

ORDER

The instant application is filed by the accused for discharge for the offence punishable under section 25 and 27 of the Payments and Settlements Act, 2007 r/w/s 138 of N.I.Act, 1881.

2. In application, accused has stated that, the complainant's financial company has filed the above complaint against him under section 200 of Cr.P.C., for the offence punishable under section 25 and 27 of Payments and Settlements Act, 2007 r/w/s 138 of N.I.Act, 1881. He has been declared as insolvent by the Hon'ble High Court of Madras on 23.03.2023. The complainant has filed this complaint to harass him and to falsely extract money from him. Hence, prays to discharge from the above said offences.

3. The complainant has filed objections stating that the application is not maintainable and prays to dismiss the same with exemplary cost. Further, it has contended that accused is trying to protract the proceedings of this case by placing the order passed by the Hon'ble High Court of Madras in I.P.No.07/2023 dated 23.03.2023. The order passed by the Hon'ble High Court of Madras is not binding upon it, as it was not party in the said proceedings. Hence, prays to dismiss the application.

4. Heard arguments from both the sides.
5. The points that would arise my consideration are as under;

6. **Point No.1:** Whether, accused has made out sufficient grounds to discharge him from the offences punishable under section 25 and 27 of Payments and Settlements Act, 2007 r/w/s 138 of N.I.Act, 1881?

7. **Point No.2:** What order?

8. My findings to the above points are as under;

Point No.1: In the Negative.

Point No.2: As per final order, for the following,

: R E A S O N S :

9. **Point No.1:** The complainant has filed the above complaint against accused under section 200 of Cr.P.C., for the offences punishable under section 25 and 27 of Payments and Settlements Act, 2007 r/w/s 138 of N.I.Act, 1881. Before, filing this application the stage was for cross of PW1. In the meantime the accused came up with this application with a prayer to discharge him on the ground that he has been declared as insolvent by the Hon'ble High Court of Madras.

10. Learned counsel for accused has argued that before filing this complaint accused has been declared as insolvent and whatever claim from accused can be placed before the official assignee of Hon'ble High Court of Madras.

Therefore, the present complaint is not maintainable against accused and prays to discharge the accused for the above said offences.

11. Learned counsel for complainant has argued that the insolvent order passed by the Hon'ble High Court of Madras is not binding upon the complainant. Because, complainant was not a party to the proceedings.

12. At this stage, it is better to rely the case of Rakesh Bhanot Vs. Gurudas Agro Pvt. Ltd., in CrI.A.No.1607/2025 order dated 01.04.2025, passed by the Hon'ble Supreme Court of India. Wherein, the Hon'ble Apex Court of India held as under;

“17. For the foregoing discussion, we are of the opinion that the object of Moratorium or for the that purpose, the provision enabling the debtor to approach the tribunal u/s 94 is not to stall the criminal prosecution, but to only postponed any civil actions to recover any debt. The deterrent effect of Section 138 is critical to maintain the trust in the use of Negotiable Instruments like cheques in business dealings. Criminal liability for dishonoring cheques ensures that individuals who engage in the commercial transactions are held accountable for their actions, however, subject to satisfaction of other conditions in the N.I.Act, 1881”.

On perusal of supra decision it appears that the object of Moratorium or for the that purpose, the provision enabling the debtor to approach the tribunal u/s 94 is not to stall the criminal prosecution, but to only postponed any civil actions to recover any debt.

13. In this case, the accused is claiming that he has been declared that insolvent and he can be discharged from the offences punishable under section 25 and 27 of Payments and Settlements Act, 2007 r/w/s 138 of N.I.Act, 1881. By relying principle laid down in the supra decision I am of the opinion that a case under N.I.Act, can be filed against insolvent person. A declaration of insolvency does not protect an individual from Criminal liability for dishonor of the cheque. The criminal proceedings under the N.I.Act are separate and distinct from the civil insolvency proceedings. Therefore, I am of the opinion that the accused has not made out sufficient grounds to discharge him. Accordingly, I have answered point no.1 in the negative.

14. **Point No.2:** For the above made discussions, this court proceed to pass the following;

O R D E R

The discharge application filed by the accused is hereby rejected.

In view of order order on application memo dated 02.07.2024 is hereby dismissed as infructuous.

For cross of PW1.

Call on 12.11.2025.

III ASCJ & ACJM