IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-19131-2022
Reserved on: 04.09.2023
Pronounced on : 20.11.2023

Jitendra Singh and another .....Petitioners

Vs.

State of Punjab and others .....Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Viren Sibal, Advocate for the petitioners.

Mr. Karunesh Kaushal, AAG, Punjab.

Mr. Aashish Chopra, Advocate with
Ms. Mehar Nagpal, Advocate for respondents No.2 to 4.

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ANOOP CHITKARA J.

FIR No.	Dated	Police Station	Sections
0094	26.05.2017	Hoshiarpur, Sadar Hoshiarpur	406/420 IPC

1. Seeking quashing of FIR captioned above on the ground that a similar case under the Negotiable Instruments Act was filed by the complainants and dishonor of cheque cannot be construed as a deliberate intention to cheat and a malicious act on the part of the issuer, the accused has come up before this court under Section 482 CrPC.

2. I have heard counsel for the petitioners as well as private respondents and also gone through the pleadings.

3. The petitioners' case is that an FIR was registered for embezzlement of Rs.1.59 crores, whereas the complainants/respondents No.2 & 3 had also separately instituted criminal complaints under Section 138 of Negotiable Instruments Act (in short 'NIA') (Annexures P-2 & P-3) for the same amount, which violates his fundamental right under Article 20(2) of the Constitution of India being double jeopardy.

4. A perusal of Annexure P-2 reveals that the complaint was for the dishonor of a

cheque amounting to Rs. 49 lacs, and similarly, Annexure P-3 was filed for the dishonor of a cheque dated 17.02.2015 amounting to Rs.1.10 crores and total cheque amount in both the case is Rs. 1.59 crores. Petitioners claim that on a similar set of allegations, FIR was registered, which amounts not only to double jeopardy but also to misuse of criminal machinery.

5. The state is a formal respondent and did not file its response. However, private respondents Nos. 2 to 4 had filed their reply dated 30.08.2023.

6. The complainant's stand is the scope and nature of proceedings under NIA and IBC are different and would not intercede with each other. The nature of proceedings to be kept in abeyance under the IBC do not include criminal proceedings but are restricted to only recovery of amount with interest as a debt recovery proceeding would be. It cannot be said that the proceedings under the IBC would extinguish criminal proceedings and under Section 238 of the IBC, the provisions of CrPC shall have effect. No provision of the IBC bars the continuation of the criminal prosecution initiated against individuals as they cannot escape their prosecution and penal liability covered under Sections 138 and 141 of NIA.

7. Although both the parties have also taken up the plea of interim moratorium under section 96 of the Arbitration and Re-conciliation Court, this Court is not going into that question for the reason that it has nothing to do with the FIR at its current stage of the moratorium proceedings. Furthermore, Supreme Court in Ajay Kumar Radheshyam Goenka v. Tourism Finance Corporation of India Ltd, Sep 04, 2023, 2023 SCCOnLineSC266, holds that by operation of the provisions of the IBC, the criminal prosecution initiated against the natural persons under Section 138 read with 141 of the NI Act read with Section 200 of the CrPC would not stand terminated, and both Hon'ble Judges of Supreme Court have authored separate but concurring verdicts, holding as follows:

> [16]. We have no hesitation in coming to the conclusion that the scope of nature of proceedings under the two Acts and quite different and would not intercede each other. In fact, a bare reading of Section 14 of the IBC would make it clear that the nature of proceedings which have to be kept in abeyance do not include criminal proceedings, which is the nature of proceedings under Section 138 of the N.I. Act. We are unable to appreciate the plea of the learned counsel for the Appellant that because Section 138 of the N.I. Act proceedings arise from a default in financial debt, the proceedings under Section 138 should be taken as akin to civil proceedings rather than criminal proceedings. We cannot lose sight of the fact that Section 138 of the N.I. Act are not

> recovery proceedings. They are penal in character. A person may face imprisonment or fine or both under Section 138 of the N.I. Act. It is not a recovery of the amount with interest as a debt recovery proceedings would be. They are not akin to suit proceedings.
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> [17]. It cannot be said that the process under the IBC whether under Section 31 or Sections 38 to 41 which can extinguish the debt would ipso facto apply to the extinguishment of the criminal proceedings. No doubt in terms of the Scheme under the IBC there are sacrifices to be made by parties to settle the debts, the company being liquidated or revitalized. The Appellant before us has been roped in as a signatory of the cheque as well as the Promoter and Managing Director of the Accused company, which availed of the loan. The loan agreement was also signed by him on behalf of the company. What the Appellant seeks is escape out of criminal liability having defaulted in payment of the amount at a very early stage of the loan. In fact, the loan account itself was closed. So much for the bona fides of the Appellant.
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> [18]. We are unable to accept the plea that if proceedings against the company come to an end then the Appellant as the Managing Director cannot be proceeded against. We are unable to accept the plea that Section 138 of the N.I. Act proceedings are primarily compensatory in nature and that the punitive element is incorporated only at enforcing the compensatory proceedings. The criminal liability and the fines are built on the principle of not honouring a negotiable instrument, which affects trade. This is apart from the principle of financial liability per se. To say that under a scheme which may be approved, a part amount will be recovered or if there is no scheme a person may stand in a queue to recover debt would absolve the consequences under Section 138 of the N.I. Act, is unacceptable.
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> [107]. I may draw my final conclusions as under:
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> (a) After passing of the resolution plan under Section 31 of the IBC by the adjudicating authority & in the light of the provisions of Section 32A of the IBC, the criminal proceedings under Section138 of the NI Act will stand terminated only in relation to the corporate debtor if the same is taken over by a new management.
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> (b) Section 138 proceedings in relation to the signatories/directors who are liable/covered by the two provisos to Section 32A(1) will continue in accordance with law.

8. The primary stand of the complainants/informants is that it was not only a case of dishonoring of the cheques but also a breach of trust accompanied by mensrea; as such, it amounts to the commission of an offence punishable under section 406 IPC and also amounted to an act of cheating punishable under section 420 IPC, for which the above captioned FIR was registered. As such, FIR cannot be termed as a civil dispute for breach of contract or mere prosecution under Section 138 of NIA, and the ingredients of the offence under Section 138 of NIA and the offence under Section 420 of IPC are entirely different. It is explicitly stated that the complaint under Section 138 of NIA will not act as a bar to the criminal proceedings under Sections 406 & 420 IPC initiated by way of FIR, and the offence punishable under Section 420 IPC is a serious one, as a sentence of

seven years can be imposed. Respondents' further stand is that under Section 138 of NIA, mensrea is not needed. However, for an offence under Section 420 IPC, the fraudulent and dishonest intention is relevant to prove what exists in the given allegation, making both offences different. Further, it had been held that the case under the NI Act could only be initiated by filing a complaint, which condition is not necessary in the case under IPC. Given this, the offences under NIA & IPC Act are distinct, notwithstanding that the facts in the proceedings might be similar.

9. The impugned FIR (Annexure P-1) is based on a complaint addressed to the Senior Superintendent of Police, Hoshiarpur, against the petitioners for not releasing the amount against the goods purchased from their firm for Rs.1.59 crores and for dishonoring the cheques. It is mentioned in the FIR that the petitioners had handed over to the complainants five cheques of Rs.20 lacs each and one cheque for Rs.14 lacs; however, when the said cheques were presented in the bank, the same could not be encashed due to insufficient funds. When the complainant contacted the petitioners, they made excuses for releasing Rs.1.5 crores. Based on this, a complaint dated 25.03.2017 was made, and an FIR was registered against the petitioners.

10. In reply to the present petition filed by the private respondents, it has been mentioned that the complainant had served legal notice to the petitioners on 07.03.2015 as well as on 07.04.2015, and the copies are annexed as Annexures R-2/1 and R-2/2. A perusal of Annexure R-2/1 dated 07.03.2015 refers to the dishonor of a cheque amounting to Rs.49 lacs, and Annexure R-2/2 dated 07.04.2015 refers to the dishonor of a cheque amounting to Rs.1.10 crores. After that, the respondents filed criminal complaints (Annexures P-2 & P-3) before the concerned Court to seek prosecution under Section 138 of NIA.

11. An analysis of the above pleadings makes it crystal clear that the FIR was registered for non-receipt of the amount of Rs.1.59 crores, whereas two separate complaints were filed under section 138 of NIA for the dishonor of two cheques, one for Rs. 1.10 crores and another for Rs. 49 lacs. It is not a case of private respondents that the amount received for cheques was different than the amount mentioned in FIR. The stand of private respondents was that cheques were handed over with dishonest intentions, and it amounted to misappropriation of funds and cheating as such separate offences would lie. Thus, it remains undisputed that for the same amount of Rs. 1.59 crores, not only two complaints were filed under Section 138 of NIA seeking criminal prosecution, but an FIR was also registered for the same amount under Sections 420 &

406 IPC. A reference to FIR dated 26.05.2017 reveals that legal notices were issued on 07.03.2015/07.04.2015, and the complaints under Section 138 of NIA were also filed before the registration of FIR, and the contents of complaint filed under NIA as well as the FIR are similar.

12. Section 403 IPC provides that dishonestly misappropriating or converting any movable property to one's own use is a penal offence. Section 405 IPC also makes a criminal offence when any person who has been entrusted with any property or who has any dominion over such property dishonestly misappropriates or converts it for his own use, in violation of any direction of law, providing such trust to be discharged or any legal contract, express or implied, which he has made touching the discharge of such trust or wilfully suffers any person so to do, commits the offence of Criminal breach of trust. Sections 406 to 409 prescribe a sentence for criminal breach of trust depending upon such person's position. When the parties settle their outstanding debts through an agreement, and the debtor agrees to take cheques in place of the liability, then the element of entrustment of the explicit entrustment of such property gets merged with the issuance of the cheque. Even the previous legal contracts under which the property was handed over also get settled. In such a position, unless there is a specific provision that if the cheques are not honoured, then the agreement shall stand rescinded automatically, and the position would revert to the original, it cannot be said that even after taking the cheques, the element of entrustment and consequent mistrust and misappropriation would survive. Section 118 of the Negotiable Instruments Act of 1881 starts with a presumption as to negotiable instruments, and later, Section 138 clarifies that when a person draws a cheque on an account maintained by him for discharge, either whole or in part, of any debt or other liability, and it is dishonored, then it would constitute an offense. Thus, the holder of the cheque only needs to show that the person drew the cheque from the account maintained by him with the banker for payment of any amount of money to another person from out of that account for discharge.

13. Once the legislature had provided a special provision for prosecution for the dishonor of a cheque with a presumption in favor of the holder of the cheque, it would be reading down the statute by taking the view that the same amount was also misappropriated. The entrustment was against a promise to pay and was governed under Indian Contract Act, 1872, and if still there was a malicious intent and offences punishable under Sections 420 & 406 IPC are also made out, then it would be undermining the stringent provisions of Section 138 of NIA, which is a Special Act. The Statutory presumption

under Section 118[1] of NIA has been provided to shift the burden on the accused. This mechanism has been built keeping in mind the knowledge of the issuer of the cheque that the funds in his bank account would be less than the amount for which the cheque was handed over or the amount permitted to be entered by giving a blank cheque. The malicious intent has been taken care of by providing the presumption in NIA under section 118. As such, on the same and similar set of allegations, once the complainant has preferred to launch prosecution under Section 138 of NIA, a parallel prosecution under Sections 420 & 406 IPC would not lie and would amount to double jeopardy, violating Article 20(2) of India's Constitution, which makes it fundamental right that no person shall be prosecuted and for the same offence more than once. After a criminal prosecution has been launched, then it would be a violation of Article 20(2) of India's Constitution to file an FIR under the Indian Penal Code by leveling allegations that the goods were received with malicious intent and cheques were also issued with such an intent, and to simultaneously seek prosecution under Section 138 of NIA for the same set of allegations and a similar transaction for the same amount would violate Article 20(2) of the Constitution of India.

14. Be that as it may, given the matter having been referred to a larger bench, awaiting a final verdict from Hon'ble Supreme Court, the view expressed by me has no legal and binding force.

15. In Sangeetaben Mahendrabhai Patel, Gujarat, (2012) 7 SCC 621, a two-member bench of Supreme Court holds,

> [27]. Admittedly, the appellant had been tried earlier for the offences punishable under the provisions of Section 138 N.I. Act and the case is sub judice before the High Court. In the instant case, he is involved under Sections 406/420 read with Section 114 IPC. In the prosecution under Section 138 N.I. Act, the mens rea i.e. fraudulent or dishonest intention at the time of issuance of

[1] 118. Presumptions as to negotiable instruments.—Until the contrary is proved, the following presumptions shall be made:—
(a) of consideration:—that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;
(b) as to date:—that every negotiable instrument bearing a date was made or drawn on such date;
(c) as to time of acceptance:—that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;
(d) as to time of transfer:—that every transfer of a negotiable instrument was made before its maturity;
(e) as to order of indorsements:—that the indorsements appearing upon a negotiable instrument were made in the order in which they appear then on;
(f) as to stamp:— that a lost promissory note, bill of exchange or cheque was duly stamped;
(g) that holder is a holder in due course:—that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

> cheque is not required to be proved. However, in the case under IPC involved herein, the issue of mens rea may be relevant. The offence punishable under Section 420 IPC is a serious one as the sentence of 7 years can be imposed. In the case under N.I. Act, there is a legal presumption that the cheque had been issued for discharging the antecedent liability and that presumption can be rebutted only by the person who draws the cheque. Such a requirement is not there in the offences under IPC. In the case under N.I. Act, if a fine is imposed, it is to be adjusted to meet the legally enforceable liability. There cannot be such a requirement in the offences under IPC. The case under N.I. Act can only be initiated by filing a complaint. However, in a case under the IPC such a condition is not necessary.
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> [28]. There may be some overlapping of facts in both the cases but ingredients of offences are entirely different. Thus, the subsequent case is not barred by any of the aforesaid statutory provisions.

16. In V.S. Reddy v. Muthyala Ramalinga Reddy 2015 SCC OnLine SC 1925, Decided on September 28, 2015, a two-member bench of Supreme Court holds,

> [2]. The present appeal, by special leave, calls in question the legal validity of the order dated 16th December, 2014 in Criminal Petition No. 8362 of 2012, preferred under Section 482 of the Code of Criminal Procedure (Cr.P.C.), whereby the High Court has directed stay of Crime No. 6 of 2012 instituted for the offence punishable under Section 420 of the Penal Code, 1860 and directed C.C. No. 139 of 2012 instituted for the offence under Section 138 of the Negotiable Instruments Act to be taken up by the learned Magistrate for trial.
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> [3]. It is submitted by Mr. D. Ramakrishna Reddy, learned counsel appearing for the appellants that the High Court has erroneously stayed the proceeding by forming opinion that the cases under Section 420 I.P.C and Section 138 of the Negotiable Instruments Act are based on self same facts, and hence Section 300(1) of the Code of Criminal Procedure would come into play. To bolster his submission, he has placed reliance on SangeetabenMahendrabhai Patel v. State of Gujarat, (2012) 7 SCC 621.
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> [4]. In SangeetabenMahendrabhai Patel (supra), it has been held as follows: “Admittedly, the appellant had been tried earlier for the offences punishable
> under the provisions of Section 138 of the NI Act and the case is sub judice before the High Court. In the instant case, he is involved under Sections 406/420 read with Section 114 IPC. In the prosecution under Section 138 of the NI Act, the mens rea i.e. fraudulent or dishonest intention at the time of issuance of cheque is not required to be proved. However, in the case under IPC involved herein, the issue of mens rea may be relevant. The offence punishable under Section 420 IPC is a serious one as the sentence of 7 years can be imposed.”
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> [5]. On a perusal of the judgment in entirety, we find that the similar reasoning was given by the High Court which was not accepted by this Court. The attractability of Section 300 Cr.P.C. was negatived. The facts in the present case are almost similar to the case stated in SangeetabenMahendrabhai Patel (supra).

> [6]. In view of the aforesaid, we allow the appeal and set aside the order passed by the High Court and direct that the learned Magistrate before whom both the cases are pending, shall proceed in accordance with law. However, we direct that he shall pronounce the judgments in both the cases on the same day.

17. In Sajid Khan vs. State of Haryana and another, 2018(3) R.C.R. (Criminal) 992, Single Bench of this Court observed as under:-

> [6]. However, this Court does not find any force in the arguments of learned counsel for the petitioner. There is no concept of 'same cause of action' or for that matter, of 'cause of action' in the criminal jurisprudence.What is punishable in criminal law is the conduct of an accused or the consequences arising from such conduct as reflected in a fact or set of acts. If such two distinct facts or set of facts or the consequences thereof constitute more than one offences then the accused is liable to be prose uted and punished for all such offences, whether the offences are punishable under the general penal law as contained in IPC only or the same are punishable under general criminal and special criminal law separately. It is settled law that mere fact that a conduct is punishable under special law is not the ground to hold that such conduct can not be punished under general criminal law. In the present case, the set of facts involved are of two different stages. In the complaint case, the factum of issuance of cheque on a business transactions and the dishonour thereof; is involved. For that the criminal complaint has been filed under Section 138 of the Negotiable Instruments act. No fault could be found in that. Even the petitioner has not questioned the validity of the complaint filed by the complainant under Section 138 of the Negotiable Instruments Act in the present proceedings. So far as the FIR is concerned, it relates to several transactions/set of facts including supply of some of the goods by the complaint on the representation of the accused Hasan Ahmed which were ultimately received by the present petitioner. The present petitioner does not claim to have any connection with the complainant, of business, or otherwise, therefore, the goods were supplied only through representation by Hasan Ahmed. Admittedly, the petitioner has received the goods but has not made the payment. After investigation, it has been found by the Police, as mentioned in the Final Form/Report(under Section 173 Cr.P.C.), that instead of returning the money taken by Hasan Ahmed for getting the Distributorship to the complainant, he started alluring the complainant further to supply certain goods to certain entities through the said Hasan Ahmed. One of those entities happened to be the firm of the present petitioner. After investigation, the Police has found an angle of conspiracy in this matter which involves the present petitioner as well. As is so discernible from the FIR; even the name of the present petitioner does not find mentioned in it. Therefore, it can notbe said by any stretch of imagination that the proceedings in the FIR against the petitioner has been started by the complainant as misuse of the process of the court, and therefore, should be quashed on that ground. Once the Police has found material to present the challan against the petitioner; showing his involve-

ment in the conspiracy, then per se, the FIR can notbe quashed on this ground.

18. In Sripati Singh (since deceased) through his son Gaurav Singh vs. The State of Jharkhand and another, Criminal Appeal Nos.1269-1270 of 2021 [arising out of SLP (Criminal) No.252-253/2020], in paras 11& 16 to 22, decided on 28-10-2021, it was observed as under: -

> [11]. In the background of what has been taken note by us and the conclusion reached by the High Court, insofar as the High Court arriving at the conclusion that no case punishable under Section 420 IPC can be made out in these facts, we are in agreement with such conclusion. This is due to the fact that even as per the case of the appellant the amount advanced by the appellant is towards the business transaction and a loan agreement had been entered into between the parties. Under the loan agreement, the period for repayment was agreed and the cheque had been issued to ensure repayment. It is no doubt true that the cheques when presented for realization were dishonoured. The mere dishonourment of the cheque cannot be construed as an act on the part of the respondent No.2 with a deliberate intention to cheat and the mens rea in that regard cannot be gathered from the point the amount had been received. In the present facts and circumstances, there is no sufficient evidence to indicate the offence under section 420 IPC is made out and therefore on that aspect, we see no reason to interfere with the conclusion reached by the High Court.
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> [16]. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.
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> [17]. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as 'security' cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that manner if the amount of loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior

discharge of the loan or there being an altered situation due to which there would be understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in a proceedings initiated under Section 138 of the N.I. Act. Therefore, there cannot be a hard and fast rule that a cheque which is issued as security can never be presented by the drawee of the cheque. If such is the understanding a cheque would also be reduced to an 'on demand promissory note' and in all circumstances, it would only be a civil litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security' the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation.

[18]. If the above principle is kept in view, as already noted, under the loan agreement in question the respondent No.2 though had issued the cheques as security, he had also agreed to repay the amount during June/July 2015, the cheque which was held as security was presented for realization on 20.10.2015 which is after the period agreed for repayment of the loan amount and the loan advanced had already fallen due for payment. Therefore, prima facie the cheque which was taken as security had matured for payment and the appellant was entitled to present the same. On dishonour of such cheque the consequences contemplated under the Negotiable Instruments Act had befallen on respondent No.2. As indicated above, the respondent No.2 may have the defence in the proceedings which will be a matter for trial. In any event, the respondent No.2 in the fact situation cannot make a grievance with regard to the cognizance being taken by the learned Magistrate or the rejection of the petition seeking discharge at this stage.

[19]. In the background of the factual and legal position taken note supra, in the instant facts, the appellant cannot be nonsuited for proceeding with the complaint filed under Section 138 of N.I. Act merely due to the fact that the cheques presented and dishonoured are shown to have been issued as security, as indicated in the loan agreement. In our opinion, such contention would arise only in a circumstance where the debt has not become recoverable and the cheque issued as security has not matured to be presented for recovery of the amount, if the due date agreed for payment of debt has not arrived. In the instant facts, as noted, the repayment as agreed by the respondent No.2 is during June/July 2015. The cheque has been presented by the appellant for realisation on 20.10.2015. As on the date of presentation of the cheque for realisation the repayment of the amount as agreed under the loan agreement had matured and the amount had become due and payable. Therefore, to contend that the cheque should be held as security even after the amount had become due and payable is not sustainable. Further, on the cheques being dishonoured

the appellant had got issued a legal notice dated 21.11.2015 wherein interalia it has been stated as follows:

"You request to my client for loan and after accepting your word my client give you loan and advanced loan and against that you issue different cheque all together valued Rs. One crore and my client was also assured by you will clear the loan within June/July 2015 and after that on 26.10.2015 my client produce the cheque for encashment in H.D.F.C. Bank all cheque bearing No.402771 valued Rs. 25 Lakh, 402770 valued Rs.25 lakh, 402769 valued Rs. 50 lakh, (total rupees one crore) and above numbered cheques was returned with endorsement "In sufficient fund". Then my client feel that you have not fulfil the assurance."

[20]. The notice as issued indicates that the appellant has at the very outset after the cheque was dishonoured, intimated the respondent no.2 that he had agreed to clear the loan by June/July 2015 after which the appellant had presented the cheque for encashment on 26.10.2015 and the assurance to repay has not been kept up.

[21]. In the above circumstance, the cheque though issued as security at the point when the loan was advanced, it was issued as an assurance to repay the amount after the debt becomes due for repayment. The loan was in subsistence when the cheque was issued and had become repayable during June/July 2015 and the cheque issued towards repayment was agreed to be presented thereafter. If the amount was not paid in any other mode before June/July 2015, it was incumbent on the respondent No.2 to arrange sufficient balance in the account to honour the cheque which was to be presented subsequent to June/July 2015.

[22] These aspects would primafacie indicate that there was a transaction between the parties towards which a legally recoverable debt was claimed by the appellant and the cheque issued by the respondent No.2 was presented. On such cheque being dishonoured, cause of action had arisen for issuing a notice and presenting the criminal complaint under Section 138 of N.I. Act on the payment not being made. The further defence as to whether the loan had been discharged as agreed by respondent No.2 and in that circumstance the cheque which had been issued as security had not remained live for payment subsequentthereto etc. at best can be a defence for the respondent No.2 to be put forth and to be established in the trial. In any event, it was not a case for the Court to either refuse to take cognizance or to discharge the respondent No.2 in the manner it has been done by the High Court. Therefore, though a criminal complaint under Section 420 IPC was not sustainable in the facts and circumstances of the instant case, the complaint under section 138 of the N.I Act was maintainable and all contentions and the defence were to be considered during the course of the trial.

19. However, the matter stands referred to a larger bench vide order dated Aug 11, 2022, passed in J. Vedhasinghv. R.M. Govindan,2022 INSC 825, by another two-member bench of Supreme Court.

[12]. On perusal of the judgment of SangeetabenMahendrabhaiPatel (supra) [(2012) 7 SCC 621] relied

in the case of M/S. V.S. Reddy and Sons (supra) [(Crl Appeal No. 1285 of 2015) decided on 28.09.2015] by the appellant and the judgments relied upon by the respondents in the case of G. Sagar Suri (supra) [(2000) 2 SCC
636] and Kolla Veera Raghav Rao (supra) [(2011) 2 SCC 703] as afore quoted, the facts and the allegations were similar and that too the prosecution for the offences under Section 138 of the NI Act and, under Sections 406 and 420 of the IPC were also similar. In the judgment of SangeetabenMahendrabhai Patel (supra)it was held that the requirement to prove an offence under the NI Act and an offence under the IPC is different, and it was observed that there may be some overlapping of facts but the ingredients of the offences are entirely different, therefore, the subsequent cases are not barred by any statutory provisions. While in the case of G. Sagar Suri (supra)and Kolla Veera Raghav Rao (supra), the Court concluded that as per Section 300(1) Cr.P.C. no one can be tried and convicted for the same offence or even for a different offence on the same facts, therefore, the prosecution under Section 420 of the IPC is barred by Section 300(1) of Cr.P.C and accordingly liable to be quashed. It is to observe that in the case of SangeetabenMahendrabhai Patel (supra)the judgments of G. Sagar Suri (supra) and Kolla Veera Raghav Rao (supra)have been referred but distinguished on the ground that it was not raised and decided that ingredients of both offences were not same, and the bar of Section 300(1) of Cr.P.C. would not attract. It is relevant to note here that the judgments cited by both the parties are rendered by benches having the strength of two Judges. In our considered view, the bench of this Court in the case of SangeetabenMahendrabhai Patel (supra) followed in M/s. V.S. Reddy and Sons (supra) has taken a different view from the previous judgments of G. Sagar Suri (supra) and Kolla Veera Raghav Rao (supra) rendered by the bench of the same strength. The view taken in both the cases are conflicting to each other. Needles to observe that it is a trite law, if any issue is decided in a previous judgment by a bench of the same strength, conflicting view in the subsequent judgment should not be rendered on the pretext that the issue has not been raised or considered in the previous judgment. In this regard the judgment in District Manager, APSRTC, Vijaywadav.K. Sivaji, (2001) 2 SCC 135,Chandra Prakash v. State of U.P.2002 AIR SCW1573can be profitably referred whereby it is observed that judicial decorum demands that if judgments passed by two judges' bench of equal strength are conflicting, the issue of law involved must be referred to a larger bench as the same is desirable to avoid confusion and maintain consistency of law. In our view, the aforesaid judgments cited by the respective parties are conflicting, however, to avoid any further confusion and to maintain consistency, we deem it appropriate to refer this issue for decision by the larger bench to answer the following questions:

(1) Whether the ratio of the judgment, in the case of G. Sagar Suri (supra) and Kolla Veera Raghav Rao (supra) lay down the correct law?

or

The view taken in the case of SangeetabenMahendrabhai Patel (supra)as

> followed in M/s V.S. Reddy and Sons (supra) which is subsequent and conflicting, lay down the correct proposition of law?
> (2) Whether on similar set of allegations of fact the accused can be tried for an offence under NI Act which is special enactment and also for offences under IPC unaffected by the prior conviction or acquittal and, the bar of Section 300(1) Cr.P.C. would attract for such trial?
>
> [13]. In view of the above discussion, in our view, the judgments relied by learned counsel for both the parties are in conflict with each other on the legal issue. Therefore, the above questions of law have been formulated for answer by a larger bench for decision. In such circumstances, we request the Registry to place the file before Hon'ble the Chief Justice of India for orders.

20. In the case of Union Territory of Ladakh & Ors Versus Jammu and Kashmir National Conference &anr. Civil Appeal No. 5707 Of 2023, Hon'ble Supreme Court holds as under: -

> 35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v Pranay Sethi, (2017) 16 SCC 6805. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.

21. In the light of the mandate of Hon'ble Supreme Court in Union Territory of Ladakh &Ors Versus Jammu and Kashmir National Conference &anr., Civil Appeal No. 5707 Of 2023, the earliest judgement of the largest bench strength on the point in issue is to be followed.

22. In SangeetabenMahendrabhai Patel, Gujarat, (2012) 7 SCC 621, Para 28, a two-member bench of Supreme Court had Squarely held that there may be some overlapping of facts in both the cases but ingredients of offences are entirely different. Thus, the subsequent case is not barred by any of the aforesaid statutory provisions.

23. Given above, the present petition is disposed of with liberty to file fresh after the decision of the above-mentioned larger bench of Hon'ble Supreme Court. Till that time, the petitioners shall be permitted to appear through counsel and shall be exempted from personal appearance except on the date(s), when in the opinion of the trial court, such appearance is necessary. All the proceedings before the trial court shall be subject to the outcome of the judgment of larger bench and consequent petition similar to this, if the stage arises. Trial Court may give some reasonable time to petitioner in case question answered in his favour to come to this Court again under Section 482 CrPC for quashing of FIR on the same ground as taken in this petition.

24. Petition is disposed of with liberty reserved as mentioned above. All pending applications, if any, stand closed.

(ANOOP CHITKARA)
JUDGE

20.11.2023
anju rani

Whether speaking/reasoned: Yes
Whether reportable: YES.