**(1998) 02 MAD CK 0130**

**In the Madras High Court**

**Case No :** Criminal O.P. No''s. 1408 to 1412 of 1998 and Criminal M.P. No''s. 937 to 941 of 1998

Rajkumar Nahata and Another APPELLANT

Vs

Harita Finance Ltd. and Another RESPONDENT

**Date of Decision :** 10-02-1998

**Acts Referred:**
Companies Act, 1956 — Section 457
Negotiable Instruments Act, 1881 (NI) — Section 138

**Citation :** (1999) 95 CompCas 492

**Hon'ble Judges :** S.M. Sidickk, J

**Bench :** Single Bench

**Advocate :** Habibullah Basha and A. Abdul Rahim, for the Appellant;

## Judgement

S.M. Sidickk, J.—Heard the petitioner''s counsel. All these five applications were filed by the same petitioner, who is accused No. 2 in five criminal cases pending before the XIVth and XIIIth Metropolitan Magistrate, Egmore, Madras, and the petitioner/A-2 seeks to quash the proceedings in five criminal cases u/s 482 of the Criminal Procedure Code.

2. The first petition in Crl. O.P. No. 1408 of 1998 is filed by the petitioner/A-2 by name Rajkumar Nahta, who is said to be the director of the first accused company under the name and style of Mrinal Dyeing and Manufacturing Company Limited at Bombay to quash the proceedings in C.C. No. 2263 of 1996 on the file of XIVth Metropolitan Magistrate, Egmore, Madras, and it relates to the return of a cheque dated November 21, 1995, issued by the first accused company represented by its director the petitioner/A-2 for a sum of Rs. 24,99,013.

3. The second petition in Crl. O. P. No. 1409 of 1998 is filed by the very same petitioner u/s 482 of the Criminal Procedure Code to quash the proceedings in C. C. No. 2261 of 1996 on the file of the very same magistrate and it relates to the cheque dated November 21, 1995, issued by the first accused company represented by its director the petitioner/A-2 for a sum of Rs. 24,98,481.

4. The third application Crl. O. P. No. 1410 of 1998 is filed by the very same petitioner u/s 482 of the Criminal Procedure Code to quash the proceedings in C. C. No. 3059 of 1996 on the file of the very same magistrate and it relates to a cheque dated February 10, 1996, issued by the first accused company represented by the director, the petitioner/A-2 for a sum of Rs. 1,04,588.

5. The fourth application, Crl. O.P. No. 1411 of 1998, is filed by the very same petitioner u/s 482 of the Criminal Procedure Code to quash the proceedings in C.C. No. 5184 of 1996 on the file of the XIIIth Metropolitan Magistrate, Egmore, Madras, and it relates to two cheques dated December 14, 1995, issued by the first accused company represented by the petitioner/A2 for a sum of Rs. 24,98,968 and Rs. 24,99,445, respectively.

6. The fifth application in Crl. O.P. No. 1412 of 1998 is filed by the very same petitioner u/s 482 of the Criminal Procedure Code to quash the proceedings in C.C. No. 2587 of 1996 on the file of the XIVth Metropolitan Magistrate, Egmore, Madras, and it relates to the return of the cheque dated January 10, 1996, for a sum of Rs. 1,04,588.

7. Learned senior counsel, Mr. Habibullah Basha, appearing for the petitioner in all these five petitions contended that the petitioner was a director of the first accused company which had business at Bombay and the respondent/ complainant entered into bill discounting with the first accused company, and in discharge of the liability, the first accused company had issued cheques on several dates for several amounts as mentioned in all these five applications arid when the respondent-complainant deposited the cheques, they were returned unpaid for the reason "insufficient funds" or "not arranged" or "refer to drawer" and later the respondent-complainant filed the complaint for the offences under Sections 138 and 142 of the Negotiable Instruments Act, not only against the first accused company but also against the petitioner/A2 who was only a director, and no offence u/s 138 of the Negotiable Instruments Act is made out and the complaint is filed by the respondent/complainant suppressing several material facts, and the first accused company was wound up by an order of the High Court of Gujarat, which appointed an official liquidator, and in these circumstances all the complaints filed by the respondent/complainant as against the petitioner/AZ are not maintainable, and in these circumstances, the proceedings in all these five cases should be quashed u/s 482 of the Criminal Procedure Code.

8. Learned senior counsel also placed reliance upon some decisions which are as follows. He brought to my notice the decision of the Punjab and Haryana High Court in Khosla Fans (India) P. Ltd. (In Liquidation), In re [1983] 53 Comp Cas 858. That was a case where the official liquidator filed a complaint against the respondents under Sections 538, 478 read with Section 446 of the Companies Act, 1956, alleging that the respondents being officers of the liquidated company failed to deliver to the liquidator as desired by him all the movable and immovable properties of the company which was in their custody and control and

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which in law they were enjoined upon to deliver after the company was ordered to be wound up. It was held by the Punjab and Haryana High Court in the said decision in Khosla Fans (India) P. Ltd. (In Liquidation), In re [1983] 53 Comp Cas 858 that the High Court can exercise jurisdiction in suits and proceedings including criminal proceedings in appropriate cases by or against the company. The facts in those cases are not identical with the facts of the present case for the simple reason that the present applications are filed u/s 482 of the Criminal Procedure Code to quash the proceedings pending before the magistrate''s court and, therefore, in my view, the decision in Khosla Fans (India) P. Ltd. (In Liquidation), In re [1983] 53 Comp Cas 858 will have no application to the facts of the present case.

9. Then learned senior counsel for the petitioner has drawn my attention to the decision of the Gujarat High Court in Harish C. Raskapoor v. Jaferbhai Mohmedbhai Chhatpar [1989] 65 Comp Cas 163 wherein it was laid down that where the directors of a company are accused of offences committed by them in their individual capacity, the company court may not grant stay of criminal proceedings against them u/s 391(6) of the Companies Act, 1956, and if the directors are sought to be criminally proceeded against by the creditors in their acts as directors pending consideration of a scheme of arrangement between the creditors and the directors, the proceedings can be stayed by the company court in suitable cases so that the directors may not be pressurised by the creditors, and the proposed scheme u/s 391 of the Companies Act, 1956, can be effectively considered and implemented. So, that was a case where the company court granted stay but did not quash the proceedings of the criminal court. Moreover, that was a case where there was a scheme of arrangement u/s 591 of the Companies Act, 1956, between the creditors and the directors. No such scheme is available in the present case. In those circumstances, I am of the opinion that the decision of the Gujarat High Court in Harish C. Raskapoor v. Jaferbhai Mohmedbhai Chhatpar [1989] 65 Comp Cas 163 will have no application to the facts of the present case wherein we are concerned with quashing of the proceedings by invoking the inherent jurisdiction of this High Court u/s 482 of the Criminal Procedure Code.

10. Then learned senior counsel for the petitioner has drawn my attention to an unreported decision of the Bombay High Court dated October 10, 1997, in Criminal Applications Nos. 2859 of 1997 and 2913 of 1997. A fair reading of the unreported order of the High Court of Bombay dated October 10, 1997, in Criminal Applications Nos. 2859 of 1997 and 2913 of 1997, would disclose that the petitioners therein have filed the applications to pass an order or direction under article 227 of the Constitution of India and Section 482 of the Criminal Procedure Code to stay the proceedings against the petitioners therein and thereupon the further proceedings were stayed pending disposal of the criminal applications. Here the applications filed by the petitioner are simpliciter u/s 482 of the Criminal Procedure Code and article 227 of the Constitution of India is not cited under which these applications are filed. Even otherwise only stay was

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granted by the Bombay High Court but the criminal proceedings pending before the magistrate''s court were not quashed by the Bombay High Court under article 227 of the Constitution of India and Section 482 of the Criminal Procedure Code. Therefore, the unreported order of the Bombay High Court dated October 10, 1997, in Criminal Applications Nos. 2859 of 1997 and 2913 of 1997, will not be of any help to the petitioners to contend that the criminal proceedings pending before the Magistrate''s court at Madras should be quashed u/s 482 of the Criminal Procedure Code.

11. Then the last decision to which my attention was drawn is the decision of the Madras High Court in Mubarak Nisha v. R.M. Subramanian [1997] 1 Cri55 ; [1997] 88 Comp Cas 172 where, in paras. 3 and 4, it was held by his Lordship M. Karpagavinayagam J. as follows (page 174 of 88 Comp Cas) :

"But this case having been filed u/s 138 of the Negotiable Instruments Act relates to summons procedure contemplated under the Code of Criminal Procedure. As such, the petition filed by the petitioner before the lower court under the relevant section was not competent and the same was not maintainable. However as per the decision in K.M. Mathew Vs. State of Kerala and another, , the Supreme Court held that even in summons cases, the petition could be maintained u/s 204 of the Criminal Procedure Code, to drop the proceedings. So I have no hesitation to hold that though the petition was filed by quoting wrong provisions, viz., Section 227 read with Section 239 of the Criminal Procedure Code, it could be construed as having been filed u/s 204 of the Criminal Procedure Code, to drop the proceedings and discharge the accused. In the revision though there are several contentions raised, I feel that the revision has to be allowed on a simple and substantial ground."

12. It follows that a revision was filed as against the order passed by the learned magistrate in the application filed by the accused before the magistrate''s court to drop the proceedings with reference to the complaint filed u/s 138 of the Negotiable Instruments Act. In the present case there is no revision filed by the petitioner herein nor the petitioner has chosen to file any application to drop the proceedings or to discharge from the above case pending before the magistrate''s court. In other words these five applications are filed simpliciter u/s 482 of the Criminal Procedure Code to quash the criminal proceedings. In those circumstances the decision relied on by learned senior counsel appearing for the petitioner and reported in Mubarak Nisha v. R.M. Subramanian [1997] 1 Cri 55 (Mad) ; [1997] 88 Comp Cas 172 will have no application to the facts of the present case.

13. It is significant to note that all the five criminal cases referred to in all these five petitions are of the year 1996, and the petitioner herein has not chosen to question these criminal proceedings by way of filing the petitions u/s 482 of the Criminal Procedure Code at an earlier point of time, and he remained silent from the year 1996, till 1998, when these applications u/s 482 of the Criminal Procedure Code were filed. It is also relevant to note that the petitioner has not

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chosen to file any application before the magistrate''s court either u/s 203 or 204 of the Criminal Procedure Code or under any other provision of law to drop the proceedings or to discharge him from the above case for several reasons as set out in all these five petitions. It is pertinent to note that the cheques referred to in all these five applications were dishonoured or returned unpaid on January 8, 1996, January 8, 1996, February 14, 1996, April 18, 1996 and January 11, 1996, for several reasons as "insufficient funds", "not arranged" and "refer to drawer". While so the first accused company was wound up and the official liquidator was appointed u/s 457 of the Companies Act, by an order dated September 18, 1996, in Company Petition No. 88 of 1996 by the High Court of Gujarat at Ahmedabad, and it is evident from the copy of the judgment filed along with the typed set of papers in these five petitions. So the winding up of the first accused company in these cases and the appointment of official liquidator u/s 457 of the Companies Act was long after the cheques were returned or unpaid in all these five cases. In those circumstances, I am of the view that these are all matters to be agitated before the learned magistrate and to be decided by him either during the course of trial or by filing a petition to drop the proceedings or to discharge the petitioner from the cases. Quashing of criminal proceedings u/s 482 of the Criminal Procedure Code is an exercise of extraordinary inherent jurisdiction of the High Court, and it should be sparingly used and that too in the rarest of rare cases as pointed out by the Supreme Court in R.S. Raghunath Vs. State of Karnataka and another, . The Supreme Court in State of Madhya Pradesh v. Dr. K. Krishnachandra [1997] 1 Cri 4 SC pointed out that the High Court u/s 482 of the Criminal Procedure Code will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. The allegations made in the complaints, a copy of which is filed along with the typed set of papers with these five petitions, will prima facie show that they constitute an offence triable by a magistrate. The allegations in the complaints filed by the respondent/complainant are not absurd or inherently improbable. The criminal proceedings in all these five cases are not manifestly attended with mala fides and the proceedings were not maliciously instituted with ulterior motive for wreaking vengeance and there is no abuse of process of the court.

14. Considering the above facts and circumstances of the case, I am to hold that the petitioner is not entitled to the relief prayed for under Sections 482 of the Criminal Procedure Code to quash the proceedings in C. C. No. 2263 of 1996, 2261 of 1996, 3059 of 1996, 2587 of 1996, and C. C. No. 5184 of 1996, pending on the file of XIVth Metropolitan Magistrate and XIIIth Metropolitan Magistrate, Egmore, Madras, respectively, and consequently these five applications, viz., Crl. O. P. Nos. 1408 of 1998 to 1412 of 1998, have to be dismissed and I answer this point as against the petitioner.

15. In the result all the five applications in Crl. O. P. Nos. 1408 to 1412 of 1998 are dismissed. Consequently, the stay petitions in Crl. M.P. Nos. 937 to 941 of 1998 are also dismissed as unnecessary.

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