

(2019) 03 DEL CK 0246

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 4672 Of 2015, Criminal
Miscellaneous Application No. 16754 Of 2015, 1791 Of 2017

Unique Infoways Pvt. Ltd. & Ors

APPELLANT

Vs

M/S Mps Telecom Private Limited

RESPONDENT

Date of Decision : 19-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Negotiable Instruments Act, 1881 — Section 138, 138(b), 141, 141(1), 141(2)
Code Of Criminal Procedure, 1973 — Section 65, 155(2), 156(1), 219, 220(1), 482
Companies Act, 1956 — Section 2(24), 5(e), 5(f)

Citation : (2019) 2 JCC 959

Hon'ble Judges : Anu Malhotra, J

Bench : Single Bench

Advocate : Randhir Jain, Dhanjani Jain, Madhav Khurana, Parvez Alam

Final Decision : Dismissed

Judgement

Anu Malhotra, J

1. The petitioners of the present petition, namely, (1) Unique Infoways Pvt. Ltd. through its director Vipul Jain, (2) Vipul Jain (Director) and Ms.Usha Jain (Director) arrayed as petitioners No.1 ,2 and 3 vide the present petition seek the setting aside of the order dated 1.6.2015 of the learned Trial Court of the MM (N.I.Act)-02 (South-East), Saket in CC No. 1529/2015 vide which the three petitioners herein arrayed as the three accused in CC No. 1529/2015 in a complaint filed by the respondent herein as complainant thereof were summoned for the alleged commission of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 after pre-summoning evidence had been led.

2. Vide the impugned order it was observed to the effect:

" 01.06.2015

Fresh case U/s 138 of NI Act received. It be checked and registered.

Present: AR of the Complainant alongwith Ld. Counsel.

Pre-summoning evidence by way of affidavit has been tendered. Arguments have been heard upon the point of summoning of the accused. After going through the complaint, documents attached with it and testimony of the complainant, I am of the view that prima facie offence U/s 138 of Negotiable Instruments Act is made out. All the statutory requirements have been complied with. Case filed is within the period of limitation.

Let the accused be summoned on filing of PF, RC/ Speed Post/approved Courier service as well as E-mail for 31.08.2015. Accused be served through affixation also in terms of section 65 of Code of Criminal Procedure 1972. Complainant is at liberty to accompany with the process server for service of the summons."

3. The averments made in the complaint that was filed by the respondent before the learned Trial Court state inter alia to the effect:

" 1.That the complainant is a Pvt. Ltd. Company having its registered office at the address mentioned hereinabove. Complainant Company is engaged in the business of trading/distribution and supplying HTC mobile handsets and other related products.

2. That the complainant is the national distributor of the HTC mobile handsets within the territories of Delhi and imports HTC mobile handsets directly from the company's headquarter in Taiwan. In the course of its normal business complainant appoints further redistributors/stockists (RDS) to promote sale of the said brand in Delhi and elsewhere.

3.That Shri Gautam Mullick is the authorized signatory of the complainant Company having been duly authorized by virtue of Board Resolution dated 18.3.2015 having authority to sign, verify and institute the present complaint. Shri Gautam Mullick, even otherwise, is also well conversant with the facts and circumstances of the present case and therefore duly authorized to institute, prosecute the present complaint on behalf of the complainant Company.

4.That the accused no. 1 a Private Limited Company having its office at the address mentioned hereinabove and running the business concern from the aforesaid address. Accused no. 1 through accused nos. 2 and 3, represented themselves to be engaged in the business of selling mobile handsets and other related products.

5.That the accused nos. 2 and 3 represented yourself to be the Directors of the accused no. 1 and further assure complainant Company that the accused nos. 2 and 3 are in-charge and duly responsible for day-to-day affairs of the accused no. 1 M/s. Unique Infoways Pvt. Ltd.

6.That the complainant Company had business relations with the accused persons, as the accused nos. 2 and 3 on behalf of the accused no. 1 had approached complainant Company with a proposal for appointing accused

persons on non-exclusive basis as the redistributor stockiest of HTC mobile handsets in the Delhi region. Further complainant Company also agreed upon the proposal and made by the accused persons and more specifically accused no. 1 was appointed as re-distributor stockiest of HTC mobile handsets and other related products within the National Capital Region.

7. That accused no. 2 and sometimes accused no. 3 on behalf of accused no. 1, used to place orders on complainant Company through the purchase orders and accordingly complainant used to supply the HTC mobile handsets and other related products as per the purchase orders at your warehouse and raised invoices upon accused no. 1 which needs to be paid by the accused nos. 2 and 3 in the capacity of Directors of the accused no. 1 for the supply of the said products.

8. That the said material was duly received by the accused persons to their complete satisfaction and there were no complaints whatsoever of any nature regarding the quality and quantity of the products supplied to the accused persons by the complainant Company. That the complainant Company was constrained to raise the invoices accordingly and the same were duly acknowledged by the accused persons. As the accused persons was irregular in making payments complainant Company was constrained to maintain a running account of the transactions made with the accused persons.

9. That the accused no. 2 on behalf of the accused no. 1 vide Purchase Order No. PO/029234 dated 29.1.2015 had placed an order for supplying 700 HTC mobile phones, Desire 820 Q/White 150 pieces and HTC mobile phone Desire 820 Q/Grey 550 pieces to the complainant Company worth Rs. 1,27,75,000/- (Rupees One Crore Twenty Seven Lacs Seventy Five Thousand only).

10. That the said HTC mobiles were duly supplied by complainant Company to the accused persons at your warehouse address mentioned above. Complainant Company had raised a Tax Invoice No. SIGURG/000999/2014-15 dated 29.1.2015 for an amount of Rs. 1,00,37,498/- (Rupees One Crore Thirty Seven Thousand Four Hundred Ninety Eight only) towards the 550 HTC Desire 820 Q Grey/Blue mobile handsets and another Tax Invoice No. SIGURG/001007/2014-15 dated 31.1.2015 for an amount of Rs. 27,37,499/- (Rupees Twenty Seven Lacs Thirty Seven Thousand Four Hundred Ninety Nine only) towards the 150 HTC Desire 820 Q White/Blue mobile handsets supplied by complainant Company to accused persons and the same was also duly acknowledged.

11. That out of the aforementioned amount of Rs. 1,27,75,000/- (Rupees One Crore Twenty Seven Lacs Seventy Five Thousand only) the accused persons had already made a part payment of Rs. 30,00,000/- (Rupees Thirty Lacs only) to complainant Company and further assured that the remaining balance of Rs. 97,75,000/- (Rupees Ninety Seven Lacs Seventy Five Thousand only) will be paid by the accused persons to complainant Company as early as possible according

to Tax Invoices.

12. That as per account duly maintained by complainant Company there is an outstanding balance of Rs. 97,75,000/- (Rupees Ninety Seven Lacs Seventy Five Thousand only) towards goods supplied to the accused nos. 2 and 3 on behalf of the accused no. 1 by the complainant Company.

13. That the accused persons had legal and enforceable liability towards complainant Company and were under obligation to pay an amount of Rs. 97,75,000/- (Rupees Ninety Seven Lacs Seventy Five Thousand only). The accused persons despite several repeated requests and reminders from complainant Company and its representatives, have failed to make payment of the outstanding amount to complainant Company.

14. That after much persuasion and follow up by complainant Company, the accused persons had agreed to pay the above noted legal enforceable amount against the invoices raised by complainant Company.

15. That the accused no. 1 under the signatures of addressee no. 2 and upon the instructions of addressee no. 3 towards the outstanding balance payment of the above mentioned amount, issued several cheques to the tune of Rs. 97,75,000/- (Rupees Ninety Seven Lacs Seventy Five Thousand only) all drawn on HDFC Bank, 89, Hemkunt Chamber, Nehru Place, New Delhi - 110019 towards discharge of your existing legal liability.

Details of the cheques are as under:

Sr. No.

Cheque No.

Date

Amount (Rs.)

1.

017015

12.2.2015

25,60,119/-

2.

017016

13.2.2015

25,60,119/-

3.

017017

14.2.2015

25,60,119/-

4.

017018

13.2.2015

6,98,214/-

5.

017019

15.2.2015

6,98,214/-

6.

017020

14.2.2015

6,98,214/-

Total

97,75,000/-

16. That accused no. 2 on behalf of accused no. 1 while issuing the aforesaid cheques, assured and promised to complainant Company that the above said cheques would be duly honoured upon its presentation and further guaranteed to make the payments of legal debts and dues payable to complainant Company.

17. That the cheques mentioned in para 15 at sl. nos. 1 to 6, when presented for clearance by complainant Company to its banker, State Bank of India, South Ext. Part-I, New Delhi - 110049, within the statutory period; was returned back unpaid containing the remark "Payment Stopped By Drawer".

18. It is evident that the accused persons never harboured any intention to pay the complainant Company and have dishonestly and intentionally withheld the dues in order to achieve their otherwise mala fide intention and deceitful designs. That the said dishonor of the cheques were under the knowledge of the accused persons and the same was also informed by complainant Company to the accused persons.

19. That you the accused nos. 2 and 3 on behalf of accused no. 1, again given the assurance and promise that the accused have made proper arrangements of the funds in the bank account and requested complainant Company to present the cheques in question for the second time for clearance. On the request and instructions of the accused persons, the complainant Company has presented the

said cheques in question to its banker namely State Bank of India, South Ext. Part-I, New Delhi - 110049, for clearance for the second time but, to the utter shock and surprise, the said cheques got bounced/returned back unpaid for the second time also despite the specific assurance and promise made by the accused persons containing the same remark "Payment Stopped By Drawer".

Details for the Date of Returning Memo are as under:

Sr. No.

Cheque No.

Date

Amount (Rs.)

Returning memo Date

1.

017015

12.2.2015

25,60,119/-

25.3.2015

2.

017016

13.2.2015

25,60,119/-

20.3.2015

3.

017017

14.2.2015

25,60,119/-

25.3.2015

4.

017018

13.2.2015

6,98,214/-

20.3.2015

5.

017019

15.2.2015

6,98,214/-

20.3.2015

6.

017020

14.2.2015

6,98,214/-

25.3.2015

Total

97,75,000/-

20. That the accused persons might not be having the sufficient funds in their account maintained with its banker named above and with malafide intention to defeat the lawful claim of the complainant Company, the accused no. 2 on behalf of the accused no. 1, had deliberately issued the said cheques in question, knowingly that the said cheques will not be honoured upon presentation as the accused no. 2 on behalf of the accused no. 1 issued the said stop payment instructions to its banker and effected the dishonor of the above said cheques.

21. That the accused persons with malafide intentions issued the aforesaid cheques for the above amount payable to the complainant Company. The said cheques were issued towards the discharge of the debt and legal liability owed by the accused persons towards the complainant Company. Since the said cheques were returned back dishonoured and unpaid for the reasons and grounds stated above, the accused persons in those circumstances committed an offence as contemplated under Chapter XVII of the N.I. Act, 1881, as amended from time to time and therefore, held yourself liable to action in that behalf.

22. The above dishonor of the said cheques is in direct contravention of the promises and assurances made by the accused persons to the complainant Company assuring due encashment of the aforesaid cheques upon presentation for the second time also.

23. That within a period of 30 (thirty) days of the receipt of information from its banker that the said cheques have been returned unpaid due to above mentioned remarks. the complainant Company sent a legal Notice dated 17.4.2015 through registered post on 17.4.2015 at the aforementioned address of the accused persons demanding payment of the dishonoured cheques within 15 (fifteen) days of the receipt of the notice. That the said notice was sufficiently stamped

Registered AD and sent at the last known correct addresses of the accused persons and same is duly served upon the accused persons.

24. That despite the service of the legal notice as aforesaid, the accused persons have not made payment of the cheques-in-question to the complainant Company till date.

25.

26.

27.

28.

4. Through the present petition, the petitioners contend that:

I. That a single complaint filed for the dishonour of six cheques could not have been considered by the learned Trial Court in terms of Section 219 of the CrPC;

II. That there was no case alleged by the respondent in relation to any insufficiency of funds in the accounts of the petitioners herein in as much as vide para 17 of the plaint it had been stated that the cheques on presentation for clearance by the plaintiff company to its banker within a statutory period were returned back unpaid containing the remarks " payment stopped by the drawer";

III. That the respondent had put up the case in relation to dishonour of cheques in question when the dishonour was for the second time and no notice for the dishonor made the second time had been issued;

IV. That the petitioner No.3 had been implicated by invocation of Section 141 of the Negotiable Instruments Act, 1881, despite there being no allegation or material on record to connect her with the commission of any offence.

5. Through the reply to the petition, the respondent has contended that the petition is frivolous and vexatious. The respondent has placed reliance on the verdict of the Hon'ble Supreme Court in State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 to state that the specific observation in para 102 thereof to the effect:

" 102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1 . Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3 . Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4 . Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.",

and it has thus been contended by the respondent that none of the parameters laid down by the Hon'ble Supreme Court in State of Haryana (Supra) are applicable in the instant case.

6. The respondent has further submitted that as the petitioners had issued six cheques for the single and same transaction between the same parties, the respondent had issued a consolidated legal notice for all the six dishonoured cheques and thus one single cause of action arose after the expiry of the period of 15 days.

7. It was also submitted on behalf of the respondent that the series of acts alleged against the petitioners are so interlinked and interconnected that they form the same transaction. It has also been submitted on behalf of the respondent that every dishonour of a cheque of transaction amounts to an independent default against the issuer of the cheque and the holder of the cheque can choose to file a complaint under Section 138 of the Negotiable

Instruments Act, 1881, for any such default and thus it cannot be contended as sought to be contended by the petitioner that Section 138 would have no application to a cheque presented for the second time if the same had already been dishonoured once in as much as, it was a continuing obligation of the drawer to make the cheque good by either arranging funds into its account on which the cheque was drawn or liquidating the liability otherwise.

8. Inter alia, it was submitted on behalf of the respondents that in the case of directors or the officer of the company who signs the cheque on behalf of the company there is no need to make a specific averment that he was in-charge of and was responsible for the conduct of the business of the company or to make any specific allegation and that the mere fact that the dishonoured cheque was signed by the respondent No.2 on behalf of the company would give rise to the responsibilities under Section 141(2) of the Negotiable Instruments Act, 1881.

9. It was also submitted on behalf of the respondent that the averments in the complaint that the Directors, other than the director who signed the cheque in question on behalf of the plaintiff i.e. the petitioner No.1 company, would be liable to face the prosecution without an averment being made in a complaint that such director was in-charge and was responsible to the company for the conduct of the business of the company would suffice as petitioners No.2 and 3 in the present petition are in any event Directors of the petitioner No.1 since 1986 till date and as also indicated from the website of the Ministry of Corporate Affairs.

10. It was also submitted on behalf of the respondent that the issue in respect to the involvement of the petitioner No.3 has been erroneously raised in as much as the issue in relation to the issuance of cheques and the dishonor of cheques was a disputed question of fact which needs to be adjudicated upon by the learned Trial Court on the basis of evidence.

11. Through the written synopsis on behalf of the petitioner and on behalf of the respondents similar submissions were made.

12. Reliance was placed on behalf of the petitioner on a catena of verdicts:

- a. K.K.Ahuja V. V.K.Vora & Another; (2009) 10 SCC 48
- b. Standard Chartered Bank v. State of Maharashtra and Others; (2016) 6 SCC 62
- c. Gunmala Sales Private Ltd. V. Anu Mehta & Ors.; AIR 2015 SC 1072

to contend that the vicarious liability cannot be imposed against a person in terms of Section 141(1) of the Negotiable Instruments Act, 1881 without specific averment as to the role in the issue of the dishonoured cheque.

13. Reliance was also placed on behalf of the respondents on the following verdicts :

- i. Indian Bank Association and Ors. vs. UOI (2014) 5 SCC 590

- ii. K.K.Ahuja vs. V.K.Vora and Anr. (2009) 10 SCC 48
- iii. Standard Chartered Bank v. State of Maharashtra & Ors. (2016) 6 SCC 62
- iv. HMT Watches Limited v. M.A. Abida and Anr. (2015) 11 SCC 776
- v. Charsashni Kumar Talwani vs. Malhotra Poultries, (2013) SCC Online P & H 26656
- vi. Sharma Contracts (India) Pvt. Ltd. vs. State & Anr. 2013 SCOnline P& H 26656
- vii. MSR Leathers vs. S. Palaniappan and Anr. (2013) 1 SCC 177

14. Placed on record along with the reply of the respondent as annexure R-2 is the Company Master Data of the petitioner No.1 which shows the names of the petitioners no. 2 and the petitioner 3 as the directors of the petitioner No.1 with their date of commencement as directors being 19.8.1996 for both of them and there is no 'end' date that has been shown for the respondents No.1 and 2 i.e. the petitioners No.2 and 3 herein.

15. The contents of the complaint as already adverted to herein above are categorical in relation to the allegations against the petitioners herein.

16. In terms of Section 141 of the Negotiable Instruments Act, 1881 every person who at the time of the commission of offence under Section 138 of the Negotiable Instruments Act, 1881, who was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company and such a director of the company would be liable to be prosecuted and punished. The proviso thereto to Section 141 of the Negotiable Instruments Act, 1881, however lays down that no person would be rendered liable to be punished if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the to commission of such offence.

17. As laid down by the Hon'ble Supreme Court in K.K.Ahuja (supra) while summarizing the Section 141 of Negotiable Instruments Act, 1881 it has been observed to the effect:

20. The position under section 141 of the Act can be summarized thus :

(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix 'Managing' to the word 'Director' makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he

was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

(iii) In the case of a Director, Secretary or Manager (as defined in Sec. 2(24) of the Companies Act) or a person referred to in clauses (e) and (f) of section 5 of Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under section 141(1). No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) Other Officers of a company cannot be made liable under sub-section (1) of section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence."

18. The averments in the complaint are categorical to the effect that the petitioner No.2 was the signatory of the cheques which have been issued on behalf of the petitioner No.1 company to the respondent.

19. As regards the petitioner No.3 it is apparent that she falls in the category of director in terms of Section 2 (24) of the Companies Act and thus in terms of the verdict of the Hon'ble Supreme Court in K.K.Ahuja (Supra) para 27(iv), adverted to elsewhere herein above, it is apparent that the petitioner No.3 has also rightly been arrayed as an accused in the instant case. Though the aspect of the respondent No.3 having not been in control and in charge of the petitioner No. 1 company can always be put forth by the petitioner No.3 after putting her defence and can be so contended before the learned Trial Court at the stage of analysis of evidence that is led by either side.

20. Presently in view of the averments that have been made in the plaint coupled with the factum that the petitioner No.3 continues to be a director of the petitioner No.1, it cannot be held that there is an unimpeachable evidence or acceptable circumstances which can lead to the conclusion that the petitioner No.3 could not have been in charge or responsible for the conduct of the business at the relevant time and that making her stand the trial would be an abuse of the process of Court as no offence was made out against her. The same undoubtedly is a matter of evidence and the petitioner No.3 can undoubtedly lead her defence in relation thereto.

21. As regards the contention raised on behalf of the petitioner herein that in relation to the six cheques adverted to herein above, there was only one criminal

complaint that had been filed i.e. CC No. 1529/2015 out of which the impugned order arises, in relation thereto it is essential to observe in as much as it was laid down by this Court in *Sharma Contracts India Pvt. Ltd. V. State & Anr.* (2012) SCC Online Delhi 310 vide para 11 to the effect

"11. The purport of the above provision is that where a person is accused of more than one offence of the same kind committed within the space of twelve months he can be charged and tried at one trial for, any number of them not exceeding three. The stage for determining whether there should be more than one charge and therefore more than one trial has not yet been reached. That will be decided at the appropriate stage by the learned trial court as and when charges are framed. This issue should therefore be appropriately addressed to that Court. The mere reference in the complaint to 20 cheques as having been dishonoured cannot render the complaint bad in law or not maintainable. The order of the learned MM issuing summons also does not get invalidated on that score. The second submission of learned Senior counsel for the Petitioner is also rejected." and that of Bombay High Court in *Rajasthan Trading Co. v. Chemos International Limited II* (2001) BC 426 observing:

"It is true that in the instant case petitioner has issued 27 cheques, 2 of which were dated 30.11.1996 while the remaining were dated 26.2.1997. Thus all the 27 cheques came to be issued to respondent No. 1, within a span of less than 3 months. It is also true that dishonour in respect of each cheque would constitute separate offence. However, it is to be borne in mind that all the 27 cheques were presented to the Bank on one and the same date and they were dishonoured by the Bank. The intimation of dishonour of the cheques was given by the Bank to respondent No. 1 on one and the same date i.e. 10.3.1997. It may further be noted that a single notice dated 19.3.1997 in respect of the dishonour of all the 27 cheques was given to the petitioners. The offence under Section 138 is deemed to have committed when the drawer of the cheques fails to make payment of the amount of money within 15 days of the receipt of the demand notice given under Section 138(b) of the Negotiable Instruments Act. It is also material to note that all the 27 cheques issued by the petitioner were in connection with a single transaction entered with respondent No. 1. Therefore, the provisions of Section 220(1) of Cr. P. Code permits the respondent No. 1 to file one complaint against the petitioners in respect of the said transaction and the petitioners can be tried together for the dishonour of 27 cheques which in fact forms the same transactions. In this respect Mr. Sathyanarayanan referred to the decision in *K. Govindaraj v. Ashwin Baral, I* (1998) BC 581=1998 CrL.J. 22, which was a case in respect of 6 dishonoured cheques given to the complaint within a period of three months. The Madras High Court held that the cheques though given on different dates, were presented on one particular date as requested by the accused, and, therefore, one offence must be deemed to have been committed in respect of the single transaction. It was further held that acts of giving the cheques were merged together to form the same transaction. Therefore, the accused should be charged and tried at one trial for such an

offence. It was, however, held that even otherwise Section 220(1) of the Cr. P. Code permits for such a single trial. I am inclined to adopt the same view taken by the Madras High Court. Consequently, it will have to be held that the challenge given by the petitioners in this petition cannot be sustained. The learned Magistrate must be held to be right in holding that the petitioners can be tried at a single trial for the dishonour of all the 27 cheques.",

in which case it was held that the petitioner of that case could be tried on a single trial for dishonour of all the 27 cheques. Since the contention of the respondent herein is that all the six cheques which form the subject matter of the complaint case No. 1529/2015 have been given in relation to the same transaction, it is apparent that Section 219 of the CrPC, 1973 would not be an impediment to the summoning of the accused persons as has been done in the instant case.

22. It is further essential to observe that it has been laid down by the Hon'ble Supreme Court in *MSR Leathers v. Palaniappan* and another (2013) 1 SCC 177 that a prosecution based on a second or successive default in payment of the cheque amount is not impermissible simply because no prosecution based on the first default which was followed by a statutory notice and a failure to pay and had not been launched. The observations in para 33 and para 34 of the said verdict which read to the effect:

" 33. Applying the above rule of interpretation and the provisions of Section 138, we have no hesitation in holding that a prosecution based on a second or successive default in payment of the cheque amount should not be impermissible simply because no prosecution based on the first default which was followed by a statutory notice and a failure to pay had not been launched. If the entire purpose underlying Section 138 of the Negotiable Instruments Act is to compel the drawers to honour their commitments made in the course of their business or other affairs, there is no reason why a person who has issued a cheque which is dishonoured and who fails to make payment despite statutory notice served upon him should be immune to prosecution simply because the holder of the cheque has not rushed to the court with a complaint based on such default or simply because the drawer has made the holder defer prosecution promising to make arrangements for funds or for any other similar reason. There is in our opinion no real or qualitative difference between a case where default is committed and prosecution immediately launched and another where the prosecution is deferred till the cheque presented again gets dishonoured for the second or successive time.

34. The controversy, in our opinion, can be seen from another angle also. If the decision in *Sadanandan* case [(1998) 6 SCC 514 : 1998 SCC (Cri) 1471] is correct, there is no option for the holder to defer institution of judicial proceedings even when he may like to do so for so simple and innocuous a reason as to extend certain accommodation to the drawer to arrange the payment of the amount. Apart from the fact that an interpretation which curtails

the right of the parties to negotiate a possible settlement without prejudice to the right of holder to institute proceedings within the outer period of limitation stipulated by law should be avoided we see no reason why the parties should, by a process of interpretation, be forced to launch complaints where they can or may like to defer such action for good and valid reasons. After all, neither the courts nor the parties stand to gain by institution of proceedings which may become unnecessary if cheque amount is paid by the drawer. The Magistracy in this country is overburdened by an avalanche of cases under Section 138 of the Negotiable Instruments Act. If the first default itself must in terms of the decision in *Sadanandan case* [(1998) 6 SCC 514 : 1998 SCC (Cri) 1471] result in filing of prosecution, avoidable litigation would become an inevitable bane of the legislation that was intended only to bring solemnity to cheques without forcing the parties to resort to proceedings in the courts of law. While there is no empirical data to suggest that the problems of overburdened Magistracy and judicial system at the district level is entirely because of the compulsions arising out of the decisions in *Sadanandan case* [(1998) 6 SCC 514 : 1998 SCC (Cri) 1471] , it is difficult to say that the law declared in that decision has not added to court congestion." ,are thus germane and relevant.

23. Further more, the verdict of the Hon'ble Supreme Court in Criminal Appeal Nos. 403 and 405 of 2019 in *A.R. Radha Krishna v. Dasari Deepthi & Ors.* Dated 28.2.2019, lays down to the effect:

" 9. In a case pertaining to an offence under S. 138 and S. 141 of the Act, the law requires that the complaint must contain a specific averment that the Director was in charge of, and responsible for, the conduct of the company's business at the time when the offence was committed. The High Court, in deciding a quashing petition under S. 482, Cr.P.C., must consider whether the averment made in the complaint is sufficient or if some unimpeachable evidence has been brought on record which leads to the conclusion that the Director could never have been in charge of and responsible for the conduct of the business of the company at the relevant time. While the role of a Director in a company is ultimately a question of fact, and no fixed formula can be fixed for the same, the High Court must exercise its power under S. 482, Cr.P.C. when it is convinced, from the material on record, that allowing the proceedings to continue would be an abuse of process of the Court. [See *Gunamala Sales Private Limited v. Anu Mehta and Ors.*, (2015) 1 SCC 103].

10. A perusal of the record in the present case indicates that the appellant has specifically averred in his complaint that the respondent nos. 1 and 2 were actively participating in the day today affairs of the accused no.1 - company. Further, the accused nos. 2 to 4 (including the respondent nos. 1 and 2 herein) are alleged to be from the same family and running the accused no.1 - company together. The complaint also specifies that all the accused, in active connivance, mischievously and intentionally issued the cheques in favor of the appellant and later issued instructions to the Bank to "Stop Payment". No evidence of

unimpeachable quality has been brought on record by the respondent nos. 1 and 2 to indicate that allowing the proceedings to continue would be an abuse of process of the court."

24. As regards the contention raised on behalf of the petitioner that there is nothing in the complaint to indicate that there was any insufficiency of funds in the accounts of the petitioners and thus the ingredients of Section 138 of the Negotiable Instruments Act, 1881 are not brought forth, it is essential to observe that it has also been laid down by the Hon'ble Supreme Court in HMT Watches Ltd. vs. M.A. Abida and Anr. (2015) 11 SCC 776, vide para 14 thereof to the effect:

"14. Lastly, it is contended on behalf of Respondent 1 that it was not a case of insufficiency of fund, as such, ingredients of the offence punishable under Section 138 of the NI Act are not made out. We are not inclined to accept the contention of the learned counsel for Respondent

1. In this connection, it is sufficient to mention that in Pulsive Technologies (P) Ltd. v. State of Gujarat [Pulsive Technologies (P) Ltd. v. State of Gujarat, (2014) 13 SCC 18 : (2014) 5 SCC (Civ) 684 : (2014) 5 SCC (Cri) 511], this Court has already held that instruction of "stop payment" issued to the banker could be sufficient to make the accused liable for an offence punishable under Section 138 of the NI Act. Earlier also in Modi Cements Ltd. v. Kuchil Kumar Nandi [Modi Cements Ltd. v. Kuchil Kumar Nandi, (1998) 3 SCC 249 : 1999 SCC (Cri) 252], this Court has clarified that if a cheque is dishonoured because of stop payment instruction even then the offence punishable under Section 138 of the NI Act gets attracted,"

observing thus that in Modi Cement V. Kuchil Kumar Nandi (1998) 3 SCC 249, the Hon'ble Supreme Court has already clarified that if the cheque is dishonoured for 'stop payment' even then the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 gets attracted.

25. In the circumstances, it is not considered appropriate to exercise jurisdiction under Section 482 of the CrPC, in as much as there is no infirmity in the impugned order dated 1.6.2015 of the learned Trial Court, MM (N.I.Act) South-East, Saket in CC no. 1529/2015

26. The petition and the accompanying applications are thus dismissed. However, nothing stated herein shall amount to any expression on the merits of the case pending before the learned Trial Court which shall adjudicate the matter on its own merits uninfluenced by any of the observations made herein.