NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1808 OF 2014
[Arising out of Special Leave Petition (Crl.) No.9901 of 2011]

Pulsive Technologies P. Ltd. ... Appellant

Vs.

State of Gujarat & Ors. ... Respondents

WITH

CRIMINAL APPEAL NO.1807 OF 2014
[Arising out of Special Leave Petition (Crl.) No.9915 of 2011]

J U D G M E N T

(SMT.) RANJANA PRAKASH DESAI, J.

1. Leave granted.

2. These appeals are directed against the judgment and order dated 08/09/2011 passed by the High Court of Gujarat in Criminal Misc. Application No.1757 of 2007 and Criminal Misc. Application No.9158 of 2007 whereby the

High Court of Gujarat quashed the criminal complaint filed by the appellant being Criminal Case No.6076 of 2006 pending on the file of the Chief Judicial Magistrate of Vadodara for offences punishable under Section 138 and 142 of the Negotiable Instruments Act ('**the NI Act'**).

Brief facts of the appellant-Company's case.

3. The appellant in both the appeals is the original complainant. It is a private limited company. Contesting respondent no. 2 in appeal arising out of SLP No. 9915 of 2011 is the accused company and contesting respondent nos. 2 to 4 in appeal arising out of SLP No. 9901 of 2011 are its directors.

4. In the course of its business, the accused received bulk orders from Gujarat Informatics Limited ("**GIL**"), a Government of Gujarat Company for supply of desktop computers, printers, UPS and other products. The complainant being one of the approved vendors on the list of the GIL, the accused, placed various purchase orders with the complainant and the complainant sold and supplied the same as per the demand and specifications.

During the course of business, the accused made part payments regularly. For the remaining outstanding legitimate dues of the complainant, the accused handed over a post-dated cheque bearing No.387176 dated 15/07/2006 for Rs.11,80,670/- drawn on HSBC Bank, Bangalore in favour of the complainant.

5. The complainant presented the cheque twice for collection through its bankers viz. Bank of Baroda, Jetalpur Branch. It was returned unpaid on 3/10/2006 for the reason "Payment stopped by drawer". The complainant on 13/10/2006 sent a demand notice to the accused asking them to pay the cheque amount within a period of 15 days from the date of the receipt of the notice. The accused failed to pay the amount to the complainant.

6. On 15/11/2006 the complainant filed a complaint being Criminal Complaint No.6076/06 in the Court of Chief Judicial Magistrate, Vadodara, Gujarat against the accused under Sections 138/142 of the NI Act. The Chief Judicial

Magistrate, Vadodara, by order dated 15/11/2006 issued summons to all the accused.

7. The accused filed applications before the High Court under Section 482 of the Code Criminal Procedure for quashing of the said complaint case. The High Court by the impugned order dated 8/9/2011 allowed the petition and quashed the said complaint. Being aggrieved by the said order the complainant has approached this Court.

8. We have heard Mr. D.N. Ray, learned counsel for the complainant and Mr. Giriraj Subramanium, learned counsel for the accused. Counsel for the complainant submitted that the High Court erred in coming to the conclusion that the complaint does not disclose offence punishable under Section 138 of the NI Act. Counsel submitted that the High Court was wrong in holding that "stop payment" instructions are not covered by Section 138 of the NI Act. The High Court failed to notice authoritative pronouncements of this Court which state that if a cheque bounces because of "stop payment" instructions it would constitute an offence under Section 138 of the NI Act.

Counsel urged that impugned order must, therefore, be set aside. Counsel for the accused, on the other hand, supported the impugned order.

9. The High Court held that provisions of Section 138 of the NI Act are attracted where a cheque is returned by the bank on the ground that there is insufficient amount or that the amount of cheque exceeds the amount arranged to be paid from that account by an agreement made with the bank. The High Court further held that the cheque in question was returned on account of "stop payment" instructions given by the accused vide letter dated 13/07/2006 in view of the fact that the complainant had failed to discharge its obligations as per the agreement by not repairing/replacing the damaged UPS system. The High Court further observed that the complainant had not disclosed complete facts as required under provisos (b) and (c) of Section 138 of the NI Act. The High Court concluded that the complaint did not disclose offence contemplated under Section 138 of the NI Act. The High Court, in the circumstances, quashed the complaint.

10. The High Court, in our opinion, fell into a grave error when it proceeded to quash the complaint. Even "stop payment" instructions issued to the bank are held to make a person liable for offence punishable under Section 138 of the NI Act in case cheque is dishonoured on that count. In ***Modi Cements v. Kuchil Kumar Nandi***[1] this Court made it clear that even if a cheque is dishonoured because of "stop payment" instructions given to the bank, Section 138 of the NI Act would get attracted. This Court further observed that once the cheque is issued by the drawer a presumption under Section 139 must follow and merely because the drawer issues a notice to the drawee or to the bank for stoppage of the payment it will not preclude an action under Section 138 of the NI Act by the drawee or the holder of the cheques in due course.

11. Again in ***M.M.T.C. Ltd. and anr. v. Medchl Chemicals and Pharma (P) Ltd. and anr.***[2] this Court reiterated the same view. What is more important is the fact that this Court declared that the complaint cannot be

[1] (1998) 3 SCC 249
[2] (2002)1 SCC 234

quashed on this ground. Relevant observations of this Court read as under:

> *"... ... ...Even when the cheque is dishonoured by reason of stop-payment instructions by virtue of Section 139 the court has to presume that the cheque was received by the holder for the discharge, in whole or in part, of any debt or liability. Of course this is a rebuttable presumption. The accused can thus show that the "stop-payment" instructions were not issued because of insufficiency or paucity of funds. If the accused shows that in his account there were sufficient funds to clear the amount of the cheque at the time of presentation of the cheque for encashment at the drawer bank and that the stop-payment notice had been issued because of other valid causes including that there was no existing debt or liability at the time of presentation of cheque for encashment, then offence under Section 138 would not be made out. The important thing is that the burden of so proving would be on the accused. Thus a court cannot quash a complaint on this ground."*

12. In ***Laxmi Dyechem v. State of Gujarat and ors***[3] this Court reiterated the above view.

13. We find that the High Court has relied on ***M.M.T.C. Ltd.*** and ***Modi Cements*** and yet drawn a wrong conclusion that inasmuch as cheque was dishonoured

[3] (2012) 13 SCC 375

because of "stop payment" instructions, offence punishable under Section 138 of the NI Act is not made out. The High Court observed that "stop payment" instructions were given because the complainant had failed to discharge its obligations as per agreement by not repairing/replacing the damaged UPS system. Whether complainant had failed to discharge its obligations or not could not have been decided by the High Court conclusively at this stage. The High Court was dealing with a petition filed under Section 482 of the Code for quashing the complaint. On factual issue, as to whether the complainant had discharged its obligations or not, the High Court could not have given its final verdict at this stage. It is matter of evidence. This is exactly what this Court said in ***M.M.T.C. Ltd.*** Though the High Court referred to ***M.M.T.C. Ltd.***, it failed to note the most vital caution sounded therein.

14. The High Court also erred in quashing the complaint on the ground that the contents of the reply sent by the accused were not disclosed in the complaint. Whether any money is paid by the accused to the complainant is a

matter of evidence. The accused has ample opportunity to *probabilis* his defence. On that count, in the facts of this case, complaint cannot be quashed.

15. In view of the above, we set aside the impugned order dated 08/09/2011 passed by the Gujarat High Court in Criminal Misc. Application No. 1757 of 2007 with Criminal Misc. Application No. 9158 of 2007. We direct the Chief Judicial Metropolitan Magistrate, Vadodara to dispose of the Criminal Complaint No.6076 of 2006 as expeditiously as possible and, in any event, within a period of one year from the date of receipt of this order.

16. The appeals are disposed of in the afore-stated terms.

.....J.
(RANJANA PRAKASH DESAI)

.....J.
(N.V. RAMANA)

NEW DELHI,
August 22, 2014.