CASE NO.:
Appeal (crl.) 10-12 of 2001.
Special Leave Petition (crl.) 3210-3212 of 1999

PETITIONER:
RAJNEESH AGGARWAL

Vs.

RESPONDENT:
AMIT J. BHALLA

DATE OF JUDGMENT: 04/01/2000

BENCH:
G.B.Pattanaikk, U.C.Banerjee

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T..J

PATTANAIK,J.

Leave Granted.

The complainant is the appellant against the impugned orders dated 13th August, 1999 of a learned Single Judge of the Himachal Pradesh High Court in three criminal miscellaneous petitions filed under Section 482 of the Code of Criminal Procedure. By the impugned orders, the learned Judge quashed three criminal complaints filed under Section 138 read with Section 141 of the Negotiable Instruments Act. Admittedly, three cheques had been given to the appellant, drawn on Bank of Baroda, Parliament Street, New Delhi, representing different amounts, amounting to Rs.2,32,600/- in all. These cheques were presented by the appellant for encashment, but the same were returned with the endorsement Payment stopped by the drawer. The appellant, therefore, served notices on the respondent, calling upon him to pay the amount of cheques within 15 days of the receipt of the notice. Since the respondent failed to pay the amount, the complaints were filed in the Court of Chief Judicial Magistrate, Kullu. The learned Magistrate proceeded to hold inquiry under Section 202 of the Code of Criminal Procedure and thereafter took cognizance of the offence and directed issuance of process. The accused respondent challenged the order of the Magistrate, issuing process by filing application under Section 482 inter alia on the ground that the stoppage of payment by the drawer does not constitute an offence under Section 138 of the Negotiable Instruments Act and service of notice, as contemplated under proviso (b) to Section 138 of the Act has not been proved. Those petitions however were dismissed by the High Court by order dated 25.3.1998. It was held by the High Court that in view of the Judgment of the Supreme Court in M/s Modi Cements Limited vs. Shri Kuchil Kumar Nandi, JT 1998(2) SC 198, there is no merit in any of the petitions and the same accordingly stand rejected. It was, however observed that the accused shall be at liberty to raise all such points, as may be available to him during the trial of the case before

the trial Court. After dismissal of respondents application filed under Section 482 of the Code of Criminal Procedure, the respondent filed application before the Magistrate for recalling the issuance of process. The Magistrate however dismissed those applications. The accused, therefore, filed the petitions before the High Court again under Section 482. The High Court having allowed the application filed under Section 482 by the impugned orders dated 1.2.1999, the complainant has preferred these appeals against the same. Two contentions had been raised before the High Court by the accused: (1) Cheques had been issued in the capacity of the Director of the company to whom the watches were supplied, but the complaint has been filed without impleading the company as accused and as such the same is not maintainable; and (2) In the absence of notice, as contemplated by clause (b) of the proviso to Section 138 of the Negotiable Instruments Act, criminal proceedings cannot be proceeded with.

The High Court rejected the first contention and held that the criminal prosecution would lie under Section 138 of the Negotiable Instruments Act, without impleading the company of which the accused is the Director as the party. But so far as the second contention is concerned, the High Court came to the conclusion that the notice that was issued by the complainant on account of dishonour of the cheques having been issued to the accused in his individual capacity and not having been issued to the drawer thereof, no offence can be said to have been committed by the company M/s. Bhalla Techtran Industries Limited, and, therefore, the criminal proceedings cannot be proceeded against by taking recourse to Section 141 of the Act. It is this conclusion of the High Court, which is the subject matter of challenge in these appeals.

It may be stated at this stage that in the earlier round of litigation, when the accused has filed application under Section 482 of the Code of Criminal Procedure, it had been urged that the service of notice, as contemplated under proviso (b) to Section 138 of the Act, has not been proved, but yet the Court refused to exercise jurisdiction under Section 482 and refused to quash the proceedings. The learned Judge after analyzing the provisions of Section 138 of the Negotiable Instruments Act, came to hold that before an offence under the said provision can be said to have been made out, it must be shown that the cheque was presented to the bank for encashment within a period of six months from the date on which it was drawn or within the period of its validity, whichever is earlier ; the payee or holder in due course of the cheque makes demand for the payment of the amount of money under the cheque by giving a notice in writing to the drawer of the cheque within 15 days of information received by him from the bank regarding dishonour of the cheque; and the drawer of the cheque fails to make payment of the amount of money within 15 days of the receipt of notice. The High Court, however construed, the notices issued to the accused respondent, as a notice in his individual capacity and not to the company M/s Bhalla Techtran Industries Ltd., notwithstanding the fact that the notice was addressed to Shri Amit J. Bhalla, Bhalla Techtran Industries Ltd., 116-Jor Bagh, New Delhi-110 003 and, therefore, it was not a notice to the drawer. The High Court further held that the judgment of this Court in M/s Bilakchand Gyanchand Co. Vs. A. Chinnaswami, 1999(2)

SCALE 250, will have no application to the facts of this case. It ultimately came to the conclusion that in the absence of requisite notice to the drawer of the cheque, no offence can be said to have been committed by the company within the meaning of Section 141 of the Act.

Mr. D.A.Dave, the learned senior counsel, appearing for the appellant contended before us that on the self-same ground, the High Court having earlier dismissed the application, filed under Section 482, could not have re-examined the matter when fresh applications were filed under Section 482 and could not have allowed the same. He also further urged that the very construction of the notice and the conclusion of the High court on that score is erroneous and further, the High Court committed error in not following the judgment of this Court in Bilakchand Gyanchand 1999(5) SCC 693.

Mr. G.L. Sanghi, the learned counsel, appearing for the respondent, referred to the evidence of the complainant before issuance of summons and submitted that on the face of the said evidence, the High Court was fully justified in coming to the conclusion that there has been no service of notice to the drawer, which is sine qua non for completion of offence under Section 138 read with Section 141 of the Act , and, therefore, the conclusion of the High Court is unassailable. Mr. Sanghi further urged that the conclusion of the High court to the effect that supply of watches made by the respondent to the company M/s Bhalla Techtran Industries Ltd. and cheques involved in the case were also issued by the said company through its Director that is the petitioner and in view of such admitted facts, the petitioner cannot be proceeded against for the offence under Section 138 of the Act in his individual capacity, is the only conclusion permissible under the facts and circumstances of the case and, therefore, the order quashing the criminal proceedings should not be interfered with. According to Mr. Sanghi, the complainant has been prosecuting the accused Amit Bhalla in his individual capacity, though categorically in the complaint petition, it has been stated that the cheques had been issued by M/s Bhalla Techtran Industries Ltd., through Mr. Amit J. Bhalla as a Director and consequently, so far as the company is concerned, who is the real drawer of the cheque, no notice can be said to have been issued, and, therefore, criminal proceeding has rightly been quashed. Mr. Sanghi urged that the respondent not being the drawer of the cheque, could not have been prosecuted in his individual capacity inasmuch as there is no vicarious liability of a Director in the criminal matters. Mr. Sanghi also contended that the ultimate decision of quashing of criminal proceeding can be supported on the further ground that the complaint is purely one of civil nature and the complainant has abused the process of law by initiating criminal prosecution as an arm- twisting device and in this view of the matter, the case does not warrant interference by this Court in exercise of jurisdiction under Article 136 of the Constitution. Mr. Sanghi also urged that in course of the proceedings, the entire amount involved in the three cheques having been deposited, the criminal proceedings should not be allowed to be continued and the order, quashing the criminal proceedings should not be interfered with.

Having regard to the contentions raised by the counsel for the parties, two questions really arise for our consideration:

(1) Was the High Court justified in coming to the conclusion that the drawer has not been duly served with notice for payment? (2) Whether deposit of the entire amount covered by three cheques, while the matter is pending in this Court, would make any difference?

So far as the first question is concerned, it is no doubt true that all the three requirements under clauses (a), (b) and (c) must be complied with before the offence under Section 138 of the Negotiable Instruments Act, can be said to have been committed and Section 141 indicates as to who would be the persons, liable in the event the offence is committed by a company. The High Court itself on facts, has recorded the findings that conditions (a) and (b) under Section 138 having been duly complied with and, therefore, the only question is whether the conclusion of the High Court that condition (c) has not been complied with, can be said to be in accordance with law. Mere dishonour of a cheque would not raise to a cause of action unless the payee makes a demand in writing to the drawer of the cheque for the payment and the drawer fails to make the payment of the said amount of money to the payee. The cheques had been issued by M/s Bhalla Techtran Industries Limited, through its Director Shri Amit Bhalla. The appellant had issued notice to said Shri Amti J. Bhalla, Director of M/s Bhalla Techtran Industries Limited. Notwithstanding the service of the notice, the amount in question was not paid. The object of issuing notice indicating the factum of dishonour of the cheques is to give an opportunity to the drawer to make payment within 15 days, so that it will not be necessary for the payee to proceed against in any criminal action, even though the bank dishonoured the cheques. It is Amit Bhalla, who had signed the cheques as the Director of M/s Bhalla Techtran Industries Ltd. When the notice was issued to said Shri Amit Bhalla, Director of M/s Bhalla Techtran Industries Ltd., it was incumbent upon Shri Bhalla to see that the payments are made within the stipulated period of 15 days. It is not disputed that Shri Bhalla has not signed the cheques, nor is it disputed that Shri Bhalla was not the Director of the company. Bearing in mind the object of issuance of such notice, it must be held that the notices cannot be construed in a narrow technical way without examining the substance of the matter. We really fail to understand as to why the judgment of this court in Bilakchand Gyanchand Co.,1999(5) SCC 693, will have no application. In that case also criminal proceedings had been initiated against A. Chinnaswami, who was the Managing Director of the company and the cheques in question had been signed by him. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court committed error in recording a finding that there was no notice to the drawer of the cheque, as required under Section 138 of the Negotiable Instruments Act. In our opinion, after the cheques were dishonoured by the bank the payee had served due notice and yet there was failure on the part of the accused to pay the money, who had signed the cheques, as the Director of the company. The impugned order of the High Court, therefore, is liable to be quashed.

So far as the question of deposit of the money during the pendency of these appeals is concerned, we may state that in course of hearing the parties wanted to settle the matter in Court and it is in that connection, to prove the bona fide, the respondent deposited the amount covered under all the three cheques in the Court, but the complainants counsel insisted that if there is going to be a settlement, then all the pending cases between the parties should be settled, which was, however not agreed to by the respondent and, therefore, the matter could not be settled. So far as the criminal complaint is concerned, once the offence is committed, any payment made subsequent thereto will not absolve the accused of the liability of criminal offence, though in the matter of awarding of sentence, it may have some effect on the Court trying the offence. But by no stretch of imagination, a criminal proceeding could be quashed on account of deposit of money in the Court or that an order of quashing of criminal proceeding, which is otherwise unsustainable in law, could be sustained because of the deposit of money in this Court. In this view of the matter, the so-called deposit of money by the respondent in this Court is of no consequence. In the aforesaid premises, we set aside the impugned orders of the High Court and allow these appeals and direct that the criminal proceedings would be continued. The money which had been deposited by the accused in this Court, may be refunded to the accused through his counsel. The Magistrate is directed to dispose of the proceedings at an early date.