

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE/ORIGINAL JURISDICTION

CRIMINAL APPEAL No.276/2013

BANSILAL S.KABRA

Appellant(s)

VERSUS

GLOBAL TRADE FINANCE LTD. & ANR.

Respondent(s)

WITH

CRIMINAL APPEAL No. 277/2013, CRIMINAL APPEAL NOS.278-279/2013,  
CRIMINAL APPEAL NO.2099/2013, WRIT PETITION (CRIMINAL) NO.166/2011,  
WRIT PETITION (CRIMINAL) NO.55/2012 AND CRIMINAL APPEAL NO.925/2014

O R D E R

The Court is convened through Video Conferencing.

Criminal Appeal No.276/2013, Criminal Appeal No.277/2013 and  
Criminal Appeal Nos.278-279/2013:-

At the commencement of hearing, learned counsel appearing for the appellants (Mr. Bansilal S. Karba, M/s.Subhiksha Trading Services Limited and Others) submit that their clients have been acquitted by the Trial Court. Further, learned counsel appearing for the appellant (Mr. Jiten Mugatlal Shah) submits that the complaint against his client has been withdrawn. These facts are not disputed by learned counsel appearing for respondents and hence the appellants seek permission to withdraw the Appeals.

In view of the above, the Criminal Appeals are dismissed as withdrawn being infructuous.

CRIMINAL APPEAL NO.2099/2013, WRIT PETITION (CRIMINAL) NO.166/2011, WRIT PETITION (CRIMINAL) NO.55/2012 AND CRIMINAL APPEAL NO.925/2014

Heard Mr. Nikhil Jain, learned Advocate-on-Record appearing for the appellants in all these matters and Mr. Gagan Gupta, learned Advocate-on-Record appearing for Respondent No.1 – Jasjit Singh in Criminal Appeal No.2099 of 2013.

The short questions involved in these matters are (i) whether the inquiry under Section 202 of the Code of Criminal Procedure, 1973 (in short 'the Code') is mandatory before summoning of the accused under Section 138 of the Negotiable Instruments Act, when such accused is living outside the territorial jurisdiction of the Magistrate? (ii) whether inquiry under Section 202 of the Code is mandatory or directory in nature? (iii) whether the procedure contemplated under Section 145 of the N.I. Act which permits the complainant to be examined by way of an affidavit would amount to sufficient compliance of the object of an inquiry under Section 202 of the Code?

During the course of hearing, Mr. Gagan Gupta has drawn our attention to the recent Judgment passed by the Constitution Bench of this Court in Suo Motu Writ Petition (Crl.) No.2 of 2020 (Reported in AIR 2021 Supreme Court 1957) on 16-4-2021 which has already dealt with the issues raised in these matters.

Having heard learned counsel appearing for the parties and after going through the cited Judgment, we are satisfied that the issues raised in these Appeals and Writ Petitions have been effectively answered by the Constitution Bench in Para 10 to 12, which read as follows:-

"10. Section 202 of the Code confers jurisdiction on the Magistrate to conduct an inquiry for the purpose of deciding whether sufficient grounds justifying the issue of process are made out. The amendment to Section 202 of the Code with effect from 23.06.2006, vide Act 25 of 2005, made it mandatory for the Magistrate to conduct an inquiry before issue of process, in a case where the accused resides beyond the area of jurisdiction of the court. (See: Vijay Dhanuka & Ors. v. Najima Mamtaj & Ors. (2014) 14 SCC 638, Abhijit Pawar v. Hemant Madhukar Nimbalkar and Anr. (2017) 3 SCC 528, and Birla Corporation Limited v. Adventz Investments and Holdings Limited & Ors. (2019) 16 SCC 610. There has been a divergence of opinion amongst the High Courts relating to the applicability of Section 202 in respect of complaints filed under Section 138 of the Act. Certain cases under Section 138 have been decided by the High Courts upholding the view that it is mandatory for the Magistrate to conduct an inquiry, as provided in Section 202 of the Code, before issuance of process in complaints filed under Section 138. Contrary views have been expressed

in some other cases. It has been held that merely because the accused is residing outside the jurisdiction of the court, it is not necessary for the Magistrate to postpone the issuance of process in each and every case. Further, it has also been held that not conducting inquiry under Section 202 of the Code would not vitiate the issuance of process, if requisite satisfaction can be obtained from materials available on record.

11. The learned Amici Curiae referred to a judgment of this Court in *K.S. Joseph v. Philips Carbon Black Ltd & Anr.* (2016) 11 SCC 105 where there was a discussion about the requirement of inquiry under Section 202 of the Code in relation to complaints filed under Section 138 but the question of law was left open. In view of the judgments of this Court in *Vijay Dhanuka (supra)*, *Abhijit Pawar (supra)* and *Birla Corporation (supra)*, the inquiry to be held by the Magistrate before issuance of summons to the accused residing outside the jurisdiction of the court cannot be dispensed with. The learned Amici Curiae recommended that the Magistrate should come to a conclusion after holding an inquiry that there are sufficient grounds to proceed against the accused. We are in agreement with the learned Amici.

12. Another point that has been brought to our notice relates to the interpretation of Section 202 (2) which

stipulates that the Magistrate shall take evidence of the witness on oath in an inquiry conducted under Section 202 (1) for the purpose of issuance of process. Section 145 of the Act provides that the evidence of the complainant may be given by him on affidavit, which shall be read in evidence in any inquiry, trial or other proceeding, notwithstanding anything contained in the Code. Section 145 (2) of the Act enables the court to summon and examine any person giving evidence on affidavit as to the facts contained therein, on an application of the prosecution or the accused. It is contended by the learned Amici Curiae that though there is no specific provision permitting the examination of witnesses on affidavit, Section 145 permits the complainant to be examined by way of an affidavit for the purpose of inquiry under Section 202. He suggested that Section 202 (2) should be read along with Section 145 and in respect of complaints under Section 138, the examination of witnesses also should be permitted on affidavit. Only in exceptional cases, the Magistrate may examine the witnesses personally. Section 145 of the Act is an exception to Section 202 in respect of examination of the complainant by way of an affidavit. There is no specific provision in relation to examination of the witnesses also on affidavit in Section 145. It becomes clear that Section 145 had been inserted in the Act, with effect from the year 2003, with

the laudable object of speeding up trials in complaints filed under Section 138. If the evidence of the complainant may be given by him on affidavit, there is no reason for insisting on the evidence of the witnesses to be taken on oath. On a holistic reading of Section 145 along with Section 202, we hold that Section 202 (2) of the Code is inapplicable to complaints under Section 138 in respect of examination of witnesses on oath. The evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses. In suitable cases, the Magistrate can examine documents for satisfaction as to the sufficiency of grounds for proceeding under Section 202."

In addition, this Court in Criminal Appeal Nos.2221, 2222 and 2223 of 2014 Reported in (2014) 10 SCC 494 dealt with the procedure to be adopted by the Magistrates while dealing with the cases under Section 138 of the Negotiable Instruments Act.

Since the issues raised in these matters have already been considered and settled by this Court in Suo Motu Writ Petition (Crl.) No.2 of 2020 (supra), it is left open to the discretion of the concerned Magistrate(s) to decide as to what type of procedure, they need to adopt in the complaints, pending adjudication before them, where the accused persons are staying outside their territorial jurisdiction.

In view of the above, we see no reason to keep these matters pending here and the same are disposed of by giving liberty to the concerned Magistrate(s) to follow the procedure which they deem fit and appropriate, while dealing with the matters, pending adjudication before them.

Needless to state that the Stay Orders dated 3-8-2011, 26-8-2011 4-5-2012 and 19-10-2012 granted by this Court in Criminal Appeal No.2099/2013, Writ Petition (Crl.) No.166/2011, Writ Petition (Crl.) No.55/2012 and Criminal Appeal No.925 of 2014 stand vacated.

.....CJI  
(N.V. RAMANA)

.....J  
(SURYA KANT)

.....J  
(HIMA KOHLI)

NEW DELHI;  
23RD SEPTEMBER, 2021.

ITEM NO.102

COURT NO.1 SECTIONS II-A/II-B/II-C/X

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G SCriminal Appeal No.276/2013

BANSILAL S.KABRA

Appellant(s)

VERSUS

GLOBAL TRADE FINANCE LTD. &amp; ANR.

Respondent(s)

WITH

Crl.A. No. 277/2013 (II-A))

Crl.A. No. 278-279/2013 (II-A)

Crl.A. No. 2099/2013 (II-C)

W.P.(Crl.) No. 166/2011 (X)

W.P.(Crl.) No. 55/2012 (X)

Crl.A. No. 925/2014 (II-B)

Date : 23-09-2021 These appeals and Writ Petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SURYA KANT

HON'BLE MS. JUSTICE HIMA KOHLI

For Appellant(s)

Mr. A. Mariarputham, Sr.Adv.

Mr. Avneesh Arputham, AOR

For M/S. Arputham Aruna And Co, AOR

Mr. Amar Dave, Adv.

Mr. P. S. Sudheer, AOR

Ms. Shruti Jose, Adv.

Mr. Vikram Chaudhri, Sr. Adv.

Mr. Nikhil Jain, AOR

Mr. Harshit Sethi, Adv.

Mr. Rishi Sehgal, Adv.

Mr. Keshavam Chaudhri, Adv.

Ms. Ria Khanna, Adv.

Mr. Jatin Zaveri, AOR

Mr. Neel Kamal Mishra, Adv.

Mr. D.S. Mishra, Adv.

**For Respondent(s)**

Mr. Hemant Sharma, Adv.  
Mr. Ajit Pudussery, Adv.  
Mrs. Indu Sharma, AOR

Mr. Gagan Gupta, AOR

Mr. Arvind Kumar Sharma, AOR

Mr. Prasenjit Keswani, Adv.  
Ms. Nandini Gore, Adv.  
Ms. Sonia Nigam, Adv.  
Mr. Raghvendra Pratap Singh, Adv.  
For M/s. Karanjawala & Co., AOR

Ms. Tanya Shree, Adv.  
Mr. Ejaz Maqbool, AOR  
Mr. Saif Zia, Adv.

Ms. Hemantika Wahi, AOR

Mr. Sachin Patil, AOR  
Mr. Rahul Chitnis, Adv.  
Mr. Aaditya A. Pande, Adv.  
Mr. Geo Joseph, Adv.

Mr. Harshad V. Hameed, AOR  
Mrs. Ashly Harshad, Adv.  
Mr. Muhammed Siddick, Adv.

Mr. Sumeer Sodhi, AOR  
Mr. Aman Nandrajog, Adv.  
Mr. Abhishek Lalwani, Adv.

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

The Court is convened through Video Conferencing.

Criminal Appeal No.276/2013, Criminal Appeal No.277/2013 and  
Criminal Appeal Nos.278-279/2013:-

The Criminal Appeals are dismissed as withdrawn being  
infructuous, in terms of the signed order.

CRIMINAL APPEAL NO.2099/2013, WRIT PETITION (CRIMINAL) NO.166/2011,  
WRIT PETITION (CRIMINAL) NO.55/2012 AND CRIMINAL APPEAL NO.925/2014

The matters are disposed of, in terms of the signed order.

(VISHAL ANAND)  
ASTT. REGISTRAR-cum-PS

(R.S. NARAYANAN)  
COURT MASTER (NSH)

(Signed Order is placed on the file)