2026:PHHC:098300

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-45498-2019 (O&M)
Date of decision: 20.07.2026

Ajay Gupta and another **...Petitioners**

Versus

Can Bank Factors Limited **...Respondent**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sandeep Wadhawan, Advocate
for petitioner No. 1.

Mr. Nimanyu Gautam, Advocate
for petitioner No. 2.

Mr. Ajay Gupta, Advocate
for the respondent.

MANISHA BATRA, J. *(Oral)*

1. Prayer in the present petition has been made under Section 482 Cr.P.C. for quashing of Criminal Complaint No. 6614 dated 29.09.2015 (Annexure P-1), titled ***M/s Can Bank Factors Limited v. M/s Supreme Tex Mart Limited and another***, pending before the Court of learned Judicial Magistrate First Class, Ludhiana, along with all consequential proceedings arising therefrom, including the summoning order dated 31.05.2016 (Annexure P-2), whereby the petitioners have been summoned to face trial under Section 138 of the Negotiable Instruments Act, 1881 *(for short 'N. I. Act')*.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned complaint has been filed by the respondent-complainant M/s Can Bank Factors Limited alleging therein that it is a company engaged in providing trade finance facilities. The accused-company, M/s Supreme

Tex Mart Limited, had availed a factoring credit facility of Rs.5 crore from the complainant under a factoring agreement for discounting its invoices. The petitioners were the persons in-charge of and responsible for the affairs of the accused-company at the relevant time. According to the complaint, after availing the aforesaid financial facility, the accused-company failed to maintain financial discipline and defaulted in repayment, as a result of which its account became irregular and was classified as a Non-Performing Asset (NPA). Towards discharge of its legally enforceable liability, the accused-company issued the following cheques drawn on its account maintained with the State Bank of India:

- Cheque No. 582873 dated 05.06.2015 for Rs.45,00,000/-;
- Cheque No. 582874 dated 05.06.2015 for Rs.45,00,000/-;
- Cheque No. 582875 dated 05.06.2015 for Rs.11,81,748/-;
- Cheque No. 582876 dated 16.06.2015 for Rs.50,00,000/-;
- Cheque No. 582877 dated 16.06.2015 for Rs.42,38,692/-;
- Cheque No. 582878 dated 24.06.2015 for Rs.12,00,000/-;
- Cheque No. 922622 dated 08.06.2015 for Rs.50,05,903/-; and
- Cheque No. 922638 dated 08.06.2015 for Rs.1,50,36,320/-.

3. The complainant presented the aforesaid cheques for encashment within their validity period. However, the same were dishonoured by the banker of the accused-company vide returning memos dated 08.08.2015 with the remarks ‘Exceeds Arrangement”. Thereafter, the complainant served the statutory demand notice dated 21.07.2015 upon the accused calling upon them to make payment of the cheque amounts within the prescribed period. Despite service of notice, the accused failed to liquidate the outstanding liability, thereby compelling the

complainant to institute the present complaint under Section 138 read with Section 420 of the IPC against the company as well as its Directors/persons in-charge of its affairs.

4. After presentation of the complaint, preliminary evidence of the complainant was recorded and finding a *prima facie* case for commission of offence punishable under Section 138 of the N. I. Act against the accused, the Magistrate concerned the petitioners and co-accused to face trial for the alleged offence.

5. It is argued by learned counsel for the petitioners that the impugned complaint as well as the summoning order is not maintainable in the eyes of law in view of the subsequent initiation of insolvency proceedings against the accused-company under the Insolvency and Bankruptcy Code, 2016 *(for short 'IBC')*. It is submitted that the National Company Law Tribunal, Chandigarh Bench, vide order dated 29.09.2017, admitted the petition under Section 7 of the IBC and declared a moratorium under Section 14 of the Code, thereby prohibiting the institution or continuation of proceedings against the corporate debtor. Thereafter, vide order dated 11.10.2017, an Interim Resolution Professional was appointed and the powers of the Board of Directors stood suspended.

6. It is further argued that after failure of the corporate insolvency resolution process, the NCLT, vide order dated 08.08.2018, directed liquidation of the company and appointed a Liquidator. In terms of the liquidation order, all powers of the Board of Directors ceased to exist and vested in the Liquidator, while the officers and employees of the corporate debtor were deemed to stand discharged from the affairs of the company. Consequently, the petitioners ceased to

have any control over or responsibility for the affairs of the company. It is further argued that once insolvency proceedings commenced and the statutory moratorium came into operation, continuation of proceedings under Section 138 of the N. I. Act against the petitioners became legally impermissible. The respondent itself is a member of the Committee of Creditors and its claim forms part of the insolvency proceedings. Therefore, allowing simultaneous prosecution under the Negotiable Instruments Act would amount to permitting parallel recovery proceedings in respect of the same debt, which is contrary to the scheme and object of the IBC. Section 238 of the IBC gives the provisions of the Code an overriding effect over all inconsistent laws. Since the IBC has an overriding effect, its provisions would prevail over the proceedings under Section 138 of the N. I. Act in case of any inconsistency. Moreso, the respondent has now itself invoked the provisions of the IBC against both the petitioners in respect of the very same liability by filing separate petitions under Section 94 of the IBC before the NCLT. It is argued that simultaneous continuation of the insolvency proceedings and the present criminal prosecution arising out of the same transaction may lead to conflicting decisions and cause serious prejudice to the petitioners. With these broad submissions, it is urged that the impugned complaint, the summoning order dated 31.05.2016 and all consequential proceedings deserve to be quashed qua the petitioners.

7. Reply has been filed by the respondent/complainant. It is argued by learned counsel for the respondent that the accused-company had availed factoring facilities to the tune of Rs.5 crore from the respondent and, towards discharge of its outstanding liability, issued the cheques in question, which were dishonoured due to insufficiency of funds. Consequently, the complaint under Section 138 of the N.

I. Act was filed on 29.09.2015 and the petitioners were summoned on 31.05.2016. The insolvency proceedings before the National Company Law Tribunal commenced much later, as the petition under the Insolvency and Bankruptcy Code was admitted only on 29.09.2017. Therefore, the subsequent declaration of moratorium under Section 14 of the IBC or the eventual order of liquidation cannot wipe out or affect the criminal liability that had already arisen upon dishonour of the cheques in the year 2015. The offence under Section 138 of the N. I. Act stood complete on the date of dishonour of the cheques and subsequent insolvency proceedings have no bearing on the criminal prosecution. The moratorium under Section 14 of the IBC is intended to protect the corporate debtor during the insolvency resolution process and does not extend to criminal proceedings against the Directors or signatories of the dishonoured cheques. The petitioners, being the persons in-charge of and responsible for the affairs of the company at the relevant time are independently liable for the offence committed by the company. The liquidation order merely divested the petitioners of the management of the company and did not absolve them of criminal liability for acts committed while they were managing its affairs. It is, therefore, urged that the petition is liable to be dismissed.

8. This Court has heard the rival submissions.

9. The principal contention raised on behalf of the petitioners is that once the corporate insolvency resolution process was initiated against the accused-company and thereafter an order of liquidation came to be passed by the National Company Law Tribunal, the continuation of the proceedings under Section 138 of the N. I. Act against the petitioners has become legally impermissible. This

contention, in the considered opinion of this Court, cannot be accepted. It is not in dispute that the cheques in question were issued in June, 2015, were dishonoured on presentation and after issuance of the statutory demand notice and failure of the accused to make payment within the prescribed period, the complaint under Section 138 of the N.I. Act came to be instituted on 29.09.2015. The petitioners were summoned on 31.05.2016. Thus, the offence under Section 138 of the N.I. Act had already stood completed much prior to the commencement of the corporate insolvency resolution process on 29.09.2017. Subsequent initiation of insolvency proceedings cannot efface or obliterate the criminal liability already incurred on account of dishonour of the cheques.

10. The legal position is no longer *res integra*. The Hon'ble Supreme Court in ***P. Mohanraj and others v. Shah Brothers Ispat Private Limited, (2021) 6 SCC 258*** has held that while the moratorium under Section 14 of the IBC operates in favour of the corporate debtor, the statutory liability of the natural persons covered under Section 141 of the N.I. Act continues unaffected and proceedings against such persons can validly continue. The said principle has subsequently been reaffirmed in ***Ajay Kumar Radheshyam Goenka v. Tourism Finance Corporation of India Limited, (2023) 10 SCC 545***, wherein it has been held that discharge or resolution of the corporate debtor under the IBC does not absolve the Directors or persons in charge of the affairs of the company from their independent criminal liability under Sections 138 and 141 of the N.I. Act. The contention that after appointment of the Interim Resolution Professional and subsequently the Liquidator, the petitioners ceased to be in control of the affairs of the company and, therefore, cannot be prosecuted, is equally devoid of merit. The

liability under Section 141 of the N.I. Act is to be examined with reference to the status of the accused at the time when the offence was committed, i.e., when the cheques were issued and dishonoured. The subsequent divesting of managerial powers by operation of the provisions of the IBC cannot erase the criminal liability which had already crystallized on the date of commission of the offence. Similar view has been taken by this Court in ***Vishnoo Mittal v. M/s Shakti Trading Company, 2022 (3) RCR (Criminal) 926, Charanbir Singh Sethi v. Pooja Sharma and others, 2023 (3) RCR (Criminal) 809, Ram Kisho Arora @ R. K. Arora v. Anubhav Kapoor, 2023 NCPHHC 106397, Sangeeta Kumar v. State of Punjab, 2024(1) PLR 471*** and ***M/s Shiva Shakti Grains (India) Pvt. Ltd. and another v. M/s Kaur Chand Munish Kumar, 2024(1) PLR 626***.

11. Much emphasis has also been laid by learned counsel for the petitioners upon the fact that the respondent has invoked proceedings under the IBC in respect of the same liability and, therefore, continuation of the present prosecution would amount to permitting parallel proceedings. The said submission also deserves rejection as the proceedings under Section 138 of the N.I. Act are predominantly criminal in nature and the moratorium provisions under Part III of the IBC do not operate to stall or terminate the criminal prosecution. The object of the moratorium is merely to postpone civil debt enforcement and not to shield an accused from criminal accountability arising out of dishonour of cheques.

12. In the present case, the petitioners seek quashing of the complaint itself and the summoning order solely on account of the subsequent insolvency proceedings. Such a course is clearly impermissible in view of the settled legal position noticed hereinabove. Whether the petitioners were in charge of and

responsible for the conduct of the business of the company at the relevant time and whether the ingredients of Sections 138 and 141 of the N.I. Act stand established are matters to be adjudicated by the trial Court on the basis of the evidence led by the parties. No ground is made out for exercise of the inherent jurisdiction of this Court to quash the criminal proceedings at the threshold. Consequently, finding no illegality or perversity in the impugned complaint or the summoning order warranting interference in exercise of the inherent powers of this Court, the present petition is dismissed.

13. However, it is made clear that the observations made herein shall not be construed as an expression on the merits of the case pending before the trial Court.

20.07.2026 **(MANISHA BATRA)**
Waseem R. Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*