Pawankumar vs Ashish Enterprises And Another, ... on 30 August, 1991

JUDGMENT

B.U. Wahane, J.

1. These three criminal applications are directed against the order passed by the Chief Judicial Magistrate, Amravati, taking cognizance and registering the offences under section 138 of the Negotiable Instruments Act, 1981, and under section 420 of the Indian Penal Code, and consequently, the issuance of the summonses. In Criminal Application No. 433 of 1991, the order dated January 4, 1991, in Criminal Application No. 448 of 1991, the order dated December 16, 1989, and in Criminal Application No. 569 of 1991, the order dated December 7, 1989, are under challenge.

2. In Criminal Application No. 433 of 1991, respondent No. 1-Ashish Enterprises, a registered partnership-firm by its partner, Bansilal Baijanath Jaju, filed a complaint case under section 138 of the Negotiable Instruments Act, 1881, under the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988, and under section 420 of the Indian Penal Code. The complainant and the applicant/accused are the residents of Amravati having their business. The applicant/accused is running a shop for years together of purchasing and selling various seeds within the jurisdiction of the city Kotwali, P. S. Amravati. The complainant, i. e., respondent No. 1, partner and the applicant/accused are acquainted with each other. The complainant advanced a hand loan of Rs. 25,000 to the applicant on June 6, 1989, and in lieu thereof the applicant executed a receipt in favour of the complainant on the very day. It was agreed that the loan amount would be refunded within a short period. Reposing confidence in the words of the applicant/accused, the hand loan was advanced.

3. The applicant/accused issued post-dated cheques from time to time. But, on all the occasions they were dishonoured. The first post-dated account payee cheque No. 0170611 of Rs. 25,000 of the Bank of Maharashtra was presented in the bank on June 23, 1989, but it was not encashed and thus it was dishonoured with an endorsement that the applicant/accused had no requisite amount to his credit in his bank account. The complainant, therefore, through his counsel, Shri Pandharpurkar, served a registered notice on the accused dated August 10, 1989, demanding the amount. The applicant/accused approached the complainant and expressed his helplessness to return the said amount immediately as agreed.

4. The accused issued a second post-dated cheque No. ONH 365412, dated October 20, 1989, of the Punjab National Bank, branch Amravati. On presentation, it could not be encashed and was dishonoured with an endorsement "refer to drawer". This fact was also intimated to the accused.

5. On the third occasion, a post-dated cheque No. 0170621, dated October 24, 1989, for Rs. 27,000 on the Bank of Maharashtra, branch Amravati, was handed over to the complainant but the same cheque could not be encashed and it was dishonoured on November 2, 1989, with an endorsement "suit filed against the said account". The complainant, therefore, was constrained to send a registered notice dated November 9, 1989, which was duly served on the accused on November 10, 1989. The complainant demanded the principal amount and interest thereon within 15 days from the receipt of the notice. The accused did not comply with the notice but sent a reply by registered post on November 17, 1989, making false allegations.

6. The complainant, therefore, filed a complaint under section 138 of the Negotiable Instruments Act and under section 420 of the Indian Penal Code.

7. Criminal Application No. 569 of 1991 arose out of the Registered Criminal Case No. 68 of 1991 which was registered on the complaint of Shri Govind Bansilal Jaju. He too filed a complaint case under section 138 of the Negotiable Instruments Act under the Banking, Public Financial Institutions and Negotiable Instrument Laws (Amendment) Act, 1988, and section 420 of the Indian Penal Code. Initially, the case was registered as Summary Case No. 1567 of 1989, but subsequently, it was ordered to be tried as a warrant case and, therefore, it was registered as Criminal Case No. 68 of 1989.

8. The complainant took the accused as a trustworthy person and a reputed businessman and deposited a sum of Rs. 25,000 with the accused on June 25, 1989. The accused executed a deposit note (Dharwar Chithi) in favour of the complainant on the same day. It was agreed between the complainant and the accused that interest at 1.75 % per month be charged on the said amount of Rs. 25,000 and it was further agreed by the accused to return the said amount with interest within a period of two months from the date of execution of the deposit note. According to the complainant, the accused failed to return the amount as agreed upon in spite of repeated demands.

9. The accused had issued an account payee cheque No. 365411, dated October 20, 1989, for the amount of Rs. 27,000 including interest, on the Punjab National Bank, branch Amravati. The cheque was presented in the bank but it could not be encashed and it was returned to the complainant. This fact was brought to the notice of the accused and, therefore, he had issued another account payee cheque No. 0170622, dated October 20, 1989, for the amount of Rs. 27,000 including interest, of the Bank of Maharashtra, branch Amravati, in favour of the complainant but the same also could not be encashed and dishonoured as the accused had no requisite amount in the bank. The cheque was dishonoured and the endorsement was that "the case was filed against the accused." The complainant, therefore, sent a notice dated November 8, 1989, to the accused which he received on November 10, 1989. By this notice the demand was made and directed the accused to deposit the amount with interest within 15 days from the date of receipt. The accused did not comply with the notice. However, he sent the reply dated November 17, 1989, making false averments in it. According to the complainant, as the accused committed the offence under section 138 of the Negotiable Instruments Act and under section 420 of the Indian Penal Code, he filed the complaint case against him.

10. Criminal Application No. 448 of 1991 arose out of this Criminal Case No. 67 of 1991, which was registered on the complaint of Subhash, son of Dwarkadasji Heda, under section 138 of the Negotiable Instruments Act and under section 420 of the Indian Penal Code.

11. Shri Subhas Heda is acquainted with the accused since many years. Taking the accused as trustworthy and a reputed businessman, the complainant advanced a hand loan of Rs. 50,000 on June 5, 1989, to the accused. The accused, in lieu thereof, executed the receipt in favour of the complaint on the same day. It was agreed between the parties that the amount of Rs. 50,000 would be paid within a very short period. On July 2, 1989, the accused handed over the account payee cheque No. 0179613 for Rs. 50,000 on the Bank of Maharashtra, branch Amravati, but the cheque could not be encashed as it was dishonoured and returned to the complainant with an endorsement that "the accused had no requisite amount to his credit in his bank account".

12. The complainant, therefore, issued a notice through his counsel, Shri Pandharpurkar, on August 10, 1989, and thereby demanded the amount. The accused approached the complainant and expressed his inability to return the amount immediately. However, the accused issued a post-dated cheque No. 0170620, dated October 30, 1989, for Rs. 54,000 on the Bank of Maharashtra, branch Amravati. On representation, the said cheque was not encashed and it was dishonoured. The cheque was returned to the complainant with an endorsement "suit filed by the bank". Therefore, according to the complainant, the accused has deceived and cheated the complainant by not making the payment within the agreed time. Therefore, the complainant was constrained to issue a registered notice dated November 15, 1989, which was duly served on the accused on November 16, 1989. By this notice, the demand for principal amount and interest was made. There was no compliance but the same was replied on November 17, 1989, making false averments in it. The complainant, therefore, filed a complaint case under section 138 of the Negotiable Instruments Act and under section 420 of the Indian Penal Code.

13. There is no dispute in respect of the acts mentioned in the preceding paras.

14. Shri Kasat, learned counsel for the applicant/accused in all the three criminal cases, submitted that this court has wide powers to quash the order taking cognizance and issuing process against the applicants/accused, there being no material to comply with the provisions of section 138 of the Negotiable Instruments Act and section 420 of the Indian Penal Code.

15. Reliance has been placed on the case of Karnataka Theatres Ltd. v. S. Venkatesan [1989] Crl LJ NOC 74 (Kar). His Lordship, construing the provisions of sections 204 and 482 of the Criminal Procedure Code, observed that :

> "Issue of process-Main ingredients of offence though alleged in complaint not spoken of in sworn statement-Allegations in complaint cannot supplement omission-Order issuing process quashed".

16. On the contrary, Shri Gilda, learned counsel for respondent No. 1 in all the three criminal cases, submitted that in all the three complaints the ingredients of section 420 of the Indian Penal Code

are complied with. At the time of taking cognizance taken by the C. J. M., Amravati, is proper and needs no interference. Reliance has been placed on the case of Mrs. Dhanalakshmi v. R. Prasanna Kumar . In para 3, their Lordships observed that (at page 494 of AIR) :

> "Section 482 of the Criminal Procedure Code empowers the High Court to exercise its inherent powers to prevent abuse of the process of court. In proceedings instituted on a complaint exercise of the inherent power to quash the proceedings is called for only in cases where the 'complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under section 482. It is not, however, necessary that there should be a meticulous analysis of the case before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court."

17. In para 4 of the judgment, their Lordships observed (at page 494) :

> "The High Court without proper application of the principles that have been laid down by this court in Sharda Prasad Sinha v. State of Bihar , Trilok Singh v. Satya Deo Tripathi and Municipal Corporation of Delhi v. Purshotam Dass Jhunjhunwala proceeded to analyse the case of the complainant in the light of all the probabilities in order to determine whether a conviction would be sustainable and on such premises arrived at a conclusion that the proceedings are to be quashed against all the respondent. Court was clearly in error in assessing the material before it and concluding that the complaint cannot be proceeded with. We find there are specific allegations in the complaint disclosing the ingredients of the offence taken cognizance of. It is for the complainant to substantiate the allegations by evidence at a later stage. In the absence of circumstances to hold prima facie that the complaint is frivolous when the complaint does disclose the commission of an offence there is no justification for the High Court to interfere."

18. Reliance has been placed on the case of Ravindra Sonusing Patil v. Smt. Rajendra Pandit Patil [1991] Crl LJ 963 (Bom). In para 9, it is observed that (at page 966) :

> "In support of his first submission, Mr. Shah has placed strong reliance on the decision of the Supreme Court in Madhavrao Jiwaji Rao Scindia's case, , wherein the Supreme Court had observed as follows (at page 711) :
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> "The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted

> allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage' ".

19. Shri Kasat, learned counsel for the applicant/accused submitted that there being no compliance with the provisions of section 138 of the Negotiable Instruments Act, as he has not committed any offence, the notice issued by the complainants and consequently filing the complaints and the cognizance taken by the C. J. M., Amravati being unwarranted, deserve to be quashed. Section 138 of the Negotiable Instruments Act, 1881, reads as under :

> "Dishonour of cheque for insufficiency, etc., of funds in the account. Where any cheques drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque or with both :
>
> Provided that nothing contained in this section shall apply unless -
>
> (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
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> (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
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> (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation. - For the purposes of this section, 'debt or other liability' means a legally enforceable debt or other liability".

20. Shri Kasat, learned counsel for the applicant/accused, submitted that for taking cognizance under section 138 of the Negotiable Instruments Act, the complainant has to satisfy that the cheques issued by the accused were dishonoured or returned by the bank unpaid either because the amount of money standing to the credit of the amount is insufficient to honour the cheque or it exceeds the amount arranged to be paid from that account by an agreement made with that bank.

21. If these two ingredients are satisfied then only it is to be construed that the person concerned who issued the cheques and the cheques dishonoured has committed the offence under this section. According to him, in all the three complaint cases the cheques issued by the accused, do not satisfy the aforesaid two ingredients. The cheques though not encashed were returned to the drawer on different counts and, therefore, no offence is committed by the applicant/accused under section 138 of the Negotiable Instruments Act. To substantiate his submission, learned counsel relied upon the case of G. F. Hunasikattimath v. State of Karnataka [1991] 1 Crimes 226; [1993] 76 Comp Cas 278 (Kar). In the case which was before his Lordship, the cheque was dishonoured on the ground "account closed". According to his Lordship, no offence is committed under section 138 of the Negotiable Instruments Act and cognizance taken by the Magistrate was quashed under section 482 of the Criminal Procedure Code.

22. Further, reliance has been placed on the case of Abdul Samad v. Satya Narayan Mahawar [1991] 1 KLT 40 Case No. 55; [1993] 76 Comp Cas 241 (P & H). In the case before his Lordship under the provisions of section 138 of the Negotiable Instruments Act, a cheque was returned unpaid with the remark "payment stopped". According to his Lordship, this does not attract section 138 of the Negotiable Instruments Act. It has been observed that (at page 243 of 76 Comp Cas) :

> "It is well known that a cheque may be returned by the bank unpaid for various reasons, one of the reasons can be that there is no adequate amount available in the account on which the cheque is drawn to enable the bank to make the payment. Parliament in its wisdom has confined the offence referred to in section 138 only to bouncing of a cheque on the ground of inadequate balance in the account concerned. Where the cheque is returned unpaid on other grounds, the same has not been made an offence."

23. Shri Kasat, learned counsel for the applicant/accused, submitted that the words and terms used in the penal statute have to be construed strictly and in favour of subject as far as possible and that interpretation which the common man is liable to put upon the words used have to be preferred. Therefore, the provisions of section 138 of the Negotiable Instruments Act are very specific that the provisions are attracted in the event of complying with the two ingredients referred to above and none other. Reliance has been placed on the case of State of Maharashtra v. Laxmi Narsimhan [1977] Mah LJ 715. In para 9, their Lordships observed that (at page 721) :

> "The offence under section 5(1)(e) read with section 5(2) obviously deals with the criminal misconduct that can be committed by a public servant. The object of the Act is to provide for penalties so as to flush out and further check corruption from the system and stream of public administration. To keep the governmental processes

> unsullied and to enact penalties which will achieve that object are the twin motivating forces behind the present legislation. The terms used, therefore, in the defining sections will have to be understood in this context of the object and the public servant as understood by the Act. No doubt, while interpreting a penal statute, the words and terms will have to be strictly construed and as far as possible in favour of the subject and that interpretation which the common man is liable to put upon the words used by the Legislature will have to be preferred. This is more so when the court is called upon to deal with statutes of penalties. It is obvious that penal statutes are negative commands and the meanings attached to the words should, as far as possible, be the same as understood in popular parlance in preference to articulate or special or scientific connotations. While understanding the language of the Legislature in this manner, it is equally necessary to observe that the task of interpretation has to be performed to achieve the purposes and the objects of a given statute and suppress the mischief for which the prohibition or the penalty was enacted."

24. Further, reliance has been placed on the case of M. V. Joshi v. M. U. Shimpi, . In this case, their Lordships of the Supreme Court also observed how to interpret the words expressed in a penal statute. Their Lordships observed as follows (headnote) :

> "When it is said that all penal statutes are to be construed strictly it only means that the court must see that the thing charged is an offence within the plain meaning of the words used and must not strain the words. In construing a penal statute it is also a cardinal principle that in case of doubt, the construction favourable to the subject should be preferred. But these rules do not in any way affect the fundamental principles of interpretation, namely that the primary test is the language employed in the Act and when the words are clear and plain the court is bound to accept the expressed intention of the Legislature".

25. Considering the ratio regarding the interpretation of the words in a penal statute and the submissions made by Shri Kasat, learned counsel for the applicant/accused, without any interpretation or construing the words used in section 138 of the Negotiable Instruments Act, the plain meaning of the words "is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank" is that either there is no sufficient amount in the bank in the account to honour the cheque or the demand is of excess amount than the amount standing to his credit. It is, therefore, crystal clear that no amount could be paid not the cheque honoured if there is no sufficient amount to honour the cheque. It is true that cheques are dishonoured by the bank for various reasons like :

> 1. The payee's endorsement required (1a) shareholder's discharge required in the place provided for (1b) please certify that the amount of cheque is credited to the payee's account only.
>
> 2. The payee's endorsement irregular, will pay on bank's confirmation.

3. The payee's endorsement bank's confirmation (3a) shareholder's discharge irregular.

4. The payee's endorsement irregular prefix "for" or "for and on behalf of" or "per pro" required.

5. The payee's vernacular endorsement must be attested by a I.P. or Magistrate under official seal.

6. Translation of vernacular writing require bank's guarantee (6a) guaranteed translation of vernacular writing required (6b) collecting bank's confirmation requires clearing bank's guarantee (6c) collecting bank's discharge required in your favour.

7. Post-dated (7a) out of date (7b) date doubtful (7c) date irregularly written (7d) date incomplete (7e) cheque without date (7f) dividend warrant out of date, please refer the company (7g) cheque mutilated requires bank's guarantee.

8. Amount in words and figures differs.

9. ..... requires drawer's full signature.

10. The drawer's signature differs from specimen recorded with us.

11. The drawer's vernacular signature must be attested by our bank official.

12. The drawer's signature incomplete (12a) the drawer's signature required (12b) title of the account required (12c) cheque irregularly drawn.

13. Crossed-cheque must be presented through a bank (13a) this attached cheque will be received by us for collection (13b) this attached draft is marked "payee's account only".

14. Effects not cleared, please present again ...

15. Effects drawn against returned unpaid.

16. Not provided for (16a) not arranged for (16b) exceeds arrangements.

17. No advice, present again ...

18. Full cover not received (18a) funds expected, please present again.

19. Refer to drawer (19a) insufficient funds (19b) account closed.

> 20. Payment stopped by the drawer (20a) cheque number differs (20b) cheque crossed to two banks (20c) please present this cheque on the counter for encashment (20d) ... stamp required to be cancelled under authenticated initials.
>
> 21. Today's clearing house stamps required (21a) receipt stamp required.

26. On such counts cheques are returned by the bank unpaid. But the provisions of section 138 of the Negotiable Instruments Act, makes it clear that the provisions of this section are attracted when the person concerned who issued the cheque, has no adequate funds in his credit to honour the cheque.

27. In the instant case, the applicant/accused issued the cheques to the non-applicants and the cheques could not be encashed as they were dishonoured and the main reason for the same is that the bank had filed a civil suit against the applicant. During the course of argument, learned counsel, Shri Kasat and Shri Gilda, brought to my notice that the bank has instituted the civil suit against the applicant for the recovery of the loan amount. The plain meaning of this is that the applicant/accused had no amount in his credit in the bank. It is the simple meaning of the words used. There cannot be any meaning other than this. Therefore, the submissions made by Shri Kasat, learned counsel for the applicant/accused, have no force and I do not agree with the view taken by the Lordship in the case of G. F. Hunasikattimath v. State of Karnataka [1991] 1 Crimes 226; [1993] 76 Comp Cas 278 and in the case of Abdul Samad [1991] 1 KLT 40 Case No. 55; [1993] 76 Comp Cas 240 (P & H).

28. Shri Gilda, learned counsel for respondent No. 1. while controverting the submissions made by Shri Kasat, learned counsel for the applicant/accused, placed reliance on the case of S. Prithviraj Kukkillaya v.Mathew Koshy [1991] Crl. LJ 1771; [1991] 71 Comp Cas 131 (Ker). In para 8, their Lordships reproduced section 138 of the Negotiable Instruments Act as follows (at page 133 of 71 Comp Cas) :

> "In order to attract penalty provided under section 138 of the Act, the following ingredients have to be established.
>
> 1. The cheque should have been issued for the discharge, in whole or part, of any debt for other liability.
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> 2. The cheque should have been presented within the period of six months or within the period of its validity, whichever is earlier.
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> 3. The payee or the holder in due course should have issued a notice in writing to the drawer within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.
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> 4. After the receipt of the said notice by the payee or the holder in due course, the drawer should have failed to pay the cheque amount within 15 days of the receipt of

the said notice".

29. In para 9, it is observed that (at p. 134) :

> "Section 142 of the Act provided that no court shall take cognizance of any offence punishable under section 138 except, upon a complaint, in writing made by the payee or, as the case may be, the holder in due course of the cheque, within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138 of the Act, before the Metropolitan Magistrate or a Judicial Magistrate of First Class.
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> In the instant case, the State Bank of India dishonoured the cheque with the endorsement "refer to drawer" on the same day. Thereupon, the petitioner demanded payment of the amount through a registered notice dated April 13, 1989. The first respondent received the same on April 17, 1989. As there was no response to the notice, nor any payment, the petitioner filed a complaint before the lower court on May 19, 1989, alleging that the first respondent committed an offence under section 138 of the Negotiable Instruments Act. The lower court did not take the cognizance of the complaint holding that the complaint would violate article 20 of the Constitution. Their Lordships, in the instant case, quashed the order of the lower court being unsustainable and directed the lower court to proceed with the complaint in accordance with law."

30. Reliance has been placed on the case of Voltas Ltd. v. Hiralal Agarwalla [1991] Crl. LJ 609; [1991] 71 Comp Cas 273 (Cal). In para 11, his Lordship observed that (at page 279 of 71 Comp Cas) :

> "As against the above submission, learned counsel for the opposite party has produced xerox copies of 3 letters one from the General Manager, Allahabad Bank, one from the Assistant Secretary, Bharat Chamber of Commerce and one from the Branch Manager, State Bank of Bikaner and Jaipur. By these letters they have intimated that the remark 'refer to drawer' necessarily means as per banking custom that the cheque has been returned for want of funds in the account of the drawer of the cheque. In view of this clarification it is prima facie seen that the cheque in question bounced because of inadequacy of funds in the drawer's account. As the cheque in question bounced, the complaint requested the accused petitioners to make the full payment of the said cheque but the response of the accused petitioners were not at all helpful. Under the facts and circumstances, it would be premature to hold that the accused persons have not committed an offence under section 138 of the Act of 1881. That can be brought out only in the regular trial of the case. In my opinion, the learned Magistrate has not committed any illegality in proceeding with the trial of the case and directing examination of the accused under section 251 of the Criminal Procedure Code."

31. Mr. Gilda, learned counsel further placed reliance on the case of Calcutta Sanitary Wares v. C. T. Jacob [1991] 1 KLT 269; [1993] 76 Comp Cas 347 (Ker). In para 2, it is observed that (at page 348 of 76 Comp Cas) :

> "The allegations in the complaints, in my view, do make out a prima facie case against the petitioners. Before filing the complaints, the respondent had taken care to abide by the relevant legal provisions. Indeed, it is not the case of the petitioners that no amount is due to the respondent. The issuance of cheques and their dishonour followed by notices of demand and failure to pay are not matters which had been challenged. That the payment was countermanded by a stop memo is of no consequence. That hardly affects the right of the respondent to initiate proceedings under the Act. It has the same effect as closing the account as far as he is concerned. The object of the provision cannot be allowed to be defeated by such ingenuous action."

32. The next submission of Mr. Kasat, learned counsel for the applicant/accused, is that the applicant and the non-applicant in all the cases being businessmen and they being acquainted with each other, it was nothing but a commercial loan transaction. Due to various circumstances, as the applicant could not satisfy the loan amount the non-applicants had taken recourse to section 138 of the Act, though it is a case of civil nature. The non-applicants have already instituted civil proceedings for recovery of the amount advanced by them. The non-applicants, under the circumstances, cannot be allowed to take recourse to criminal proceedings and, therefore, the instant proceedings instituted by all the three non-applicants for the offence under section 138 of the Negotiable Instruments Act and under section 420 of the Indian Penal Code be quashed.

33. Reliance has been placed on the case of Trilok Singh v. Satya Deo Tripathi, . In the case before their Lordships there was a dispute between the parties regarding the purchase of a truck by the complainant (respondent). A hire-purchase agreement was entered into between the respondent and a finance corporation accused (appellants). The loan was payable in monthly instalments. According to the agreement, on default of any one instalment the financier had the right to terminate the hire-purchase agreement even without notice and seize the truck. The complainant's case was that only a blank form was got signed by him. His further case was that on default of the third instalment the truck was forcibly seized and removed by the appellants. The respondent filed a complaint against the appellants in this connection for certain offences. After enquiry the Magistrate directed the issue of summons. The appellants moved an application under section 482, Criminal Procedure Code. Their case in a nutshell was that the respondent's case that they had committed any offence was absolutely false and the proceeding should be quashed.

34. It is held by their Lordships that (head note) :

> "The proceeding initiated was clearly an abuse of the process of the court. It was not a case where any process ought to have been directed to be issued against the accused (appellants). On the well-settled principles of law, it was a very suitable case where the criminal proceeding ought to have been quashed by the High Court in exercise of

> its inherent power. The dispute raised by the respondent was purely of a civil nature even assuming the facts stated by him to be substantially correct."

35. Reliance also has been placed on the case of Shyam Sundar v. Lala Bhawan Kishore [1989] Crl. LJ 559 (All). Their Lordships held that :

> "Return of post-dated cheques being dishonoured-Absence of dishonesty at the initial stage of transaction or when cheque was issued Accused not liable for cheating-It is a case of civil liability.
>
> Absence of dishonesty or inducement at initial stage - Accused not liable for cheating. It is a case of civil liability."

36. Their Lordships further observed that :

> "If from the very inception of the contract the intention is of dishonesty and deception and in consequence thereof a person is induced to part with any property or to do or omit to do anything that he would not do or omit to do, but for that deception the offence of cheating is prima facie made out."

37. In a case in which as a result of passing of some property or doing of an act or omission to do it, a post-dated cheque it issued with the full knowledge of both the parties that for the present the cheque was not encashable, there is no dishonesty or inducement at the very inception of the contract. And if subsequently for some reason or the other on the due date the cheques are dishonoured, the case may not be covered under section 420 of the Indian Penal Code. It will only be a case of civil liability. The reason being that it was not the intention of the person issuing the cheque to make an immediate payment and the post-dated cheque was only in the nature of a promise to pay which promise, if it is broken could give rise only to a civil liability."

38. Shri Gilda, learned counsel for the non-applicant, relied upon the case of Ravindra Sonusing Patil v. Smt. Rajendra Pandit Patil [1991] Crl. LJ 963 (Bom). In para 9, reliance was placed on the decision of the Supreme Court in Madhavrao Jiwaji Rao Scindia's case, , wherein the Supreme Court had observed as follows (at page 966) :

> "The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceedings even though it may be at a preliminary stage."

39. In para 18, his Lordship observed that (at page 970) :

> "In the light of the position that emerges from the record before me, and having regard to the case law on the point, it is clear that the present order of the learned Magistrate does not call for any interference at this point of time. It is correct that the present dispute initially started as a civil dispute. It is, however, equally true that in the course of the same or a subsequent transaction, the facts may disclose a dispute that is actionable before a civil court but the facts may also justify a parallel proceeding being instituted before a criminal court. In the present case, the transaction of February 29, 1988, which is the subject matter of the criminal complaint has nothing to do with the earlier partnership litigation which was pending before the civil court and is quite distinct from that set of facts. As far as the present complaint is concerned, as indicated earlier, there was enough material before the learned Magistrate for purposes of issuing process and consequently, the petitioners are not entitled to challenge that order at this stage."

40. There is nothing in law to prevent the criminal courts from taking cognizance of the offence, provided the elements of an offence are made out on the face of the complaint/petition itself, merely because on the same facts, the persons concerned might be also subjected to civil liability.

41. It is not the function of the criminal courts to have anything to do with disputes relating to property. It is the function of the civil court to decide cases involving the right to property. The object of criminal law is the protection of the innocent and punishment of the guilty. The criminal courts are not be entertain matters which are properly within the jurisdiction of civil courts. At the same time, it will be intolerable it men of position were to evade the law with impunity. Where the complaint shows only a "civil dispute" as to title or as to other civil claims, a Magistrate ought not to deal with them but should dismiss the complaint. If the allegations disclose a criminal offence, the complaint ought not to be dismissed even if civil remedy is obtainable. That there is no possibility of conviction is no ground for dismissal.

42. It is no doubt the tendency on the part of litigants to short-circuit civil suits or proceedings by instituting complaints and this should be vigilantly checked by criminal courts and they should not lend aid to such short cuts. The parties should not be allowed to appease their anger or return their vengeance by starting proceedings in criminal courts where the proper remedy is to resort to civil courts. Criminal courts have to be on their guard to see that their processes are not abused for obtaining decisions on complicated matters of civil nature or for putting pressure on parties with a view to obtaining settlement of dispute questions.

43. Section 4 of the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988, has inserted Chapter XVII in the Negotiable Instruments Act, 1881. The Statement of Objects and Reasons appended to the Bill explaining the provisions of the new chapter read as follows :

> "This clause (clause 4 of the Bill) inserts a new Chapter XVII in the Negotiable Instruments Act, 1881. The provisions contained in the new chapter provide that where any cheque drawn by a person for the discharge of any liability is returned by the bank unpaid for the reason of the insufficiency of the amount of money standing to the credit of the account on which the cheque was drawn or for the reason that it exceeds the arrangements made by the drawer of the cheque with the bank for that account, the drawer of such cheque shall be deemed to have committed an offence. In that case, the drawer, without prejudice to the other provisions of the said Act, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both."

44. It has also been provided that it shall be presumed, unless the contrary is proved, that the holder of such cheque received the cheque in the discharge of a liability. In order to ensure that genuine and honest bank customers are not harassed or put to inconvenience, sufficient safeguards have also been provided in the proposed new chapter.

45. It being an object, the provision must be construed in its letter and spirit. Therefore, whenever cheques are dishonoured on account of insufficiency of funds, the provisions of section 138 of the Negotiable Instruments Act would be attracted.

46. Shri Kasat, learned counsel for the applicant, further submitted that taking cognizance and issuance of process under section 420 of the Indian Penal Code is erroneous as there is no whisper either in the complaint or in the verification statements as well as in the prayer that the applicant has committed the offence punishable under section 420 of the Indian Penal Code. Merely because there is no mention of the section either in the averments made in the complaint or the verification statements, it does not mean that the Magistrate is deprived of the power of taking cognizance under section 420 of the Indian Penal Code. The trial court while taking cognizance and issuing process has to see whether in the complaint or verification statements the ingredients are made out to the complaint or verification statements the ingredients are made out to take action under section 420 of the Indian Penal Code. A perusal of the complaint or verification statements makes it clear that an offence has been made out under section 420 of the Indian Penal Code and thereby the learned trial court committed no illegality.

47. Mr. Gilda, learned counsel for the non-applicant took me through the complaint and verification statements and pointed out that there is a specific averment to comply with the ingredients of section 420 of the Indian Penal Code. It is not the solitary case pending against the applicant but about seven cases are pending in the court of the Judicial Magistrate of First Class, Amravati, under section 138 of the Negotiable Instruments Act. These circumstances are crystal clear to fathom the working of the mind of the applicant/accused that the applicant/accused is in the habit of obtaining loans dishonestly, and not refunding the loan amounts in spite of demands.

48. Considering the submissions of both learned counsel, I do not find any substance in the submissions of Shri Kasat, learned counsel for the applicant and in view of the above discussion, all the three applications are dismissed.