

MHCC050008502022



**IN THE COURT OF SESSIONS, AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI
MISCELLANEOUS APPLICATION (EXHIBIT-2)**

IN

CRIMINAL REVISION NO.57 OF 2022

**Fabtech Technologies International
Limited & others**

...Applicants

V/s.

**Mr. Pawankumar Ramakrishna Chunduru
and others**

... Respondents

Advocate Mr. Devang Shah for Applicants.

Advocate Dinesh Gupta for Respondent Nos.1 to 4.

Spl. APP Smt. Purnima Rathod for Respondent No.5/State

CORAM: H.H.THE SPECIAL JUDGE,

Ms. S. J. ANSARI, (C.R.NO.11)

DATED : 28th March, 2025

ORDER

The present application has been filed on behalf of the petitioners who have approached this Court to challenge the order dated 30/12/21 as passed by the learned Metropolitan Magistrate, 65th Court, Andheri, Mumbai in MA No.65000468/2021 in terms of which it issued process against the accused Nos.4, 5 and 6 i.e. the present petitioners, for the offences punishable u/s.406, 419, 420, 465, 467, 471 r/w. Section 34 and section 120-B of the Indian Penal Code. As per the petitioners, the matter before the trial court was kept for their appearance and hence, they have requested for a stay saying that otherwise, they will have to face trial and suffer grave loss and damage.

2. The record will further show that at the time of the filing of the petition itself, on 22/02/22 the then presiding officer of C.R. No.9 had granted the relief in terms of prayer clause (a) as made in the application under consideration. The same pertains to the order impugned being required to be stayed. The said stay has continued till date.

3. I have heard Advocate Devang Shah for the petitioners and Advocate Dinesh Gupta for the respondent No.2.

4. Prima facie, the facts as they appear before me show that the petitioners had previously filed two complaint cases against the respondent No.1, 3 and 4 pertaining to offences committed u/s.138 of the Negotiable Instruments Act (hereinafter referred to as “the N.I. Act”) by filing two proceedings bearing Nos.5083/SS/2017 and 5774/SS/2017. The said matters then came to be proceeded with and ultimately it resulted in the accused persons therein, being convicted and sentenced. The relevant appeals against the said judgments have also been filed and are pending before this Court itself. Hence, contending that the criminal complaint case bearing No.468/MISC/2021 has come to be filed only as a counter blast by the persons responsible for the Company i.e. Centech Engineers Pvt. Ltd. to save themselves from the conviction and sentence imposed upon them in the case filed under section 138 of the N.I. Act, it has been pointed out that the stay to the M.A. No.65000468/2021 if not granted, will result in the petitioners being forced to face a trial in an obviously concocted case. This is because, as per the Advocate for the petitioners, if there would have been any truth in the allegations as made against

the present petitioners, nobody had stopped the respondent No.1 from approaching the trial Court at that time itself for obtaining the necessary relief. The fact that the criminal complaint came to be filed much after the judgment dated 10/12/19 in the two complaints filed u/s.138 of the N.I. Act against the respondent Nos.1, 3 and 4 herein will by itself, according to him, reflect the fact of it being nothing but a manipulated complaint made with the sole object of somehow preventing the company i.e. M/s. Centech Engineers Private Limited and its director, etc. from suffering the legal consequences of their own actions.

5. On the other hand, Shri Dinesh Gupta Advocate for the respondents has vehemently contended that it was only after contesting the complaint filed u/s.138 of the N.I. Act that the complainant in the matter in hand i.e. Pawan Kumar Chundru the Director of M/s. Centech Engineers Private Limited and the others became aware about the offence committed by the present petitioners. This therefore, according to him, resulted in the criminal complaint being filed in the year 2021 after which the learned Metropolitan Magistrate, on appreciation of the facts and the documents on the record, was pleased to pass an order directing the issuance of process against the present petitioners. Stating that initially, the stay order had been passed in the absence of the respondents which was therefore, required to be vacated as it has resulted in the trial before the learned Metropolitan Magistrate being stayed, he is, seeking the rejection of the application for stay.

6. Prima facie, a perusal of the documents as placed on the record will show that in 2017 M/s. Fabtech Technologies International Limited

had filed two complaint cases against M/s. Centech Engineers Private Limited, it's directors i.e. Mr. Chunduru Anil Kumar, Mr. Ramkrishna Cluncuri and Mr. Pawan Kumar Chunduru for the offence punishable u/s.138 of the N.I, Act. The copy of the judgment - Exh.'K' in the compilation filed with the revision in the matter, will also show that the offence had been held to have been proved after which the directors of M/s. Centech Engineers Private Limited had come to be sentenced as per law. It will also have to be kept in mind that the evidence as led in the said matter, as has been placed on the record, will show that a detailed cross-examination had been conducted on behalf of the accused i.e. M/s. Centech Engineers Private Limited in the said criminal complaint. Therein, clear-cut suggestions had been given to the witness examined on behalf of the Fabtech Technologies International Ltd. about the transactions being entered into between Brucke Pharma Private Limited and the accused, and that the disputed cheques were in the custody of Brucke Pharma Private Limited, but had been wrongly given to the complainant. The same were however, categorically denied. It is therefore, clear that the defence taken on behalf of the Centech Engineers Private Limited in the complaints filed against it and it's officials was about the goods having been supplied to Brucke Pharma Private Limited, and not to Centech Engineers Private Limited. But, the complainant therein, remained steadfast on the fact that the goods had been supplied to Centech Engineers Private Limited as per the purchase order.

7. It is therefore, quite clear that M/s. Centech Engineers Private Limited, was always coming with the case of no goods having been delivered to it and of the cheques having been misused on account of

one Mr. Nagesh from Brucke Pharma Private Limited having handed over the same to Fabtech Technologies International Limited. Consequently, if the said company was bonafidely coming with the said defence and was aware about the alleged cheating, forgery, etc. committed by Fabtech Technologies International Limited, nothing had stopped them from filing the complaint on the basis of the said facts in 2017 or 2018 itself. Without doing so, the respondent No.1 - who is the director of Centech Engineers Private Limited, and the others allowed the complaints as filed u/s.138 of the N.I. Act to reach their conclusion in the year 2019 with their conviction, only subsequent to which the director of Centech Engineers Private Limited and other persons associated with it, chose to file the complaint case against the present petitioners and others in the year 2021.

8. In such circumstances, it is prima facie clear that there is indeed substance in the contention as advanced by Shri Devang Shah Advocate about the complaint case having been filed as a counterblast only to pressurize the petitioners. Hence, it appears necessary to stay the order of issue of process as passed in C.C. No.SW2/22 by the learned Metropolitan Magistrate, 65th Court, Andheri, Mumbai. This is because, if the matter is not stayed, the petitioners will have to unnecessarily face a trial in a case which is prima facie been shown to have been filed only after substantial delay for which no plausible reason has been given and as a counterblast to the company i.e. M/s. Centech Engineers Private Limited and it's directors being convicted for the offence u/s.138 of the N.I. Act in the complaint cases initiated by M/s. Fabtech Technologies International Limited. The order of misusing process against the petitioners will surely cause a great loss to them as they will

MA Exh.2 in RA 57/22

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be compelled to face a criminal proceeding without any prima facie fault on their part. In the result, I proceed to pass the following order :-

ORDER

- 1. Miscellaneous Application Exhibit-2 stands allowed.**
- 2. The proceedings of C.C. No.SW/02 of 2022 against accused Nos.4, 5 and 6 before the 65th learned Metropolitan Magistrate Court, Andheri, Mumbai are stayed till the decision of the present revision.**

Date : 28.03.2025

**(S. J. Ansari)
Special Judge under P.O.C.S.O. Act,
Sessions Court, Borivali Division,
Dindoshi, Goregaon, Mumbai**

Dictated on	: 28.03.2025
Transcribed on	: 25.04.2025
Checked and corrected on	: 05.05.2025
Signed on	: 05.05.2025
Sent to Dept. on	:

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

UPLOAD DATE

AND TIME : 06/05/2025 at 12.20 p.m.

Mrs.Vidya Pendharkar

NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Ms. S. J. ANSARI (Court Room No.11)
Date of Pronouncement of Judgment/Order	28/03/2025
Judgment/Order signed by P.O. on	05/05/2025
Judgment/Order uploaded on	06/05/2025