimed at upholding the integrity of commercial transactions by holding individuals accountable for their personal actions. The scope and nature of the proceedings under the IBC may result in extinguishment of the actual debt by restructuring or through the process of liquidation. But such extinguishment will not absolve its directors from the criminal liability. Section 141 of the N.I. Act, 1881 enables the prosecution of the persons in charge of the affairs and responsible for the conduct of the business of the company along with the company. The statutory liability against the directors under Section 138 of the N.I. Act, 1881, is personal and hence, continues to bind natural persons, irrespective of any moratorium applicable to the corporate debtor. The acceptance of the resolution plan under Section 31 IBC or its implementation thereof will have no effect on the prosecution under Section 138 of the N.I. Act, 1881. Similarly, the acceptance of the report by the resolution professional under Section 100 and the moratorium under Section 101, which reprises Section 96, will not bar the continual of any criminal action. The cause of action for prosecution under Section 138 of NI Act commences on the dishonor of the cheque and the failure to pay the amount unpaid because of dishonour, within 15 days from the date of receipt of notice demanding

payment. It is pertinent to mention here that the prosecution can be only with respect to the amount unpaid by dishonour of the cheque irrespective of the actual debt. The distinction between the right to sue based on a dishonoured cheque by initiating a civil suit and launching a prosecution under Section 138 of the Negotiable Instruments Act is significant. In case of former, the interim moratorium can operate, but not in case of later.

(emp

hasis supplied)

17. Having perused the decision in **Rakesh Bhanot** (supra), we share the view expressed therein.

18. There is, thus, no reason to hold that because the company has been liquidated, the appellant has no liability. Incidentally, the appellant was convicted even before the process under the Insolvency and Bankruptcy Code was initiated. Further, his position is that of a personal guarantor for the loan advanced to the company. Also, NCLAT expressly permitted proceedings under Section 138 of the N.I. Act to continue.

19. For the reasons aforesaid, it is not open to the appellant to claim protection by urging that proceedings under Section 138 of the N.I. Act cannot be carried forward against him.

20. In view of the peculiar facts and circumstances, we find no merit in any of the appeals. However, as a last opportunity, we grant the appellant some more time to put in 25% of the cheque amount before the High Court. Let such amount be deposited in the Registry, within a period of eight weeks from date. Till that time, the appellant's liberty shall not be curtailed.

21. In the event, payment within the aforesaid time is not made, law

shall take its own course meaning thereby that the appellant shall expose himself to be taken into custody.

22. Should the deposit be made, the revisional application shall be heard on its own merits and decided in accordance with law.

23. If any amount out of 25% of the cheque amount has already been paid and sufficient proof is produced before the High Court to this effect, the same may be considered upon granting reasonable opportunity to the complainant and the liquidator to offer their versions.

24. Subject to the aforesaid terms, the appeals stand dismissed.

.....J.
(DIPANKAR DATTA)

.....J.
(PRASHANT KUMAR MISHRA)

**New Delhi;
April 23, 2025.**

ITEM NO.301

COURT NO.14

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No.5606/2024

SHASHANKBHAI JAYANTIBHAI SHAH

Appellant

VERSUS

HDFC BANK LTD. & ORS.

Respondents

[PART-HEARD BY : HON'BLE DIPANKAR DATTA AND HON'BLE PRASHANT KUMAR MISHRA, JJ.]

(With I.A. No.54505/2024-DISCHARGE OF ADVOCATE ON RECORD, I.A. No. 168031/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and I.A. No.168028/2019-PERMISSION TO PLACE ON RECORD SUBSEQUENT FACTS)

WITH

CrI.A. No. 5607/2024 (II-B)

(With I.A. No.54528/2024-CHANGE OF ADVOCATE ON RECORD, I.A. No.15006/2021-EARLY HEARING APPLICATION and I.A. No. 161455/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 23-04-2025 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPANKAR DATTA
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Appellant(s) : Ms. Henna George, AOR
Ms. Purti Gupta (Arguing Counsel/ Adv.)

Ms. Purti Gupta, AOR/Arguing Counsel)
Ms. Henna George, Adv.

For Respondent(s) :Mr. Manish Verma, Adv.
Mr. Arvind Kumar, AOR

Ms. Swati Ghildiyal, AOR
Ms. Devyani Bhatt, Adv.
Ms. Abhipsa Mohanty, Adv.

Mr. Mohit D. Ram, AOR
Mr. Anubhav Sharma, Adv.
Ms. Nayan Gupta, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

1. The appeals stand dismissed in terms of the signed order.
2. Pending application(s), if any, shall stand disposed of.

**(RASHMI DHYANI PANT)
ASST. REGISTRAR-CUM-PS**

**(SUDHIR KUMAR SHARMA)
COURT MASTER (NSH)
(signed order is placed on the file)**