

Mahendra A. Dadia and Others Vs. State of Maharashtra and Another

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Court : Mumbai

Decided On : Mar-17-1998

Reported in : 1998(4)ALLMR115; 1999(5)BomCR124; 1999BomCR(Cri)124; 1999CriLJ4361

Judge : S.S. Nijjar, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138, 139, 140 and 141; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Indian Partnership Act, 1932](#); Income-tax Act, 1961; [Indian Penal Code \(IPC\), 1860](#) - Sections 191, 192, 193 and 199; [Constitution of India](#) - Articles 14 and 21

Appeal No. : Criminal Application No. 645, 646, 647, 648, 651 of 1998 with Criminal Application No. 3690, 3691 &a

Appellant : Mahendra A. Dadia and Others

Respondent : State of Maharashtra and Another

Advocate for Def. : Mr. Mody

Advocate for Pet/Ap. : Subhash Jha, ;Mrs. Sharmila Modle, ;Ms. Anjo Singh and ;H.C. Mody, Advs., ;M.P. Galeria, A.P.P.

Judgement :

ORDER

S.S. Nijjar, J.

1. This order will dispose of Criminal Writ Petition Nos. 645 of 1998 in Case No. 1060/S/97, 646 of 1998 in Case No. 1061/S/97, 647 of 1998 in Case No. 1063/S/97, 648 of 1998 in Case No. 1064/S/97, 651 of 1998 in Case No. 1062/S/97, 3690 of 1997 in Case No. 1056/S/97, 3691 of 1997 in Case No. 1054/S/97 and 3692 of 1997 in Case No. 1057/S/97 and Criminal Application No. 624 of 1998 in Criminal Writ Petition No. 3690 of 1997 and 3691 of 1997 and Criminal Application No. 694 of 1998 in Criminal Writ Petition No. 3692 of 1997. The prayer made in the writ petitions under section 482 of the Cr. P.C. is that proceedings in respect of the aforesaid cases pending in the Court of the learned Metropolitan Magistrate's 20th Court at Mazgaon, Mumbai be quashed and set aside. The petitioners are sought to be prosecuted in the aforesaid cases for an alleged offence under section 138 of the Negotiable Instruments Act (for short 'the Act'), as amended. All the petitioners are accused in the learned Metropolitan Magistrate's 20th Court, Mazgaon, Mumbai. The petitioner Nos. 2 to 5 in Writ Petition Nos. 645/98, 646/98, 647/98, 648/98, 651/98 and petitioner Nos. 2 to 6 in Writ Petition Nos. 3690/97, 3691/97 and 3692/97 are said to be not at all concerned with the management of the partnership firm. Criminal Application Nos. 624 of 1998 and 694 of 1998, have been filed by respondent No. 2 for vacation of the interim order of stay passed on 22nd December, 1997 in Writ Petition Nos. 3690/97, 3691/97 and 3692/97.

2. For the purposes of this order, the facts are taken from Criminal Writ Petition No. 645 of 1998.

3. A complaint was filed by Dr. Hasmukhlal Chhotalal Mody, respondent No. 2 herein, alleging that he is the creditor of the petitioners. Petitioner No. 6 is a partnership firm registered under the [Indian Partnership Act, 1932](#) having its office and place of business at Amrut, Hansoti Road, Carna Lane, Ghatkopar (West), Mumbai- 400 086. Petitioner No. 6 is stated to be engaged in the business of construction and property development. Petitioner Nos. 1 to 5 are the partners of petitioner No. 6. It is categorically stated in the complaint that petitioner No. 1 to 5 jointly manage the business of petitioner No. 6. Respondent No. 2 had lent and advanced diverse amounts as and by way of loan carrying interest at the rate of

18% per annum to petitioner No. 6. The petitioners are said to be closely related to respondent No. 2. The accounts were maintained by petitioner No. 6 which were regularly sent to respondent No. 2. Petitioner No. 6 had sent the annual statement of account to respondent No. 2 for the year 1995-96 as on 31st March, 1996 after crediting the amount of interest on the outstanding amount of loan for the year 1995-96 (from 1-4-1995 to 31-3-1996). Different amounts of money were said to be due from the petitioner to the respondent No. 2. The petitioners while crediting the interest on the loan amount had deducted a certain amount of money in each case towards income-tax at source in accordance with the provisions of the Income-tax Act, 1961. A certificate to this effect was issued by the petitioners to respondent No. 2. In the first week of March, 1996 respondent No. 2 had demanded repayment of loan by the end of March, 1996. Petitioner No. 1 had agreed to repay the outstanding amount of loan as on 31-3-1996 after crediting the amount of interest payable on the loan amount for the year 1995-96 and deducting income-tax at source. Petitioner No. 1 had promised to issue cheques in favour of respondent No. 2 towards the payment of the loan on 1st April, 1996. Petitioner No. 6 had issued a cheque bearing No. 816097 dated 1st April, 1996 for Rs. 97,741-drawn in favour of respondent No. 2 on Indian Bank, Ghatkopar, Mumbai- 400 077. Similarly other cheques dated 1st April, 1996 were also issued which are subject matter of the other petitions. The cheques were sent to respondent No. 2 in the first week of April, 1996. These cheques were to be in full and final settlement of the loan account. It was requested by the petitioners that since petitioner No. 6 was facing financial difficulty the said cheques should not be deposited in the Bank Account till the end of August, 1996. Petitioner No. 1 had also promised to pay further interest on the amount of cheques separately for the period from 1-4-96 to 31-8-1996. Petitioner No. 1 had given assurances that the said cheques will be positively honoured when presented for realisation in the first week of September, 1996. Relying upon the aforesaid assurances respondent No. 2 had not deposited the cheques till 4th September, 1996. On presentation of the said cheques by respondent No. 2, the same were dishonoured and returned unpaid with the remarks 'payment stopped by the drawer'. Upon the dishonour of the aforesaid cheques, respondent No. 2 served the necessary notice on 14th September, 1996 calling upon the petitioners to make payment within a period of

15 days from the receipt of the notice. This notice was sent by registered post with the A.D. as well as by ordinary post under certificate of posting. This was duly received by the petitioners. The petitioners sent a reply through their Advocate by letter dated 30th September, 1996. According to respondent No. 2, the petitioners had raised false and frivolous contention about their liability for the payment against the dishonoured cheques. In view of the above, respondent No. 2 filed the complaint under section 138 of the Act on 22nd October, 1996. After complying with the necessary proceedings the learned Magistrate issued process against all the petitioners.

4. Aggrieved against this order, the petitioners have filed the aforesaid criminal applications for quashing of the further proceedings before the learned Magistrate.

5. The plea raised in the petitions is that the aforesaid cheques had been given by petitioner No. 1 to respondent No. 2 by way of security for repayment of the loan. On 16th August, 1996 petitioner No. 1 addressed a letter to respondent No. 2 stating therein that the petitioners strongly apprehend that respondent No. 2 and his family members are contemplating to present the cheques, details of which were given in the letter, for encashment though they are given to respondent No. 2 and his family members as and by way of security only. The letter written by the petitioners to respondent No. 2 is as follows:

'UNDER CERTIFICATE OF POSTING

Date: 16-8-1996.

To Dr. H.C. Mody and Your other family members, 102/4 Shreyas, Sewri Wadala Scheme Road No. 7, Wadala, Mumbai-400 031. Dear Sirs,

We strongly apprehend that you and your family members are contemplating to present the following detailed cheques for encashment, though they are given to you and your family members as and by way of 'SECURITY' only.

You are hereby requested not to present the following detailed cheques for encashment as they have been given to you and your family members as and by way of 'SECURITY' only.

Please note that if you still proceed to deposit the following detailed cheques for encashment, without our instructions in writing, we shall not be responsible for the consequences thereof.

S.No. Name of the Chq. No. Date Amount family member

1. Dr. H.C. Mody 816097 1-4-96 97, 741/- 2. Lilavati 816098 1-4-96 96, 452/-
Manilal. 3. Nita H. Mody 816099 1-4-96 1, 03, 227/- 4. Rupa H. Mody 816100 1-4-96 1, 10, 870/-

Thanking you, Yours truly, For Dadia Brothers, Sd/- Partner.'

There was no response to this letter. It is thereafter pleaded in the petition that consequently on 5th September, 1996 the petitioners issued instructions to their Bankers to stop payment of the said cheques. The letter written to the Bank reads as under:-

'September 5, 1996.

To The Chief Manager, Indian Bank, Ghatkopar (East) Branch, Ghatkopar (East), Bombay-77. Dear Sir,

Sub: Stop payment of following cheques. Ref: Current Account No. 10974.

Kindly make the Stop Payment of the following cheques with immediate effect.

Date Drawn in favour of Amount Che. No.

01-APR-96 H.C. Mody Rs. 97, 741/- 816097 01-APR-96 Lilavati Rs. 96, 452/-
816098 Manilal. 01-APR-96 Nita H. Mody Rs. 1, 03, 227/- 816099 01-APR-96 Rupa H. Mody Rs. 1, 10, 870/- 816100

Rs. 4, 08, 290/-

Thanking You, For Dadia Brothers, Sd/- Partner.'

As stated above the facts in all the cases are identical. All the cheques had been issued on 1st April, 1996. Identical letters reproduced above have been written in all the cases.

6. In paragraph 4 of the petition, following averments are made.

'The only short point which is involved in the present application is whether the complaint filed by the respondent No. 2 in the trial Court would be maintainable in view of the fact that the Applicants had called upon the respondent No. 2 before the cheque under question was presented for encashment by him, not to present the cheque under question for encashment. If the respondent No. 2 herein was called upon not to present the cheque under question for encashment before he proceeded to do so, no offence under section 138/141 of the [Negotiable Instruments Act, 1881](#), as amended can be said to have been made out in the facts and circumstances of the case.'

Relying on the aforesaid averments it is pleaded that the question of law raised in these petitions is squarely covered by the decisions of the Supreme Court which are mentioned in paragraph 5 of the petition. Paragraph 5 reads as follows:

'The Hon'ble Supreme Court in case of Electronics Trade and Technology Development Corpn Ltd. v. Indian Technologists and Engineers (Electronics) (P) Ltd. 8s another, reported in : 1996 CriLJ1692 has decided the issue involved in the present application. The next judgment of the Hon'ble Supreme Court in K.K. Siddharthan v. T.P. Praveena Chandran and others, reported in 1997 All.M.R. (Cri.) 304, has confirmed the view taken by the Supreme Court in its earlier judgment in the case of Electronics Trade and Technology Development Corpn. Ltd. v. Indian Technologist & Engineers (Electronics) (P) Ltd. and another.'

7. Mr. Jha, appearing for the petitioners, has vehemently argued that at the time when the learned Magistrate issued process, the law of the country as enunciated by the Supreme Court was that if a creditor is put to notice not to present the cheque for encashment, and yet the creditor presents the cheque for encashment, and the same are dishonoured, no offence would be committed under section 138 of the Act. Relying on the letter dated 16th August, 1996, Mr. Jha submits that the

learned Magistrate committed an error of jurisdiction in issuing process. In view of the above it is submitted that the petitions deserve to succeed and the proceedings deserve to be quashed on this short ground. Mr. Jha has further submitted that the learned Magistrate would be entitled to take into account not only the averments made in the complaint or the documents attached with the complaint but also the documents which may be presented by the petitioners when deciding whether or not to recall issue of process. For this proposition the learned Counsel relies on a judgment of the Supreme Court given in the case of M/ s. Pepsi Foods Ltd. and another, v. Special Judicial Magistrate and others, 1997 (4) Crimes 212 (S.C.). Mr. Jha further submits that so far as petitioner Nos. 2 to 5 are concerned they have no concern whatsoever with the petitioner No. 6. It is submitted that they have in fact resigned from the partnership before the issuance of the cheques. Mr. Jha further submits that time and again it has been observed by the Supreme Court that putting a person to trial is unnecessarily harsh when no offence can possibly be established against the person. On these additional grounds also, submits Counsel, the petitions deserve to be allowed and the proceedings at least against petitioner/accused Nos. 2 to 5 in Writ Petition Nos. 645, 646, 647, 648, 651 of 1998 and petitioner/accused Nos. 2 to 6 in Writ Petition No. 3690, 3691 and 3692 of 1997 deserve to be quashed.

8. Mr. Mody, appearing for respondent No. 2 states that interim stay of further proceedings was granted to the petitioners in these petitions on deliberate misstatements having been made. He further submits that the letter dated 16th August, 1996 is a forgery, it is a fabrication and has been created purely to mislead this Court and to obtain favourable order. Mr. Mody submits that the aforesaid letter was never received by respondents No. 2. If the letter had actually existed the same would have been sent to respondent No. 2 through Registered A.D. Post as is the normal course. In the reply to the notice sent by respondent No. 2 to the petitioner, there is no mention of the letter dated 16th August, 1996 alleged to have been written to the Bank. In view of the above, respondent No. 2 had taken out Application Nos. 624 of 1998 and 694 of 1998 for vacation of the interim stay granted by this Court. Mr. Mody submits that petitioner Nos. 1 to 6 appeared in the Court of the learned Magistrate on 23rd June, 1997 and furnished bonds under section 88 of Criminal Procedure Code. Even at that time the

documents were not brought to the notice of the learned Magistrate. He further submits that the present petitions are an abuse of the process of Court as the petitioners have the alternative remedy of moving the learned Magistrate for withdrawal of process. It is submitted that all the arguments raised by the petitioners in the present petitions could well have been raised before the learned Magistrate. In support of his submission learned Counsel relies on the judgment of the Supreme Court reported in : 1992 CriLJ3779 K.M. Mathew v. State of Kerala, Mr. Mody vehemently contends that the conduct of the petitioners is such that they deserve to be prosecuted for offences under sections 191, 192, 193 & 199 of the Indian Penal Code. It is submitted that both the letters mentioned above have been fabricated which amounts to creating false evidence. Mr. Mody further submits that when examining the matter under section 482 of the Criminal Procedure Code, this Court will assume that all the averments made in the complaint are correct. If even after assuming the said statements to be correct, this Court comes to the conclusion that no offence has been made out only then the proceedings before the learned Magistrate can be quashed. So far as point of law raised by Mr. Jha in paragraph 4 of the petition, relying on the decisions quoted in paragraph 5 of the petition is concerned, it is submitted that the same has been squarely answered against the petitioners in the latest judgment of the Supreme Court reported in : 1998 CriLJ1397 (M/s. Modi Cements Ltd. v. Shri Kuchil Kumar Nandi. Apart from this, it is submitted that the petitioners have not only tried to get out of their liability in these petitions, but they have repeated the same modus operandi in other cases also. Three different criminal complaints were filed against the petitioners in Gujarat. There also the petitioners had filed Criminal Misc. Application Nos. 6519 of 1997, 6520 of 1997 and 6521 of 1997 for quashing of the said complaints. It is submitted that after taking note of the decisions of the Supreme Court mentioned in paragraph 5 of the present petitions, the Gujarat High Court has dismissed the said applications. It is submitted that the very same submissions had been made in the matters which were under the consideration of the Gujarat High Court. In view of the above it is submitted by Mr. Mody that all the petitions deserve to be dismissed and the petitioners deserve to be prosecuted. Mr. Mody submits that at least Contempt of Court proceedings ought to be initiated against the petitioners.

9. I have considered the various arguments put forward by the Counsel. In my view, the question of law raised in these petitions is no longer *res integra*. The matter is squarely covered by the ratio of the Supreme Court judgment in *Modi Cements (supra)*. After considering the earlier judgment of the Supreme Court given in *Electronics Trade and Technology Development Corporation Ltd., Secunderabad v. Indian Technologists and Engineers (Electronics) (P). Ltd. & another, : 1996 CriLJ1692*, a larger Bench of the Supreme Court has held that the observations made therein, on which Mr. Jha has placed strong reliance, do not flow from the correct interpretation of section 138 read with section 139 of the Act. The observations of the Supreme Court with regard to the aforesaid are as follows.

'9. The High Court has laid much stress in its judgment to emphasize that a petition under section 482 Cr.P.C. is tenable when no offence even *prima facie* was made out in the complaint. There can be no dispute regarding that legal proposition but the application thereof will depend upon the averments made in the complaint. But the second reasoning of the High Court is contrary to the decision of this Court (rendered by a Bench of two Judges) in *Electronics Trade and Technology Development Corporation Ltd., Secunderabad v. Indian Technologists & Engineers (Electronics) (P). Ltd. & another, : 1996 CriLJ1692*. While interpreting section 138 of the Act, it firstly observed as under :

'It would thus be clear that when a cheque is drawn by a person on an account maintained by him with the banker for payment of any amount of money to another person out of the account for the discharge of the debt in whole or in part or other liability is returned by the Bank with the endorsement like (1) in this case, 'refer to the drawer' (2) 'instructions for stoppage of payment' and stamped (3) 'exceeds arrangement', it amounts to dishonour within the meaning of section 138 of the Act. On issuance of the notice by the payee or the holder in due course after dishonour, to the drawer demanding payment within 15 days from the date of the receipt of such a notice, if he does not pay the same, the statutory presumption of dishonest intention, subject to any other liability, stands satisfied.'

10. It then took up for consideration a similar contention advanced before them by the learned Counsel for the drawer of the cheques that stoppage of payment due to instructions does not amount to an offence under section 138 of the Act and

repelling the same observed. 'We find no force in the contention. The object of bringing section 138 on the Statute appears to be to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments.....' The Court further observed, 'it is seen that once the cheque has been drawn and issued to the payee and the payee has presented the cheque and thereafter, if any instructions are issued to the Bank for non-payment and the cheque is returned to the payee with such an endorsement, it amounts to dishonour of cheque and it comes within the meaning of section 138.'

11. Another two Judge Bench while dealing with the same question in K.K. Sidharthan v. T.P. Praveena Chandran & another : (1996)6SCC369 observed, 'This shows that section 138 gets attracted in terms if cheque is dishonoured because of insufficient funds or where the amount exceeds the arrangement made with the Bank. It has, however, been held by a Bench of this Court in Electronics Trade and Technology Development Corpn Ltd. v. Indian Technologists and Engineers (Electronics) (P) Ltd., that even if a cheque is dishonoured because of 'stop payment' instruction to the Bank, section 138 would get attracted'. We are in complete agreement with the above legal proposition.

12. The Learned Counsel for the appellant vehemently urged that both these decisions of this Court clearly support the case of the appellant and the trial Court had rightly issued the process and the High Court was totally wrong in taking a contrary view.

13. It was, however, contended on behalf of the respondent that the decision in Electronics Trade & Technology Development Corporation Ltd., Secunderabad (supra) does not support the appellant as far as the facts that emerged in the present cases inasmuch as the drawer had intimated to the Bank on 8-8-1984 to stop the payment whereas the cheques were presented for encashment on 9-8-94 although the same were drawn on 23-2-1994, 26-2-1994 and 28-2-1994. The learned Counsel for the respondent strongly relied upon the following observations in Electronics Trade and Technology Development Corporation Ltd., (supra):

'Suppose after the cheque is issued to the payee or to the holder in due course and before it is presented for encashment, notice is issued to him not to present

the same for encashment and yet the payee or holder in due course presents the cheque to the Bank for payment and when it is returned on instructions section 138 does not get attracted.'¹⁴. The Learned Counsel for the appellant submitted that if the attention of the Court was drawn to the provisions of section 139 of the Act which according to him, had an important bearing on the point in issue, the Court would certainly not have made the above observations. The said section reads as under :

'Section 139. Presumption In favour of holder :- It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.'¹⁵. According to the learned Counsel if the observations of this Court in *Electronics Trade & Technology Development Corporation Ltd., Secunderabad* (supra) to the effect, 'Suppose after the cheque is issued to the payee or to the holder in due course and before it is presented for encashment, notice is issued to him not to present the same for encashment and yet the payee or holder in due course presents the cheque to the Bank for payment and when it is returned on instructions, section 138 does not get attracted' is accepted as good law, the very object of introducing section 138 in the Act would be defeated.

16. We see great force in the above submission because 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 Act by the drawee or the holder of a cheque in due course. The object of Chapter XVII, which is instituted as 'OF PENALTIES IN CASE OF DISHONOUR OF CERTAIN CHEQUES FOR INSUFFICIENCY OF FUNDS IN THE ACCOUNTS' and contains sections 138 to 142, is to promote the efficacy of banking operations and to ensure credibility in transacting business through cheques. It is for this reason we are of the considered view that the observations of this Court in *Electronics Trade & Technology Development Corporation Ltd., Secunderabad* (supra) in paragraph 6 to the effect 'suppose after the cheque is issued to the payee or to the holder in due course and before it is presented for encashment, notice is issued to him not to present the same for encashment and yet the payee or holder in due course

presents the cheque to the Bank for payment and when it is returned on instructions, section 138 does not get attracted', does not fit in with the object and purpose for which the above chapter has been brought on the Statute Book.

18. The aforesaid propositions in both these reported judgments, in our considered view, with great respect are contrary to the spirit and object of sections 138 and 139 of the Act. If we are to accept this proposition it will make section 138 a dead letter, for, by giving instructions to the Bank to stop payment immediately after issuing a cheque against a debt or liability the drawer can easily get rid of the penal consequences notwithstanding the fact that a deemed offence was committed. Further the following observations in para 6 in Electronics Trade & Technology Development Corporation Ltd., Secunderabad (supra).....' Section 138 of the Act intended to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a Bank and induce the payee or holder in due course to act upon it. Section 138 draws presumption that one commits the offence if he issues the cheque dishonestly' in our opinion, do not also lay down the law correctly.

21. It is needless to emphasize that the Court taking cognizance of the complaint under section 138 of the Act is required to be satisfied as to whether a prima facie case is made out under the said provision. The drawer of the cheque undoubtedly gets an opportunity under section 138 of the Act to rebut the presumption at the trial. It is for this reason we are of the considered opinion that the complaints of the appellant could not have been dismissed by the High Court at the threshold.'

Section 140 of the Act provides that it shall not be a defence in a prosecution for an offence under section 138 of the Act that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentation for the reasons stated in that section. Thus clearly for committing an offence under section 138 of the Act mens rea is not an essential ingredient. Sections 138, 139 and 140 of the Act clearly rule out mens rea as an ingredient for the commission of the offence under section 138 of the Act. This view of mine also finds support from a Division Bench judgment of this Court in the case of Mayuri Pulse Mills and others v. Union of India and others, 1996 (5) Bom.C.R. 348 : 1995 (1) Crimes 226

wherein the very constitutionality of section 138, 139, 140 and 141 of the Act were challenged as being ultra vires Articles 14 and 21 of the [Constitution of India](#). Examining the various provisions of the Act, this Court speaking through R.M. Lodha, J., observed as follows :

'13. Mere dishonour of cheque for the reasons stated in section 138 of the N.I. Act is sufficient for commission of crime under section 138 of the N.I. Act and it is not material whether he had reason to believe when he issued the cheque that the cheque may not be dishonoured on presentment. For an offence under section 138 of the N.I. Act mens rea is not essential, which is clearly spelt out from reading of section 138. The said provision clearly rules out mens rea as a constituent part of the crime. The position of law is that section 138 brings into operation the rule of strict liability and, therefore, there is nothing unreasonable, if it is provided in section 140 that certain defences may not be allowed in any prosecution under section 138. The rigour of section 138 which creates dishonour of cheque for insufficiency etc. of funds in the account as an absolute offence by legal fiction, is further maintained by making the provisions in section 140 that it shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section and, therefore, cannot be said to be unreasonable or arbitrary.

14. State of mind of accused person, his knowledge or reasonable belief are not the necessary ingredients of an offence under section 138 of the N.I. Act and, therefore, the provision contained in section 140 of the Act that it shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment, cannot be said to be unreasonable and violative of Article 14 of the [Constitution of India](#).'

The law having been thus declared by the Supreme Court and this Court, these petitions have to be held to be without any substance. I also do not find any substance of Mr. Jha that the petitions deserve to be allowed qua petitioners No. 2 to 5 in Writ Petition Nos. 645/98, 646/98, 647/98, 648/98, 651/98 and Petitioners

No. 2 to 6 in Writ Petition Nos. 3690/97, 3691/97 and 3692/97, as they were only dormant partners. These vague assertions are not sufficient to quash the complaints at the threshold. These petitioners will undoubtedly get an opportunity to rebut the presumption of dishonest intention, under section 139 of the Act.

10. In view of the above all the petitions are dismissed. Interim orders of stay are vacated. Criminal Application Nos. 624/98 and 694/98 are disposed of accordingly. Rule is discharged in Cr.W.P. Nos. 3690, 3691 and 3692 of 1997.

All the aforesaid observations made with regard to the documents and matters of fact shall not be taken into account by the learned Magistrate at any subsequent stage.

Certified copy expedited.

11. Petitions dismissed.

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